BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
PATRICK M. SUTTON, M.D.	)	File No. 11-2009-197106
Physician's and Surgeon's Certificate No. G 53929	)	
Respondent	)	

DECISION

The attached **Stipulated Settlement and Disciplinary Order** is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on **November 14, 2011.**

IT IS SO ORDERED **October 14, 2011.**

MEDICAL BOARD OF CALIFORNIA

By: _____
Hedy Chang
Chair, Panel B

KAMALA D. HARRIS
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Supervising Deputy Attorney General
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **PATRICK M. SUTTON, M.D.** **50 Alessandro Place, #420** **Pasadena, California 91105** **Physician's and Surgeon's Certificate No. G 53929,** Respondent.	Case No. 11-2009-197106 OAH No. 2011010555 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Esther P. Kim, Deputy Attorney General.

2. Respondent Patrick M. Sutton, M.D. (Respondent) is represented in this proceeding by attorney David L. Rosner, whose address is 22425 Ventura Boulevard, Suite 315, Woodland Hills, California, 91364.

3. On or about October 29, 1984, the Medical Board of California issued Physician's and Surgeon's Certificate number G 53929 to Patrick M. Sutton, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 11-2009-197106 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 15, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 11-2009-197106 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 11-2009-197106. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits that he failed to make and maintain adequate and accurate records of patient care and has therefore subjected his license to disciplinary action under

Business and Professions Code section 2266. The remaining charges in the Accusation are denied and shall be deemed unproven.

9. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the imposition of discipline by the Board of California as set forth in the Disciplinary Order below.

10. Respondent agrees that he will not petition for early termination or modification of probation. If the Board petitions for revocation of probation, for that proceeding only, it shall be deemed that the Complainant could establish a prima facie case with respect to all of the charges and allegations contained in Accusation No. 11-2009-197106, notwithstanding paragraph 8 above.

RESERVATION

11. Subject to the provision of paragraph 10 above, the admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and

effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 53929 issued to Respondent Patrick M. Sutton, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. PROFESSIONAL BOUNDARIES PROGRAM Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program, at Respondent's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of Respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The Program shall evaluate Respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire Program not later than six months after Respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on Respondent's performance in and evaluations from the assessment, education, and training, the Program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, Respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Board or its designee.

The Program's determination whether or not Respondent successfully completed the Program shall be binding.

Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

2. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in medical record keeping, at the Respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. PSYCHOTHERAPY Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board, its designee, or the board approved psychotherapist deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. If, prior to the completion of probation, Respondent is found to be mentally unfit, by the board approved psychotherapist, to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations. Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

4. THIRD PARTY CHAPERONE During probation, Respondent shall have a third party chaperone present while consulting, examining or treating female patients in his examination room. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Each third party chaperone shall initial and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

5. NOTIFICATION Prior to engaging in the practice of medicine, the Respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent,

at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is prohibited from supervising physician assistants.

7. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

8. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

9. PROBATION UNIT COMPLIANCE Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's certificate.

Respondent shall immediately inform the Board, or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

10. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent shall be

available in person for interviews either at Respondent's place of business or at the probation unit office, with the Board or its designee, upon request at various intervals, and either with or without prior notice throughout the term of probation.

11. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws and Probation Unit Compliance.

Respondent's certificate shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

12. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms

and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's certificate shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

13. COMPLETION OF PROBATION Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

14. VIOLATION OF PROBATION Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

15. LICENSE SURRENDER Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's certificate. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the

Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's certificate shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David L. Rosner. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: _____ signature attached
PATRICK M. SUTTON, M.D.
Respondent

I have read and fully discussed with Respondent Patrick M. Sutton, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____ signature attached
DAVID L. ROSNER
Attorney for Respondent

///

///

Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's certificate shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David L. Rosner. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 8/21/11

PATRICK M. SUTTON, M.D.
Respondent

I have read and fully discussed with Respondent Patrick M. Sutton, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/21/2011

DAVID L. ROSNER
Attorney for Respondent

///

///

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 8/21/11

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

ESTHER P. KIM
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 11-2009-197106

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Dec. 15 2010
BY Brenda Allen ANALYST

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **PATRICK M. SUTTON, M.D.** **50 Alessandro Place, #420** **Pasadena, California 91105** **Physician's and Surgeon's Certificate** **No. G 53929** Respondent.	Case No. 11-2009-197106 **ACCUSATION**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about October 29, 1984, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 53929 to Patrick M. Sutton, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

JURISDICTION

3. This Accusation is brought before the Medical Board of California, Department of Consumer Affairs (Board), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states:

"The Division of Medical Quality[1] shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate."

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[1] Pursuant to Business and Professions Code section 2002, "Division of Medical Quality" or "Division" shall be deemed to refer to the Medical Board of California.

6. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

7. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

"This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

8. Respondent is subject to disciplinary action under section 726 of the Code in that Respondent engaged in sexual abuse and/or misconduct with a patient. The circumstances are as follows:

A. On or about July 27, 2006, patient W.C., a 41-year-old woman, first saw Respondent for a well gynecological exam. A history was taken and a physical exam was performed. The visit was unremarkable.

B. On or about October 4, 2007, patient W.C. saw Respondent with a complaint of irregular periods. A pap test was performed which came back negative. The visit was otherwise unremarkable.

C. On or abut September 29, 2008, patient W.C. was seen by Respondent for a well woman exam ("WWE"). A nurse noted in the chart vaginal dryness and the patient's complaint regarding the occurrence of hot flashes every 20 minutes over a 2 1/2 months period ending in mid August. The patient had advised that over-the-counter medications had resolved the hot flashes. The patient was taking Levoxyl 1.25 mg, a medication for low

thyroid, and was not taking any birth control medications. Respondent noted that the patient's pelvic and breast exams were normal and he took a pap smear and ordered a mammogram. His diagnosis was perimenopausal female with a question mark about possible Estrogen replacement, birth control pills ("BCP") or local therapy. There was no mention in the medical record of any discussion of therapy for vaginal dryness or any discussion of sexual dysfunction and human sexuality. The patient was to return in one year.

D. On or about September 29, 2008, subsequent to the well woman exam, after the nurse chaperone had left the exam room and prior to the patient changing back into her clothes, Respondent engaged in a discussion of human sexuality with patient W.C. The door to the exam room was closed and Respondent sat on a stool in front of the patient, who was still on the exam table using both hands to keep the exam gown closed to avoid exposing her breasts or legs. The patient asked Respondent about water-based verses silicon lubricants and the potential side effects if the lubricant was left in overnight. Respondent answered the questions. Then Respondent asked the patient if she ever masturbated. When the patient said no, Respondent asked her why not. He then asked her questions about whether she fantasized during sex. Respondent told the patient she should feel free to fantasize about anything, "whether you like it from behind or the front, with another woman or another man, or anything you want." Respondent told the patient that she was beautiful, sexy and sensual and a real turn on. The patient asked Respondent to stop talking that way. Respondent told the patient not to worry about the size of her tummy, that, "as long as you enjoy sex, any man would love to sleep with you, believe me, I am a man, you know." Respondent asked the patient if she liked it when a man "goes down" on her. He asked the patient if she had multiple or single orgasms. He said most men just want to please a woman, "to make them smile, if you know what I mean." He said he saw many beautiful women in his office who did not want to be touched and it saddened him that they hate sex. He said the biggest turn on for a man is a woman who loves sex and he would know because he is a man. Respondent asked the patient if she loved sex. The

patient replied that she loved sex with her husband. Respondent asked the patient if she ever put her hand between her legs. Respondent told the patient several times that men liked to see women with their hands between their legs. The patient told Respondent that she is married and does not need to fantasize. Respondent told the patient to call him if she has a fantasy or "any new sexual adventure" because he would love to hear all about it. During the conversation the patient attempted to direct Respondent to discuss the menopause issue, his family or her husband, but Respondent kept talking about sex, repeatedly using such phrases as "hard dick," "hard cock going in and out of you," and "hard on." Respondent also told the patient how lucky her husband was to have her. During the conversation, Respondent patted the patient's bare thighs several times and several times briefly rubbed halfway up from the patient's knee.

E. On or about September 29, 2008, Respondent engaged in sexual abuse and/or misconduct by the manner in which he questioned the patient about her sex life and when he without prompting from the patient discussed human sexuality with patient W.C. using crude, non-medical language while the patient was still in an exam gown and the nurse chaperone had left the exam room, as more fully set forth in paragraph 8(D) above.

F. On or about September 29, 2008, Respondent engaged in sexual misconduct when he rubbed his hand on the patient W.C.'s legs above the knee several times and when he patted the patient's thigh several times during a discussion human sexuality with the patient which took place while the patient was still in an exam gown and the nurse chaperone had left the exam room as more fully set forth in paragraph 8(D) above.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

9. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that Respondent engaged in repeated acts of negligence. The circumstances are as follows:

A. On or about September 29, 2008, Respondent was negligent when he failed to chart in patient W.C.'s medical record a discussion of human sexuality with the patient.

B. On or about September 29, 2008, Respondent was negligent when he questioned the patient about her sex life and when he without prompting from the patient discussed human sexuality with patient W.C. using crude, non-medical language while the patient was still in an exam gown and the nurse chaperone had left the exam room, as more fully set forth in paragraph 8(D) above.

C. On or about September 29, 2008, Respondent was negligent when he rubbed his hand on the patient W.C.'s legs above the knee several times and when he several times patted the patient's thigh during a discussion of human sexuality with the patient which took place while the patient was still in an exam gown and the nurse chaperone had left the exam room as more fully set forth in paragraph 8(D) above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

10. Respondent is subject to disciplinary action under section 2266 of the Code in that Respondent failed to maintain adequate and accurate records of the medical services he provided to a patient. The circumstances are as follows:

A. The facts and circumstances alleged in paragraphs 8 and 9 above are incorporated here as if fully set forth.

DISCIPLINE CONSIDERATIONS

11. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about December 2, 2002, in a prior disciplinary action entitled In the Matter of the Accusation Against Patrick M. Sutton, M.D. before the Medical Board of California, in Case Number 17-1999-97314 Respondent's license was placed on probation for four years. That decision is now final and is incorporated by reference as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 53929, issued to Patrick M. Sutton, M.D.;

2. Revoking, suspending or denying approval of Patrick M. Sutton, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Patrick M. Sutton, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: December 15, 2010

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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