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7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **Michael A. Roth, M.D.**
12 **37935 Twelve Mile Road, Suite B**
Farmington Hill, MI 48331,

13 **Physician's and Surgeon's Certificate**
14 **No. C 30405,**

15 Respondent.

Case No. 800-2017-037819

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

16 **FINDINGS OF FACT**

17 1. On or about September 28, 2016, Complainant Kimberly Kirchmeyer, in her official
18 capacity as the Executive Director of the Medical Board of California, Department of Consumer
19 Affairs, filed Accusation No. 800-2017-037819 against Michael A. Roth, M.D. ("Respondent")
20 before the Medical Board of California.

21 2. On or about August 14, 1968, the Medical Board of California ("Board") issued
22 Physician's and Surgeon's Certificate No. C 30405 to Respondent. The Physician's and Surgeon's
23 Certificate was in full force and effect at all times relevant to the charges brought herein and
24 expired on February 28, 2018. On March 19, 2018, the Board suspended Respondent's
25 Physician's and Surgeon's Certificate. (Exhibit Package, Exhibit 1, License Certification).¹

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27 ¹ The evidence in support of this Default Decision and Order is submitted herewith as the
28 "Exhibit Package."

1 3. On or about April 12, 2018, Dianne Richards, an employee of the Complainant
2 Agency, served by Certified Mail a copy of the Accusation No. 800-2017-037819, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 37935
5 Twelve Mile Road, Ste. B, Farmington Hill, Michigan 48331. (Exhibit Package, Exhibit 2,
6 Accusation Package, Declaration of Service).

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c).

9 5. On or about April 26, 2018, the aforementioned documents were returned by the U.S.
10 Postal Service marked "Forward Time Exp. Rtn to Send." Below that explanation, the U.S.
11 Postal Service also provided another address for Respondent. (Exhibit Package, Exhibit 3, Return
12 Envelope).

13 6. On or about May 1, 2018, Dianne Richards, an employee of the Complainant Agency,
14 served by Certified Mail a copy of the Accusation No. 800-2017-037819, Statement to
15 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
16 11507.6, and 11507.7 to Respondent at 25882 Orchard Lake Rd Ste. A-B 200, Bloomfield, MI
17 48324, based in the information provided by the U.S. Postal Service on the previously returned
18 envelope. (Exhibit Package, Exhibit 4, Declaration of Service).

19 7. On or about May 17, 2018, the aforementioned documents were returned by the U.S.
20 Postal Service with no writing on the envelope. A copy of the United States Postal Service history
21 for this envelope, which was drawn from the following location,
22 <https://tools.usps.com/go/TrackConfirmAction?tLabels=70163010000057117773>, has been
23 included in the Exhibit Package. (Exhibit Package, Exhibit 5, U.S. Postal Service Tracking
24 History).

25 8. On or about May 18, 2018, after a search of the internet was conducted for an
26 alternate address for Respondent, Dianne Richards, an employee of the Complainant Agency,
27 served by Certified Mail a copy of the Accusation No. 800-2017-037819, Statement to
28 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

1 11507.6, and 11507.7 to Respondent at 25882 Orchard Lake Road, A & B 200, Farmington Hills,
2 MI 4836. (Exhibit Package, Exhibit 6, Declaration of Service).

3 9. The envelope has yet to return from the U.S. Postal Service. A review of the U.S.
4 Postal Service Tracking System shows on July 14, 2018, the package was "Unclaimed/Being
5 Returned to Sender." However, it appears that the U.S. Postal Service has attempted one more
6 service, commencing on July 31, 2018, without any further update of service to Respondent. A
7 copy of the United States Postal Service history for this envelope, which was drawn from the
8 following location,

9 <https://tools.usps.com/go/TrackConfirmAction?tLabels=70163010000057117902>, has been
10 included in the Exhibit Package. (Exhibit Package, Exhibit 7, U.S. Postal Service Tracking
11 History).

12 10. On or about June 14, 2018, counsel for Complainant served a Courtesy Notice of
13 Default upon Respondent at Respondent's address of record. The Notice of Default provided
14 Respondent with a copy of the Accusation, the Statement to Respondent, a Notice of Defense,
15 Request for Discovery, and discovery statutes, and advised Respondent that he was in default.
16 (Exhibit Package, Exhibit 8, Courtesy Notice of Default, Accusation Package, Declaration of
17 Service).

18 11. On or about June 25, 2018, the aforementioned documents were returned by the U.S.
19 Postal Service marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward."
20 (Exhibit Package, Exhibit 9, Return Envelope.)

21 **STATUTORY AUTHORITY**

22 12. Service of the Accusation was effective as a matter of law under the provisions of
23 Government Code section 11505, subdivision (c).

24 13. Government Code section 11506 states, in pertinent part:

25 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
26 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
27 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
28 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

1 14. Respondent failed to file a Notice of Defense within 15 days after service upon him
2 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
3 800-2017-037819.

4 15. California Government Code section 11520 states, in pertinent part:

5 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
6 agency may take action based upon the respondent's express admissions or upon other evidence
7 and affidavits may be used as evidence without any notice to respondent."

8 16. Pursuant to its authority under Government Code section 11520, the Board finds
9 Respondent is in default. The Board will take action without further hearing and, based on
10 Respondent's express admissions by way of default and the evidence before it, contained in
11 **Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 9** finds that the allegations in Accusation No. 800-2017-037819
12 are true.

13 **DETERMINATION OF ISSUES**

14 Based on the foregoing findings of fact, Respondent Michael A. Roth, M.D.'s conduct, as
15 well as the actions of the Michigan Board of Medicine, has subjected Respondent's Physician's
16 and Surgeon's Certificate No. C 30405 to discipline within the meaning of Business and
17 Professions Code sections 2305 and 141.

18 18. The agency has jurisdiction to adjudicate this case by default.

19 19. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing and, based on
21 Respondent's express admissions by way of default and the evidence before it, contained in the
22 Exhibit Package, finds that the allegations in Accusation No. 800-2017-037819 are true.

23 A. On or about, September 13, 2017, pursuant to a Consent Order and Stipulation signed
24 by Respondent, the Michigan Board of Medicine suspended Respondent from the practice of
25 medicine for the period of one (1) year and fined Respondent twenty-five thousand dollars
26 (\$25,000.00). The basis of the Michigan Board of Medicine's Consent Order was that
27 Respondent had been negligent in his practice of medicine; incompetent; lacked good moral
28 character; obtained a controlled substance without lawful authority; and betrayed professional

1 confidence. These charges came about after law enforcement searched Respondent's vehicle and
2 found not only Fentanyl and Ciprofloxacin HCL, which had not been prescribed to Respondent,
3 but also improperly stored post-conception material. (A copy of the Consent Order and
4 Stipulation issued by the Michigan Board of Medicine is attached to the Accusation, Exhibit
5 Package, Exhibit 2, Accusation Package).

6 20. Pursuant to the foregoing Findings of Fact, Respondent's conduct and the action of
7 the Michigan Board of Medicine constitute cause for discipline within the meaning of Business
8 and Professions Code sections 2305 and 141.

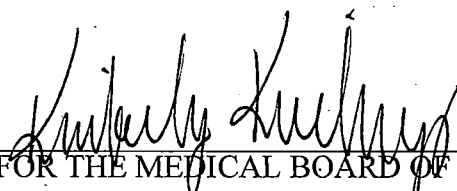
9 **ORDER**

10 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. C 30405, heretofore
11 issued to Respondent Michael A. Roth, M.D., is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve on the
13 Medical Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, a
14 written motion requesting that the Default Decision be vacated and stating the grounds relied on
15 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
16 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
17 statute.

18 This Decision shall become effective on September 20, 2018.

19 It is so ORDERED August 21, 2018

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22 FOR THE MEDICAL BOARD OF CALIFORNIA
23 DEPARTMENT OF CONSUMER AFFAIRS
24 Kimberly Kirchmeyer
25 Executive Director
26
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XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 800-2017-037819

Michael A. Roth, M.D.
37935 Twelve Mile Road, Suite B
Farmington Hill, MI 48331

ACCUSATION

Physician's and Surgeon's Certificate
No. C 30405,

Respondent.

Complainant alleges:

PARTIES

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

2. On or about August 14, 1968, the Medical Board issued Physician's and Surgeon's Certificate Number C 30405 to Michael A. Roth, M.D. (Respondent). The Physician's and Surgeon's Certificate expired on February 28, 2018, and has not been renewed. On March 19, 2018, the Board suspended Respondent's Physician's and Surgeon's Certificate.

JURISDICTION

3. This Accusation is brought before the 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 2305 of the Code states:

"The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state."

6. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

PERTINENT DRUGS

7. **Fentanyl** is a potent narcotic analgesic. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (c)(8), of the Health and Safety Code.

1 8. **Ciprofloxacin hydrochloride**, known by the trade name Cipro, is a synthetic broad
2 spectrum antimicrobial agent. It is a dangerous drug within the meaning of Business and
3 Professions Code section 4022. Cipro is indicated for the treatment of infections caused by
4 susceptible strains of the designated microorganisms in various conditions including urinary tract
5 infections.

6 **CAUSE FOR DISCIPLINE**

7 **(Discipline, Restriction, or Limitation Imposed by Another State)**

8 9. On or about, September 13, 2017, pursuant to a Consent Order and Stipulation signed
9 by Respondent, the Michigan Board of Medicine suspended Respondent from the practice of
10 medicine for the period of one (1) year and fined Respondent twenty-five thousand dollars
11 (\$25,000.00). The basis of the Michigan Board of Medicine's Consent Order was that
12 Respondent had been negligent in his practice of medicine; incompetent; lacked good moral
13 character; obtained a controlled substance without lawful authority; and betrayed professional
14 confidence. These charges came about after law enforcement searched Respondent's vehicle and
15 found not only Fentanyl and Ciprofloxacin HCL, which had not been prescribed to Respondent,
16 but also improperly stored post-conception material.

17 10. Respondent's conduct and the action of the Michigan Board of Medicine, as set forth
18 in paragraph 9, above, and within the actual Board documents attached as Exhibit A, constitutes
19 unprofessional conduct within the meaning of section 2305 and conduct subject to discipline
20 within the meaning of section 141(a).

21 **DISCIPLINE CONSIDERATIONS**

22 11. To determine the degree of discipline, if any, to be imposed on Respondent,
23 Complainant alleges that on or about May 2, 2006, in a prior disciplinary action entitled, Case
24 Number 16-2004-159043, the Medical Board issued a Public Reprimand pursuant to Business
25 and Professions Code sections 495 and 2227.

26 12. The Public Reprimand was issued after a May 19, 2004, Consent Order and
27 Stipulation with the State of Michigan Board of Medicine, which caused Respondent's Michigan
28 license to be placed on probation for six months based on allegations that Respondent, an

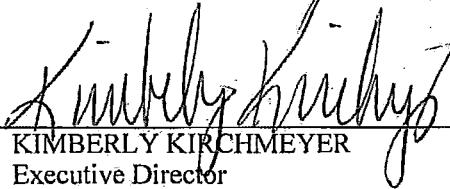
1 obstetrician and gynecologist, treated several patients without adequate medical evaluation and
2 without creating an adequate medical record, performed ultrasounds without medical
3 justification, prescribed without creating an adequate medical record, performed ultrasounds
4 without medical justification, prescribed without medical indication, inappropriately maintained
5 and labeled controlled substance in the office and placed a patient on a diet plan with included
6 prescription medication without documentation, assessment or evaluation.

7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 30405,
11 issued to Michael A. Roth, M.D.;
- 12 2. Revoking, suspending or denying approval of Michael A. Roth, M.D.'s authority to
13 supervise physician assistants and advanced practice nurses;
- 14 3. Ordering Michael A. Roth, M.D., if placed on probation, to pay the Board the costs of
15 probation monitoring; and
- 16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: April 12, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

Michigan Board of Medicine, Consent Order and Stipulation No. 43-15-139118, and
Administrative Complaint No. 43-15-139118

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MICHAEL ARTHUR ROTH, M.D.
License No. 43-01-028327

Complaint No. 43-15-139118

CONSENT ORDER AND STIPULATION

CONSENT ORDER

An administrative complaint was filed with the Disciplinary Subcommittee of the Board of Medicine on November 30, 2015, charging Michael Arthur Roth, M.D. (Respondent) with having violated sections 16221(a), (b)(i), (b)(vi), (c)(iv), and (e)(ii) of the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq.*

The parties have stipulated that the Disciplinary Subcommittee may enter this consent order. The Disciplinary Subcommittee has reviewed the stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding complaint. Therefore, the Disciplinary Subcommittee finds that the allegations of fact contained in the complaint are true and that Respondent has violated sections 16221(a), (b)(i), (b)(vi), (c)(iv), and (e)(ii) of the Public Health Code.

Accordingly, for these violations, IT IS ORDERED:

Respondent's license is SUSPENDED for a period of 1 year.

Respondent is FINED \$25,000 to be paid by check, money order or cashier's check made payable to the State of Michigan (with complaint number 43-15-139118 clearly indicated on the check or money order), and shall be payable within 90 days prior to petitioning for reinstatement. The timely payment of the fine shall be Respondent's responsibility. Respondent shall mail the fine to: Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, Michigan 48909.

Respondent shall direct any communications to the Department that are required by the terms of this order, other than the fine, to: Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30670, Lansing, Michigan 48909.

Reinstatement of Respondent's license shall not be automatic. If Respondent petitions for reinstatement of his license, the petition shall be in accordance with sections 16245 and 16247 of the Public Health Code and Mich Admin Code, R 792.10711. Under these provisions, Respondent must demonstrate the following by clear and convincing evidence: (1) good moral character; (2) the ability to practice the profession with reasonable skill and safety; (3) satisfaction of the guidelines on reinstatement adopted by the Department; and (4) that it is in the public interest for the license to be reinstated.

Respondent is currently subject to criminal prosecution in Oakland and Macomb County (File Nos. 16-260747-FH and 17-001857-FH respectively) arising out of the same facts as contained in the administrative complaint. If Respondent is

criminally convicted, the Department will not bring a new administrative complaint based on either conviction.

Respondent shall be responsible for all costs and expenses incurred in complying with the terms and conditions of this consent order.

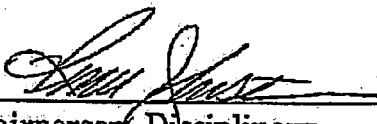
Respondent shall be responsible for the timely compliance with the terms of this consent order, including the timely filing of any documentation. Failure to comply within the time limitations provided will constitute a violation of this order.

If Respondent violates any term or condition set forth in this order, Respondent will be in violation of Mich Admin Code, R 338.1632, and section 16221(h) of the Public Health Code.

This order shall be effective thirty days from the date signed by the Chairperson of the Disciplinary Subcommittee or the Disciplinary Subcommittee's authorized representative, as set forth below.

Signed on September 13, 2017

MICHIGAN BOARD OF MEDICINE

By 
Chairperson, Disciplinary
Subcommittee

STIPULATION

The parties stipulate as follows:

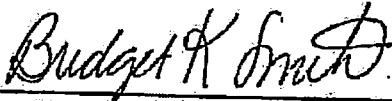
1. The facts alleged in the complaint are true and constitute a violation of the Public Health Code.

2. Respondent understands and intends that, by signing this stipulation, he is waiving the right under the Public Health Code, rules promulgated under the Public Health Code, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.*, to require the Department to prove the charges set forth in the complaint by presentation of evidence and legal authority, and to present a defense to the charges before the Disciplinary Subcommittee or its authorized representative. Should the Disciplinary Subcommittee reject the proposed consent order, the parties reserve the right to proceed to hearing.

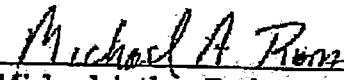
3. The Disciplinary Subcommittee may enter the above Consent Order, supported by Board conferee Rosalie Tocco-Bradley, M.D. Dr. Tocco-Bradley or an attorney from the Licensing and Regulation Division may discuss this matter with the Disciplinary Subcommittee in order to recommend acceptance of this resolution.

By signing this stipulation, the parties confirm that they have read, understand and agree with the terms of the consent order.

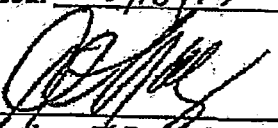
AGREED TO BY:


Bridget K. Smith (P71318)
Assistant Attorney General
Attorney for Complainant
Dated: 8/16/17

AGREED TO BY:


Michael Arthur Roth, M.D.
Respondent

Dated: 8/16/17


Jonathan C. Lanesky (P59740)
Attorney for Respondent
Dated: 8/15/17

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MICHAEL ARTHUR ROTH, M.D.
License No. 43-01-028327

Complaint No. 43-15-139118

ADMINISTRATIVE COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General Kelly K. Elizondo, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing (Complainant), files this complaint against Michael Arthur Roth, M.D. (Respondent) alleging upon information and belief as follows:

Jurisdictional Allegations

1. The Board of Medicine, (Board), an administrative agency established by the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee (DSC).

2. Respondent is currently licensed to practice medicine in the State of Michigan and holds a controlled substance license along with drug control location licenses for his office location in Farmington, Michigan and the office of a practice where he provides coverage in Eastpointe, Michigan.

3. Section 16221(a) of the Code authorizes the DSC to take disciplinary action against Respondent for a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, Respondent's ability to safely and skillfully practice medicine.

4. Section 16221(b)(i) of the Code authorizes the DSC to take disciplinary action against Respondent for incompetence, which is defined at section 16106(1) of the Code as "a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession, whether or not actual injury to an individual occurs."

5. Section 16221(b)(vi) of the Code authorizes the DSC to take disciplinary action against Respondent for a lack of good moral character. Good moral character is defined at section 1 of 1974 PA 381, as amended; MCL 338.41 *et seq.*, as "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."

6. Section 16221(c)(iv) of the Code authorizes the DSC to take disciplinary action against Respondent for obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority, or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

7. Section 16221(e)(ii) of the Code authorizes the DSC to take disciplinary action against Respondent for betrayal of a professional confidence.

8. Section 16226 of the Code authorizes the DSC to impose sanctions against a person licensed by the Board, if, after opportunity for a hearing, the DSC determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

Factual Allegations

9. On May 19, 2004, the Board of Medicine's Disciplinary Subcommittee issued a consent order placing Respondent's medical license on probation and fining Respondent \$15,000. The consent order was based on an administrative complaint dated October 15, 2003. One of the allegations in the complaint concerned the performance of a pregnancy termination procedure in a patient's home.

10. On December 17, 2012, the Board of Medicine's Disciplinary Subcommittee issued a consent order fining Respondent \$2000. The consent order was based on an administrative complaint regarding a complication during a procedure and miscommunication with a patient.

11. On September 30, 2015, Respondent's car was impounded following a traffic accident.

12. On October 7, 2015, local law enforcement searched Respondent's car based on a search warrant. Law enforcement discovered:

- 6 prescription bottles containing Ciprofloxacin HCL (an antibiotic) prescribed by A.O., M.D.¹ to patients M.G., N.D., J.J., M.B., C.C., and A.H.
- 50 mL single dose flip top vial of Fentanyl Citrate Injection, USP 2500mcg/50mL (Schedule 2 narcotic medication used for pain).
- Fifteen specimen jars containing the "products of conception."
- 10 mg partial used bottle of Midazolam (Schedule IV medication used for anesthesia).

13. On October 13, 2015, local law enforcement searched Respondent's home pursuant to a search warrant and discovered:

- 2 vials of 5 mL Fentanyl Citrate Injection and 1 open 50 mL vial.
- 6 full glass vials containing Methylergonovine Maleate (medication used for uterine bleeding).

14. Purchase and delivery records for A.O., M.D.'s office revealed that the Fentanyl found in Respondent's car and home had been ordered by Dr. A.O. for his office practice. The Fentanyl had expired in 2014.

15. The bottles of antibiotics all contained dates from October 2014 and all bore A.O., M.D.'s name as the prescribing physician. With the exception of N.D. all patients were actual patients of A.O., M.D.; however Dr. A.O. does not know how

¹ Initials used to protect identity. Respondent provides coverage at Dr. A.O.'s office and Respondent has a drug control location license at this location.

Respondent came to be in possession of prescriptions with his patients' names and his prescriber identification information.

16. Respondent's drug control license is location specific and medications can only be stored in the locations associated with each license, the license does not allow Respondent to keep or store medications in his car or home (See MCL 333.17745). Further controlled substances must be stored in a locked cabinet, room or cart at the location (see Mich Admin Code, R 338.8143) to prevent theft or diversion. Respondent was thus in possession of controlled substances without lawful authority and it was both negligent and incompetent to improperly store the antibiotics and controlled substances.

17. Products of conception are considered pathological waste and must be disposed of pursuant to statute (see MCL 333.13811) and cannot be stored in a personal vehicle.

18. Respondent had an obligation to protect patient's personal information and it was negligent to store prescriptions with patient identifiers in his personal vehicle.

COUNT I

19. Respondent's conduct as described above constitutes negligence, in violation of section 16221(a) of the Code.

COUNT II

20. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

COUNT III

21. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

COUNT IV

22. Respondent's conduct as described above constitutes possessing a controlled substance without lawful authority, in violation of section 16221(c)(iv) of the Code.

COUNT V

23. Respondent's conduct as described above constitutes betrayal of a professional confidence, in violation of section 16221(e)(ii) of the Code.

THEREFORE, Complainant requests that this complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the aforesaid license. If compliance is not shown, Complainant further requests that formal proceedings be commenced pursuant to the Public Health Code, rules promulgated pursuant to it, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*; MSA 3.560(101) *et seq*.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(8) of the Public Health Code, Respondent has 30 days from receipt of this Administrative Complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of Professional Licensing, Department of Licensing & Regulatory Affairs, P.O. Box 30670, Lansing, Michigan,

48909, with a copy to the undersigned assistant attorney general. Further, pursuant to section 16231(9) of the Public Health Code, failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the Administrative Complaint and shall result in transmittal of the Administrative Complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

Respectfully Submitted,

BILL SCHUETTE
Attorney General

Kelly K. Elizondo

Kelly K. Elizondo
Assistant Attorney General
Licensing & Regulation Division
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