

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

**In the Matter of the First Amended)  
Accusation and Citation Against: )**

**RICHARD J. HOLMES, M.D. )**

**Case No. 800-2014-008269**

**Physician's and Surgeon's )  
Certificate No. G 89434 )**

**Respondent )**

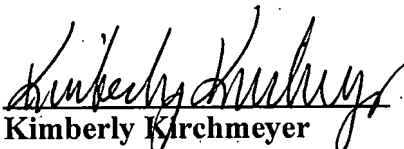
**DECISION AND ORDER**

**The attached Stipulated Surrender of License and 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 February 15, 2019.**

**IT IS SO ORDERED February 8, 2019.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
**Kimberly Kirchmeyer  
Executive Director**

1 XAVIER BECERRA  
Attorney General of California  
2 GLORIA L. CASTRO  
Senior Assistant Attorney General  
3 STEVE DIEHL  
Supervising Deputy Attorney General  
4 State Bar No. 235250  
California Department of Justice  
5 2550 Mariposa Mall, Room 5090  
Fresno, CA 93721  
6 Telephone: (559) 705-2313  
Facsimile: (559) 445-5106  
7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
10 **MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation  
13 Against:

Case No. 800-2014-008269

14 **RICHARD J. HOLMES, M.D.**  
15 **1041 E. Hillside Circle**  
**Provo, UT 84604**

OAH No. 2017090540

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

16 **Physician's and Surgeon's Certificate No. G**  
17 **89434**

Respondent.

18  
19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl,  
26 Supervising Deputy Attorney General.

27 2. Richard J. Holmes, M.D. (Respondent) is represented in this proceeding by attorney  
28 Alan Castillo, Esq., whose address is: 23152 Verdugo Drive, Suite 201, Laguna Hills, CA 92653.



1 **CULPABILITY**

2 8. Respondent understands that the charges and allegations in First Amended  
3 Accusation No. 800-2014-008269, if proven at a hearing, constitute cause for imposing discipline  
4 upon his Physician's and Surgeon's Certificate.

5 9. For the purpose of resolving the First Amended Accusation without the expense and  
6 uncertainty of further proceedings, Respondent does not contest that, at an administrative hearing,  
7 complainant could establish a *prima facie* case with respect to the charges and allegations  
8 contained in Accusation No. 800-2014-008269 and that he has thereby subjected his license to  
9 disciplinary action. Respondent agrees that if he ever petitions for reinstatement of his  
10 Physician's and Surgeon's Certificate No. G 89434, all of the charges and allegations contained  
11 in First Amended Accusation No. 800-2014-008269 shall be deemed true, correct and fully  
12 admitted by respondent for purposes of that reinstatement proceeding or any other licensing  
13 proceeding involving respondent in the State of California.

14 10. Respondent understands that by signing this stipulation he enables the Board to issue  
15 an order accepting the surrender of his Physician's and Surgeon's Certificate without further  
16 process.

17 **CONTINGENCY**

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

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28 \\\



1 2014-008269 shall be deemed to be true, correct, and admitted by Respondent for the purpose of  
2 any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

3 6. IMPOSITION OF FINE. Pursuant to the Citation issued in conjunction with and  
4 incorporated into the First Amended Accusation, Respondent shall make payment to the Board in  
5 the amount of \$30,000. Payment shall be made within 30 days of the effective date of this  
6 Decision. Payment shall be made to:

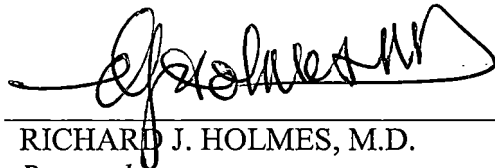
7  
8 **Medical Board of California**  
9 **P.O. Box 15588**  
10 **Sacramento, CA 95852**

11 ACCEPTANCE

12 I have carefully read the above Stipulated Surrender of License and Order and have fully  
13 discussed it with my attorney, Alan Castillo, Esq. I understand the stipulation and the effect it  
14 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of  
15 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
16 Decision and Order of the Medical Board of California.

17 DATED: \_\_\_\_\_

1/4/2019

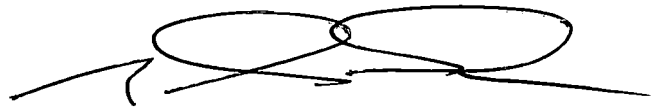


RICHARD J. HOLMES, M.D.  
*Respondent*

19 I have read and fully discussed with Respondent Richard J. Holmes, M.D. the terms and  
20 conditions and other matters contained in this Stipulated Surrender of License and Order. I  
21 approve its form and content.

22 DATED: \_\_\_\_\_

1/4/2019



ALAN CASTILLO, ESQ.  
*Attorney for Respondent*

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**ENDORSEMENT**

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

Dated: \ / 4 / 19

Respectfully submitted,  
XAVIER BECERRA  
Attorney General of California  
GLORIA L. CASTRO  
Senior Assistant Attorney General



STEVE DIEHL  
Supervising Deputy Attorney General  
*Attorneys for Complainant*

SA2017305229  
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**Exhibit A**

**First Amended Accusation No. 800-2014-008269**



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XAVIER BECERRA  
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MATTHEW M. DAVIS  
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*Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO *September 19 2017*  
BY: *R. Young* ANALYST

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

In the Matter of the First Amended Accusation  
and Citation Against:

Case No. 800-2014-008269

**RICHARD J. HOLMES, M.D.**  
1041 E Hillside Cir  
Provo, UT 84604

**FIRST AMENDED ACCUSATION AND  
NOTIFICATION OF VIOLATION AND  
IMPOSITION OF FINE (CITATION)**

**Physician's and Surgeon's Certificate  
No. G 89434,**

Respondent.

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation and Citation 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 23, 2013, the Medical Board issued Physician's and Surgeon's Certificate Number G 89434 to Richard J. Holmes, 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 March 31, 2019, unless renewed.

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

2           “(g) The practice of medicine from this state into another state or country without meeting  
3 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
4 apply to this subdivision. This subdivision shall become operative upon the implementation of the  
5 proposed registration program described in Section 2052.5.

6           “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
7 participate in an interview by the board. This subdivision shall only apply to a certificate holder  
8 who is the subject of an investigation by the board.”

9           6.     Section 2242 of the Code states:

10           “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022  
11 without an appropriate prior examination and a medical indication, constitutes unprofessional  
12 conduct.

13           “(b) No licensee shall be found to have committed unprofessional conduct within the  
14 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of  
15 the following applies:

16           “(1) The licensee was a designated physician and surgeon or podiatrist serving in the  
17 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs  
18 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return  
19 of his or her practitioner, but in any case no longer than 72 hours.

20           “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed  
21 vocational nurse in an inpatient facility, and if both of the following conditions exist:

22           “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse  
23 who had reviewed the patient's records.

24           “(B) The practitioner was designated as the practitioner to serve in the absence of the  
25 patient's physician and surgeon or podiatrist, as the case may be.

26           “(3) The licensee was a designated practitioner serving in the absence of the patient's  
27 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized  
28

1 the patient's records and ordered the renewal of a medically indicated prescription for an amount  
2 not exceeding the original prescription in strength or amount or for more than one refill.

3 “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety  
4 Code.”

5 7. Section 2242.1 of the Code states:

6 “(a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed,  
7 dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the  
8 Internet for delivery to any person in this state, without an appropriate prior examination and  
9 medical indication, except as authorized by Section 2242.

10 “(b) Notwithstanding any other provision of law, a violation of this section may subject the  
11 person or entity that has committed the violation to either a fine of up to twenty-five thousand  
12 dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of  
13 twenty-five thousand dollars (\$25,000) per occurrence.

14 “(c) The Attorney General may bring an action to enforce this section and to collect the  
15 fines or civil penalties authorized by subdivision (b).

16 “(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon  
17 notification by the Attorney General or the board of a final judgment in an action brought under  
18 this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds  
19 or lottery winnings due to the person who is a defendant in the action using the offset authority  
20 under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes  
21 as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to  
22 the board for deposit in the Contingent Fund of the Medical Board of California.

23 “(e) If the person or entity that is the subject of an action brought pursuant to this section is  
24 not a resident of this state, a violation of this section shall, if applicable, be reported to the  
25 person's or entity's appropriate professional licensing authority.

26 “(f) Nothing in this section shall prohibit the board from commencing a disciplinary action  
27 against a physician and surgeon pursuant to Section 2242.”

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1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence)

3 8. Respondent Richard J. Holmes, M.D. is subject to disciplinary action under section  
4 2234, subdivision (b) in that he engaged in an act or acts amounting to gross negligence. The  
5 circumstances are as follows:

6 9. On or about December 30, 2014, a female investigator employed by the Board logged  
7 into the www.kwikmed.com website. She entered the fictitious name "Dana Taylor," date of birth  
8 December 24, 1969, and filled out the information requested by the website in order to purchase  
9 Ella.<sup>1</sup> Specifically, the investigator typed in a gender, date of birth, height, and weight, and  
10 indicated that she had "a recent physical examination by a Physician who is available for any  
11 necessary follow-up care and instructions" and that she was "requesting the prescription  
12 medication(s) solely for [her] therapeutic use and will not distribute any medication to others."  
13 She then provided the following responses to the website questionnaire (responses in italics):

14 (a) Are you pregnant now? *Don't know*

15 (b) Do you think you may be pregnant? *Maybe*

16 (c) Are you currently breastfeeding? *No*

17 (d) Have you had a failure of a contraceptive device (broken condom or diaphragm) or  
18 unprotected intercourse? *No*

19 (e) Please list all medications you are taking, include both prescription or over-the-  
20 counter medications. If none, please enter 'none.' *Motrin, tums, Vicodin*

21 (f) Please list any serious illnesses you have or have had in the past. If none, please enter  
22 'none.' *None*

23 (g) Please list any allergies you have or have had in the past. If none, please enter 'none.'  
24 *None*

25  
26 <sup>1</sup> Ella (ulipristal acetate) is an emergency contraceptive drug legally available only by  
27 prescription. It is a dangerous drug as defined by Business and Professions Code section 4022.  
28

- 1 (h) Why do you need emergency contraception? (Choose all that apply.) *I don't need it*  
2 *myself, I'm getting it for someone else.*
- 3 (i) Why did you decide to use ella instead of another kind of emergency contraception,  
4 like Next Choice or Plan B One-Step (Choose all that apply.) *I don't know how or*  
5 *where to get another kind of emergency contraception.*
- 6 (j) Why did you decide to get your ella prescription online instead of from a doctor or  
7 clinic (Choose all that apply.) *It's easier to go online.*
- 8 (k) If this ella online service had not been available to you, what would you most likely  
9 have done? (Choose one answer.) *I really have no idea.*
- 10 (l) I hereby waive pharmacist counseling at this time. I understand that if I have any  
11 questions a pharmacist is available. *I understand.*

12 10. After completing this questionnaire, the investigator clicked on the "proceed to  
13 checkout" button and provided billing and shipping addresses and credit card information.

14 11. On or about January 2, 2015, Respondent reviewed the information that the  
15 investigator had input into the website. Next to the investigator's response stating that she did not  
16 know whether or not she was pregnant, he entered the comment, "noted."

17 12. On or about January 8, 2015, the investigator picked up a package at the shipping  
18 address she provided, which contained one tablet of Ella. The tablet was in a box marked "rx  
19 only," and had a prescription label indicating that the prescribing doctor was Respondent. The fill  
20 date was January 2, 2015. The package also included an invoice, a coupon for a refill, and  
21 information regarding contraindications, precautions, and possible side effects.

22 13. On or about February 6, 2015, the same female investigator again logged on to the  
23 www.kwikmed.com website, this time using the fictitious name "Andrew Lewis," date of birth  
24 October 2, 1969. Now posing as a male patient, the investigator ordered Viagra.<sup>2</sup> After providing

25 \_\_\_\_\_  
26 <sup>2</sup> Viagra (sildenafil citrate) is a drug used to treat erectile dysfunction. It is available only  
27 by prescription, and is a dangerous drug as defined by Business and Professions Code section  
28 4022.

1 a gender, date of birth, height, and weight, she indicated that she had “a recent physical  
2 examination by a Physician who is available for any necessary follow-up care and instructions”  
3 and that she was “requesting the prescription medication(s) solely for [her] therapeutic use and  
4 will not distribute any medication to others.” She then provided the following responses to the  
5 website questionnaire (responses in italics):

6 (a) Over the past 4 weeks, when you attempted sexual intercourse, how often was it  
7 satisfactory for you? *Did not attempt intercourse*

8 (b) During the past 30 days, how would you rate the level of your sexual drive? *Medium*

9 (c) How long have you had sexual problems? *Between 4 and 12 months*

10 (d) Do you have a significant curvature of your penis or have you been diagnosed with  
11 Peyronie’s Disease (a hard lump that forms on the erection tissue of the penis)? *No*

12 (e) Have you had an erection lasting more than 4 hours or become painful or been  
13 diagnosed with priapism? *No*

14 (f) Have you used any method or treatment for erection problems in the past? *No*

15 (g) Over the past six months, how do you rate your confidence that you could get and  
16 keep an erection? *Moderate*

17 (h) When you had erections with sexual stimulation, how often were your erections hard  
18 enough for penetration (entering your partner)? *Sometimes (about half the time)*

19 (i) During sexual intercourse, how often were you able to maintain your erection after  
20 you had penetrated (entered) your partner? *Sometimes (about half the time)*

21 (j) Over the past 4 weeks, during sexual intercourse, how difficult was it to maintain  
22 your erection to completion of intercourse? *Difficult*

23 (k) Over the last 3 months, have you had any pain, pressure, or discomfort in your chest,  
24 left arm, shoulder, or jaw? *No*

25 (l) Have you ever had an EKG (electrocardiogram) performed on your heart? *No*

26 (m) How long has it been since you had a general medical examination? *One to two years*

27 (n) Do you have any chronic medical problems such as: diabetes, high blood pressure,  
28 heart disease, asthma, chronic lung disease, thyroid disease, sleep apnea, arthritis, liver

- 1 disease, esophageal reflux, urinary incontinence, kidney disease, seizures, or irritable  
2 bowel syndrome? *No*
- 3 (o) Have you ever had prostate gland trouble? *No*
- 4 (p) Do you EVER take any medication classified as a nitrate in any form, including amyl  
5 nitrate or poppers sometimes used as a recreational drug? *No*
- 6 (q) Do you ever take any medication classified as an alpha-1-adrenergic blocker including  
7 Cardura, Hytrin, Minipress, Flomax, UroXatral, prazosin, doxazosin, tamsulosin,  
8 alfuzosin, or terazosin? *No*
- 9 (r) Over the past 2 weeks have you felt down, depressed, or hopeless? *No*
- 10 (s) Describe your health TODAY. *Good.*
- 11 (t) Describe your use of any type of tobacco. *Formerly used*
- 12 (u) How often do you have 6 or more alcoholic drinks on one occasion? *Never*
- 13 (v) Have you ever had a bowel movement test for blood done? (Two main uses for  
14 FOBT are to screen for early colon cancer or to look for cause of anemia. FOBT tests  
15 for presence of microscopic or invisible blood in the stool or feces.) *No*
- 16 (w) How long has it been since you last had your blood pressure checked? *Between 2*  
17 *months and 1 year*
- 18 (x) Have you EVER had your cholesterol checked by a doctor, nurse, or other health care  
19 provider? *Yes*
- 20 (y) About how long has it been since you last had your cholesterol checked by a doctor,  
21 nurse, or other health care provider? *Over one year*
- 22 (z) Did you carefully complete the medical history and truthfully indicate what  
23 medications you are taking? *Yes, Truthfully*
- 24 (aa) Please list all medications you are taking, include both prescription or over-the-  
25 counter medications. If none, please enter 'none.' *Motrin, occasionally as needed*
- 26 (bb) Please list any serious illnesses you have or have had in the past. If none, please enter  
27 'none.' *None*
- 28



1 (cc) Please list any allergies you have or have had in the past. If none, please enter 'none.'

2 *None*

3 (dd) I hereby waive pharmacist counseling at this time. I understand that if I have any  
4 questions a pharmacist is available. *I understand.*

5 14. After completing this questionnaire, the investigator clicked on the "proceed to  
6 checkout" button and provided billing and shipping addresses and credit card information. On or  
7 about February 18, 2015, the investigator picked up a package at the shipping address she  
8 provided, which contained three tablets of Viagra. The box containing the tablets had a  
9 prescription label indicating that the prescribing doctor was Respondent. The fill date was  
10 February 12, 2015.

11 15. The standard of care for the prescription of Ella is to exclude the possibility of  
12 pregnancy prior to issuing such a prescription. Pregnancy, known or suspected, is a  
13 contraindication to the prescription of Ella. Posing as "Dana Taylor," the Board's investigator  
14 indicated that she did not know if she was pregnant or not. Respondent explicitly noted that he  
15 reviewed this online response, but he failed to act on it. Respondent failed to obtain a pregnancy  
16 test in order to conclusively determine whether the patient was pregnant. This failure represents  
17 an extreme departure from the standard of care.

18 16. The standard of care for the prescription of any drug is to evaluate the patient for  
19 whom the medication is intended, not a third party. Posing as "Dana Taylor," the Board's  
20 investigator indicated that she intended to obtain the Ella "for someone else." In an interview,  
21 Respondent stated that he "did not see" that response. Respondent's failure to thoroughly review  
22 the information presented to him by the website, and specifically to cancel the prescription of Ella  
23 in light of this response, represents an extreme departure from the standard of care.

24 17. The standard of care for the prescription of any drug requires an appropriate prior  
25 examination. The standard of care for the prescription of Viagra requires the physician to obtain a  
26 detailed history, including urological, neurological, cardiorespiratory, and psychological elements,  
27 and to make a good faith effort to confirm that history with physical examination. With respect to  
28 prescribing Viagra, an appropriate examination would be focused on determining the etiology of

1 the erectile dysfunction, and on excluding contraindications to the use of a phosphodiesterase  
2 inhibitor such as Viagra. The standard of care requires a genital examination be performed, to  
3 exclude anatomic defects and to detect previously undiagnosed hypogonadism. The standard of  
4 care requires that vital signs be taken, to exclude undiagnosed hypertension or arrhythmia. The  
5 standard of care requires that a cardiopulmonary examination be performed, to exclude previously  
6 undiagnosed valvular heart disease or underlying lung disease. The standard of care requires that  
7 a neurological examination be performed, to exclude peripheral neurological pathology (e.g.,  
8 diabetic or alcoholic peripheral neuropathy.) The standard of care requires that a psychological  
9 history and physical examination be performed, to exclude psychiatric disease as an etiology for  
10 sexual dysfunction. For a new patient, measurement of serum creatinine is required prior to the  
11 prescription of Viagra to determine renal function. Respondent failed to obtain an adequate  
12 history or to perform any physical examination, thereby failing to perform an adequate  
13 examination with respect to his prescribing of Viagra. These failures, separately and collectively,  
14 represent extreme departures from the standard of care.

15 18. The standard of care for any patient encounter requires that the physician take steps to  
16 verify the identity of the patient. No such steps were taken on either occasion when the Board's  
17 investigator visited the [www.kwikmed.com](http://www.kwikmed.com) website. With respect to the prescription of Viagra,  
18 Respondent failed to confirm that the Board's investigator was indeed a man of a certain height  
19 and weight. The prescription of Viagra to an unknown patient of unknown demographics is  
20 dangerous, as Viagra is highly sought-after by some men, some of whom have been denied a  
21 Viagra prescription by their personal physician because of life-threatening contraindications.  
22 Respondent's failure to attempt to confirm the Board's investigator's identity is an extreme  
23 departure from the standard of care.

24 19. The standard of care for the prescription of Viagra is to determine whether the patient  
25 is a pilot. If so, the standard of care requires that the prescribing physician warn the patient not to  
26 perform pilot duties within eight hours of taking Viagra. Respondent's failure to determine  
27 whether the patient in this case was a pilot is an extreme departure from the standard of care.

28 \\\





