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

In the Matter of the Second Amended Accusation Against:	)	
Michael Mario Santillanes, M.D.	)	Case No. 800-2015-018869
Physician's and Surgeon's Certificate No. A 77181	)	
Petitioner	)	

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by James Victor Kosnett, attorney for Michael Mario Santillanes, for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on March 23, 2020.

IT IS SO ORDERED: MAR 23 2020

Kristina D. Lawson, J.D., Chair
Panel B

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

In the Matter of the Second Amended Accusation Against:	)	
	)	MBC No. 800-2015-018869
Michael Mario Santillanes, M.D.	)	
Physician's and Surgeon's Certificate No. A 77181	)	**ORDER GRANTING STAY**
	)	(Government Code Section 11521)
Respondent	)	

The Medical Board of California (Board) has filed a Request for Stay of Execution of the Decision in this matter with an effective date of March 13, 2020, at 5:00 p.m.

Execution is stayed until March 23, 2020, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: March 13, 2020

Christine J. Lally
Interim Executive Director
Medical Board of California

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

In the Matter of the Second Amended Accusation Against:	)	
Michael Mario Santillanes, M.D.	)	**Case No. 800-2015-018869**
Physician's and Surgeon's Certificate No. A 77181	)	
Respondent	)	

DECISION

The attached Second Amended Accusation 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 14, 2020.

IT IS SO ORDERED January 15, 2020.

MEDICAL BOARD OF CALIFORNIA

By: _____
Kristina D. Lawson, J.D., Chair
Panel B

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

In the Matter of the Second Amended Accusation Against:

MICHAEL MARIO SANTILLANES, M.D., Respondent

Physician's and Surgeon's Certificate No. A 77181,

Case No. 800-2015-018869

OAH No. 2019011138

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 9 through 12, 2019, September 16 through September 18, 2019, October 28 and 29, 2019, and November 14 and 15, 2019, in San Diego, California.

Keith Shaw, Deputy Attorney General, Department of Justice, State of California, represents complainant Christine Lally, Interim Executive Director of the Medical Board of California.

Albert Garcia, Attorney at Law, represented respondent at the hearings through September 18, 2019, at which time he withdrew as respondent's attorney at respondent's request. The matter was continued at respondent's request in order that

he may have new counsel. James V. Kosnett, Attorney at Law, represented respondent at the hearings on October 28 and 29, 2019. The matter was further continued for good cause due to respondent's illness, and the hearing proceeded on November 14 and 15, 2019.

The matter was submitted on November 15, 2019.

SUMMARY

Complainant asserts that respondent's license should be revoked for wide-ranging misconduct including his self-use and administration of controlled substances, inappropriate prescribing of Adderall and other medications, inappropriately disposing of medical waste and used needles, sexual misconduct with patients, and gross negligence and repeated acts of negligence in his care and treatment of patients. Complainant proved by clear and convincing evidence a number of causes for discipline and, by his conduct, respondent disregarded the health and safety of patients and the public over an extended time period. Respondent presented scant evidence of rehabilitation to justify allowing him to retain his license. Accordingly, his license is revoked.

PROTECTIVE ORDER

A protective order has been issued on complainant's motion sealing Exhibit 5, 6, 7, 11, 13, and Exhibits 15 through 72.[1] A reviewing court, parties to this matter, and a government agency decision maker or designee under Government Code section 11517 may review materials subject to the protective order provided that this material is protected from disclosure to the public.

FACTUAL FINDINGS

Jurisdiction

1. On July 26, 2019, Deputy Attorney General Shaw signed the second amended accusation on behalf of Kimberly Kirchmeyer, who was then Executive Director of the Medical Board of California (Board). Respondent had previously timely filed a Notice of Defense on December 5, 2017, to the initial accusation.

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[1] Complainant essentially asks that the entire administrative record be sealed. This request is denied and the protective order has been fashioned to cover individuals who have been identified as patients in the second amended accusation. With this noted, not all of these persons were respondent's patients. In this decision, however, all these persons are identified by their initials.

License History

2. On July 1, 2000, the Board issued Physician's and Surgeon's Certificate Number A 77181 to respondent. The certificate is current and will expire on June 30, 2020, unless renewed. Respondent has no history of discipline.

Summary of Allegations

3. Respondent is primarily engaged as a plastic surgeon who operates a cosmetic skin care clinic named Bella Derma Face & Body Sculpting. According to respondent's Fictitious Name Permit Application, since May 2, 2018, Li Wen, M.D. is designated as the owner of this practice. (Exhibit 14.)

4. Complainant alleges 15 causes to impose discipline on respondent's license in the second amended accusation. The allegations are wide-ranging and detailed, for the most part, in paragraphs 20 through 37, and involve respondent's personal and professional behavior, including assertions that respondent injected patients and himself with a narcotic cocktail called "Black Magic" for recreational use, prescribed Adderall[2] to patients without conducting exams, inappropriately disposed of needles and bodily fluids, reused needles, engaged in sexual misconduct with patients, created false medical records, failed to maintain adequate and accurate records, and committed repeated negligent acts in his care and treatment of patient F.A., gross negligence in his care and treatment of patient S.B., falsely advertised his

[2] Adderall is a mixture of amphetamine and l-amphetamine salts in a 3:1 ratio and is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (d), and a dangerous drug under Business and Professions Code section 4022.

practice of medicine, and engaged in general unprofessional conduct due to his dishonest and corrupt acts.

5. Respondent vigorously disputed many of the allegations. He particularly contested the allegations that he injected patients with a narcotic substance for recreational use, inappropriately disposed of needles and bodily fluids, reused needles and prescribed Adderall without conducting exams. Respondent, however, stipulated to the conduct alleged in paragraphs 55, 56, 57, and 58 as set forth in the Tenth Cause for Discipline which alleges that respondent engaged in repeated negligent acts in his care and treatment of patient F.A. With respect to this allegation, respondent also stipulated to Exhibits 56 to 62, evidence in support of these allegations with respect to patient F.A. Respondent, in addition, stipulated that he engaged in unprofessional conduct when he refused to attend or participate in interviews with a board investigator on December 20, 2017, and June 19, 2018, concerning his care and treatment of F.A., as set forth in the Eleventh Cause for Discipline. Additionally, respondent did not, materially, dispute the allegation that he engaged in gross negligence regarding his care of patient S.B., as detailed in the Twelfth Cause for Discipline.

6. The first 9 of the 15 causes discipline are based on a set of factual allegations distinct from the factual allegations made in the 10th through 15th causes for discipline. To organize the discussion of respondent's conduct, as alleged, the detailed factual allegations of respondent's conduct in paragraphs 20 through 37 under the First Cause for Discipline are analyzed first, and factual findings are made regarding these claims. The factual allegations in the Tenth, Twelfth and Thirteenth Causes for Discipline are analyzed separately and factual findings are made immediately below the analysis of the First Cause for Discipline.

Because the Second through Ninth Causes for Discipline incorporate the factual allegations in paragraphs 20 through 37, and factual conclusions are made regarding the claims in these paragraphs in the analysis of the First Cause for Discipline, conclusions regarding these causes for discipline are found in the Legal Conclusions section of this decision. Similarly, conclusions regarding the Fourteenth and Fifteenth Causes for Discipline are found in the Legal Conclusions sections based on the factual findings made below. These causes for discipline incorporate the allegations in the Thirteenth Cause for Discipline.[3]

In analyzing the allegations and the pertinent evidence, credibility assessments of complainant's expert and witnesses using the factors under Evidence Code section 780 have been made.

The First Cause for Discipline and Evidence and Analysis

7. As noted, the second amended accusation details specific allegations of respondent's personal and professional conduct. The allegations of gross negligence detailed in the First Cause for Discipline are as follows:

- Respondent engaged in sexual relationships with patients B.S. and A.B.;
- Respondent administered controlled substances to patients parenterally for recreational purposes, including patients H.L., A.B., and R.P.;
- Respondent administered medication likely to interfere with a patient's lifesaving reflexes outside a certified medical facility;

[3] Except for paragraph 63 of the Second Amended Accusation.

- Respondent reused needles from one patient to another;
- Respondent failed to dispose of needles properly;
- Respondent failed to properly dispose of medical waste by flushing it down the toilet;
- Respondent billed for procedures that did not occur;
- Respondent sold prescriptions for controlled substances out of his office;
- Respondent failed to keep inventories for controlled substances;
- Respondent failed to keep adequate medical records for patients;
- Respondent prescribed dangerous drugs, including Adderall, without an appropriate prior examination and a medical indication;
- Respondent prescribed controlled substances knowing they were to be used for nonmedical purposes;
- Respondent prescribed controlled substances, including Adderall, to patients for the purpose of using this medication for himself.

Analyses of each of these allegations are as follows:

PRESCRIPTION OF CONTROLLED SUBSTANCES WITHOUT PRIOR MEDICAL EXAMS

Prescriptions for A.L.

8. Concerning the allegation that respondent prescribed dangerous drugs, including Adderall, without an appropriate prior medical examination and

a medical indication, complainant called respondent's former patient A.L. to testify.

A.L. testified she treated with respondent for skin care at the clinic starting about 2011 or 2012. After she was treating with respondent for around a year, A.L. was in a medical room where she was receiving a "filler" skin care treatment from respondent. During the procedure, A.L. told respondent that she was treating with another doctor for Attention Deficit Disorder (ADD), and this doctor was prescribing her Adderall. Respondent told her he could write her a prescription for Adderall and he asked her the dosage of this medication. Respondent told A.L. he had a family clinic and he wrote prescriptions. He then left the exam room and returned with a prescription pad. Respondent asked her how much this other doctor charged and he gave her a prescription for 30 mg of Adderall. She agreed to pay respondent $100 for the Adderall prescriptions.

After A.L.'s visit with respondent where he discussed prescribing Adderall to her, A.L. returned to respondent's clinic for Adderall prescriptions 17 times between 2014 through 2016, as recorded in CURES.[4]

A.L. testified that the Adderall refill visits were very short. Sometimes she saw respondent in passing, but never went into room and he never examined her. She said

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[4] "CURES" is the acronym for The Controlled Substance Utilization Review and Evaluation System, which is maintained by the California Department of Justice. CURES is a database of prescriptions for controlled substances that reports data regarding prescriptions filled by patients, including the prescribing physician, the date the drug is dispensed, and the pharmacy that filled the prescription.

she went there only to pick up prescriptions from respondent. She went to the clinic, sat down, notified the front desk she was there to get a prescription and then prescriptions signed by respondent were brought to her. Each time she paid $100.

Respondent disputed A.L.'s testimony and presented handwritten medical records to show that, in fact, he examined A.L. before writing prescriptions for her. The records include receipts that correlate with the dates of the prescriptions. Neither respondent nor a custodian of records certified that these records were kept in the ordinary course of respondent's practice.

According to the CURES reports, respondent wrote prescriptions to A.L. for Adderall, which A.L. filled on these dates: March 4, 2013, February 20, 2014, May 29, 2014, July 29, 2014, October 1, 2014, November 6, 2014, May 7, 2015, June 16, 2015, July 18, 2015, August 18, 2015, September 20, 2015, October 21, 2015, November 20, 2015, January 22, 2016, March 24, 2016, April 27, 2016, June 6, 2016, and July 9, 2016.

9. The records respondent submitted appear to have been created *after* respondent told Health Quality Investigation Unit (HQIU) Investigator Amber Driscoll on August 10, 2016, that he did not keep records for his patients. On this date, with agents from the Drug Enforcement Administration (DEA), Investigator Driscoll participated in the execution of an Administrative Inspection Warrant at respondent's practice, and at this time she talked to respondent. This warrant was issued by United States Magistrate Judge Douglas F. McCormick on August 9, 2016, to verify that records kept by respondent relating to the prescription of controlled substances were being properly kept and maintained. (Exhibit 11, AGO 0275.) Notably, towards this end, the warrant authorized DEA to seize "patient files for patients to whom [respondent] has prescribed Adderall." (Exhibit 11, AGO

0276.) At the same time, attached to the warrant was a document captioned "Items that need to be seized" which identified "Patient Files for": "M.B., A.B., C.B, C.H, D.H., H.L., R.M., N.P., L.R., J.S., B.S. and A.W." A.L. is not among the identified patients. (Exhibit 11, AGO-0287.)

10. During the execution of this warrant, Investigator Driscoll and DEA agents found only one patient record, B.S.'s records. Respondent was asked why he had only one patient record. He responded he "did not keep patient records." He added "he can improve on record keeping." Respondent further told Investigator Driscoll he prescribes "Adderall to a select few patients that he trusts for ADD." (Exhibit 3, AGO 0011.) Respondent, however, in his testimony stated the only patient to whom he prescribed Adderall was A.L. Here, according to two CURES reports that complainant obtained, respondent prescribed Adderall to M.B., C.B., C.H., D.H., L.M., R.P., L.S., J.S., and B.S. (in addition to A.L.) (Exhibit 6.)

11. In his hearing testimony, respondent denied he told Investigator Driscoll he did not have patient records. He said Investigator Driscoll mischaracterized and misquoted him. Respondent, further, accused her of destroying exculpatory evidence, specifically, a urine screen lab result that showed he tested negative for Adderall and other substances. He also correctly noted that the DEA was seeking 12 patient files identified in a document attached to the warrant. He stressed that these persons were not his patients.

12. Respondent's testimony is not credible for several reasons. First, his testimony conflicts with A.L.'s credible testimony. A.L. stated clearly and unequivocally that respondent did not examine her and, the majority of the time, she did not see him. When she did, she only saw him in passing and did not go into an exam room with respondent. Instead, when she went to respondent's

office, she told office staff she was there for an Adderall prescription, paid them $100, waited in the reception area, and the staff then gave her a prescription for Adderall, which she filled. The CURES reports also indicated respondent prescribed A.L. Clonazepam.

In contrast, the records respondent submitted purport to document detailed discussions he had with A.L. regarding the appropriateness of prescribing Adderall and Clonazepam to her between March 4, 2013, and July 8, 2016, and reflect that he examined A.L. Had respondent had these records on August 10, 2016, when the warrant was executed, he would have provided them to the DEA. The records detail why he prescribed Adderall to A.L. According to these records, respondent discussed with A.L. her ability to concentrate, any anxiety she was experiencing, her sleep patterns, and whether she was experiencing any changes in her weight.

Finally, A.L.'s testimony corroborated respondent's statements to Investigator Driscoll on August 10, 2016, which Investigator Driscoll documented in detail in an investigation report she prepared.[5] At this time, respondent said he

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[5] The report was received in evidence and analyzed under *Lake v. Reed* (1997) 16 Cal.4th 448. In the *Lake* case, the California Supreme Court determined that law enforcement reports are admissible in administrative hearings and noted that law enforcement officers' direct observations memorialized in such reports are admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and admissions by a party memorialized in such reports are admissible under Evidence Code section 1220. (*Id.* at pp. 461-462.) Other hearsay statements contained in such reports may be used to supplement or explain other admissible evidence, but such statements are not sufficient to support factual findings on their

did not keep records as a general matter and he only prescribed Adderall to a "few" "trusted" patients with ADD. Respondent's testimony that Investigator Driscoll misquoted or mischaracterized what he said to her was simply not credible. Investigator Driscoll was acting under the authority of the Administrative Warrant to seize "patient files for patients to whom [respondent] has prescribed Adderall." (Exhibit 11, AGO 0276,) In executing this warrant, Investigator Driscoll sought such "patient files," which respondent failed to produce. Thus, it is reasonable to infer that respondent did not have A.L.'s records at this time. His admissions to her that he did not have these records and he did not keep patient records were natural responses to the question why he did not have more than one patient record when the warrant was executed. As noted, had he actually possessed A.L.'s records, respondent would have provided these records to Investigator Driscoll at that time.

Respondent noted correctly that the DEA identified select patient records, and A.L. was not among these records. But, respondent told Investigator Driscoll in no uncertain terms he did not have *any* patient records, including records for "trusted" persons to whom he said he was prescribing Adderall. The trusted persons, it is also reasonable to infer, included A.L. Respondent then apologized for not keeping patient records and said he could do a better job record-keeping.

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own unless they would be admissible over objection in a civil action. (*Id.* at p. 461, citing Gov. Code, § 11513.)

Prescriptions for Other Patients

14. Regarding his testimony that A.B., C.B., M.B., C.H., D.H., H.L., L.M., R.M. N.P., J.S. and A.W. were not his patients, respondent's testimony was not credible because two CURES reports documented that respondent prescribed Adderall to these persons. Respondent offered no plausible explanation as to why the CURES reports documented him prescribing these patients Adderal and clear and convincing evidence established this was the case.

15. Complainant offered specific evidence regarding respondent's prescription of Adderall to his former girlfriend and patient, B.S., his former wife, R.P., and A.B., another former girlfriend and patient, without conducting appropriate exams for each of these persons. Records were not submitted regarding respondent's prescription of Adderall to any of these persons. B.S. and R.P. testified in this matter. A.B. appeared under a subpoena issued to her by complainant. A.B. asserted her Fifth Amendment privilege and declined to answer questions.

Prescriptions for R.P.

16. R.P. testified that starting in July 2014, respondent wrote prescriptions for Adderall to her. As noted, no records were produced to show that respondent performed appropriate prior exams of R.P. before writing these prescriptions. CURES documented that respondent wrote prescriptions to her, which R.P. filled, on February 20, 2014, April 4, 2014, June 12, 2014, August 5, 2014, and December 16, 2014. (Exhibit 5, AGO 0070.) Respondent, according to CURES, also wrote her a prescription for Clonazepam on April 27, 2015, which she filled on this date. R.P.

stated that respondent obtained Adderall from her to conceal his use of Adderall.[6] A CURES report for the period 2015 to 2018 shows that respondent was prescribed Adderall on two occasions in 2018 by his doctor. (Exhibit 4, AGO 0574.) R.P. testified that respondent told her that Adderall helped his endurance and focus. R.P. testified that respondent also obtained Adderall from his sister, L.R., and from A.B.

17. Respondent denied that he prescribed Adderall to R.P. He said R.P. stole his prescription pad and fraudulently signed his name to the script and obtained the Adderall. He said his sister, L.R., worked with R.P. at the clinic sometime in 2014, when R.P was the supervisor/office manager. According to respondent, L.R. saw R.P. forge respondent's signature.

18. L.R. testified in this matter. She stated that on December 16, 2014, she saw R.P. using tracing paper to forge respondent's signature at the clinic. L.R. stated that she immediately texted respondent what she saw. Respondent, in a reply text to L.R., acknowledged her text and told her that he was unaware R.P. was forging his signature for drugs, he regarded this as "sad" news, and he thanked her for bringing this to her attention. (Exhibit R.) L.R.'s testimony is found credible. L.R.'s text message and respondent's response were admitted as evidence in the record. (*Ibid.*)

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[6] The allegation that respondent used Adderall prescribed for others was substantiated when a bottle containing Adderall with another's name was found by police in respondent's car following respondent's arrest for driving under the influence of a controlled substance on May 24, 2016, as discussed below.

19. R.P.'s testimony that respondent prescribed Adderall to her is not found credible in light of L.R.'s credible testimony that she observed R.P. tracing respondent's signature on a prescription for Adderall. As a result of this dishonest act, R.P.'s capacity for truthfulness as a witness is called into question. (Evid. Code, § 780, subd. (e).) Respondent's testimony, in turn, that he did not prescribe Adderall to R.P. is found credible.

Prescriptions for A.B.

20. With respect to the Adderall prescriptions for A.B., CURES documents that respondent prescribed her Adderall on the following dates: June 8, 2015, August 23, 2015, October 4, 2015, November 9, 2015, and January 2, 2016. (Exhibit 5.) In 2015, A.B. was office manager at the Clinic. Respondent did not have patient records documenting that he conducted exams of A.B. before he prescribed her Adderall. As mentioned above, A.B. asserted her Fifth Amendment privilege against self-incrimination and respondent denied that he prescribed her Adderall. He testified that A.B. forged his signature on the prescriptions for Adderall, and she also forged prescriptions for Adderall for his sister L.R., as documented in CURES. According to CURES, respondent wrote prescriptions to L.R. for Adderall on January 29, 2014, December 24, 2014, August 10, 2015, and September 11, 2015. (Exhibit 5.) There are similarly no patient records for L.R. At hearing, L.R. denied that she was taking Adderall and suggested that A.B. was forging prescriptions in her name.[7]

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[7] L.R. cited a January 4, 2016, text she wrote in which she surmised that A.B. may have "something to do with" writing prescriptions in her name. (Exhibit S.) There is no

21. A.B. gave Investigator Driscoll text messages between herself and respondent that appear to document that respondent supplied her with Adderall. In one text from August 9, 2016,[8] A.B. wrote the following:

> Hey guess what. I've been off of salts for 2 weeks. The most difficult thing ever. I still feel like shit and sleep all day and I'm fatigued constantly and my brain works slow. I crave sugar and fruit all the time now. I think this fatigue will last for a month or longer. That is some crazy shit. I think it may be to [*sic*] much to come off both alcohol and salts at the same time. I really feel terrible.

A series of texts beginning June 20, 2016, from A.B. to respondent read as follows:

> Hope everything is going well. When can you drop off the skittles candy [sent at 12:58 p.m.] . . .
>
> Ok if you can put it under the stair well and me know [sent at 10:04 p.m.] . . .

On June 21, 2016, respondent wrote the following:

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substantiation for her belief and no conclusions can be made regarding whether A.B. wrote prescriptions for Adderall in L.R.'s name.

[8] A.B. emailed Investigator Driscoll the text messages with the comment that the texts were recent, suggesting that they were from 2016.

[thumbs up Emoji] I know the drill [sent at 5:37 a.m.]

Dropping it off right now [sent at 8:04 a.m.]

22. In his testimony, respondent questioned whether A.B. wrote the texts stating that she would have to testify to confirm she wrote them and she "took the Fifth." Otherwise, he denied he wrote prescriptions for Adderall to her and stated that A.B. forged prescriptions for Adderall in his name.

23. Respondent submitted text messages purportedly between himself and A.B. on August 10, 2016, the day the DEA executed its warrant, in which A.B. appears to admit she stole his prescription pad and wrote prescriptions for Adderall for N.P. C.H., R.M., J.S. and D.H. Respondent texted her the following:

[August 10, 2016, at 8:51 p.m.]

So did you write those scripts?

[August 10, 2016, at 9:15 p.m.]

Yes I did. I am so sorry Michael!

Respondent then identifies, in a subsequent text, the persons whose records the DEA was seeking and A.B. admitted either she wrote prescriptions for these persons or "one of my roommates may have taken the script pad out of my room and forged the scripts. I am so sorry for taking the script pad and not telling you!"[9]

[9] These persons do not include R.P., and L.R. and M.B. M.B., who works for respondent at present and worked for respondent in 2015, when A.B. was the office manager, told Investigator Driscoll she thought A.B. forged a prescription for Adderall

24. As dramatic as A.B.'s text confessions to respondent seem to be, her confessions do not ring true. It is inconceivable that respondent would not have immediately reported A.B. to the police, the DEA, and to Investigator Driscoll *if* A.B.'s purported confessions were true. She confessed to a wide ranging criminal scheme to steal his prescription pad, forge prescriptions for friends, and allow his prescription pad to be used by others to forge prescriptions under his name. Given the stakes for respondent, namely the possible loss of his license, and possible federal charges, as well as the obvious public safety concerns raised by loss of his prescription pad, A.B.'s text confessions are simply not believable.[10]

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in her name at that time. M.B. testified in this hearing. Respondent stated that he learned from M.B. in 2016 that A.B. was forging prescriptions in his name. M.B.'s statement to Investigator Driscoll is considered only to the extent it supplements and explains respondent's testimony that M.B. was not one of his patients.

[10] Respondent said he did not go to the police regarding A.B. until March 2019 because he said he did not learn about the full extent of A.B.'s criminal conduct until that time when he received discovery from complainant which described the extent of her fraud. In fact, respondent knew on August 10, 2016, the extent of A.B.'s criminal conduct based on the text messages he submitted into evidence. (Exhibit B.). On August 10, 2016, as discussed above, A.B. told him she committed wide ranging fraud and he seemed to express surprise and anger. Thus, respondent knew the scope of A.B.'s fraudulent criminal conduct at that time, according to these texts. It is also noted that several months before her text confession to him, on March 8, 2016, respondent wrote CVS's "Privacy Office" that he knew one of his prescription pads was stolen and A.B. may have tried to use one of the prescriptions from the stolen pad. (Exhibit HH.)

25. Respondent's testimony regarding his prescribing of Adderall to A.B. and R.P. is further not credible for these reasons: After December 16, 2014, when R.P. was caught forging his signature, respondent knew his prescription pad was accessible in his office and could be used to forge prescriptions. It strains credulity to accept that he took no action to secure his prescription pad with the result that A.B. was able to steal his pad and prescribe Adderall to herself and others.

In addition, the text messages A.B. sent substantiate that respondent was providing A.B. Adderall. In these texts A.B. told respondent she had run out of Adderall, she needed the medication, and respondent indicated he brought Adderall to her. A.B. did not have to testify to confirm that she wrote these texts to respondent and received his reply texts.

Prescriptions for B.S.

26. B.S. testified in this matter regarding her use of Adderall. To obtain Adderall, she said she stole prescriptions from respondent's prescription pad and forged respondent's signature for the Adderall she then obtained from the pharmacy. According to CURES, respondent wrote prescriptions for B.S. for Adderall on July 31, 2015, December 14, 2015, and January 27, 2016, which she filled on these dates. Respondent also wrote prescriptions for B.S. for Lorazepam and Alprazolam during this time.

27. At the time these prescriptions were filled, B.S. worked at the clinic in an administrative capacity that included supervising staff and managing the office. Despite supposedly forging respondent's signature on prescriptions for Adderall, since 2017, B.S. has had an arrangement with respondent where she operates the spa above the clinic and has an ownership interest in the business.

28. B.S.'s testimony is viewed with suspicion and is not credited to support respondent's contention that he did not prescribe Adderall to her. [B.S. has a current financial relationship with respondent and has a motive to lie] Quite simply, she cannot be believed because she either lied about forging prescriptions or she repeatedly committed fraudulent acts to obtain Adderall.

Further, as a matter of her bias on respondent's behalf, B.S. has an interest in respondent's practice where she owns "the Spa part" of the clinic. As noted, she entered into an agreement with respondent in 2017. In her testimony she emotionally explained the importance of the arrangement she has with respondent, stating that she has "nowhere to go" and is financially dependent upon respondent.

29. There is another reason to find B.S.'s testimony that she stole his prescription pad not credible. B.S. said she wrote scripts from respondent's prescription pad starting in July 31, 2015. As noted, on December 16, 2014, respondent's sister told him that R.P. had inappropriately accessed his prescription pad to prescribe Adderall to herself. Given this, respondent offered no explanation why he would not have taken any steps to secure his pads in light of his knowledge that one of his employees was fraudulently writing prescriptions.[11]

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[11] As discussed above, respondent sent a letter to "CVS Privacy Office" dated March 8, 2016, in which he asked for a prescription profile from CVS "dating back" six months because one of his prescription pads was stolen. (Exhibit HH.) He noted in this letter that CVS in Costa Mesa was able to intercept the prescriptions from his pad as A.B. sought to fill a prescription.

When one excludes B.S.'s testimony that she forged prescriptions for Adderall, respondent's denial that he wrote prescriptions for her is not found credible. There is simply no explanation how B.S. obtained Adderall without respondent writing these prescriptions. He did so without conducting appropriate prior exams of her.

Respondent prescribed Adderall to multiple patients without performing exams.

30. The credible evidence of record supports the conclusion that respondent prescribed Adderall to A.L., A.B., C.B., M.B., C.H., D.H., H.L., L.M., R.M. N.P., J.S., and A.W. without conducting prior exams and without documenting he prescribed Adderall to these persons. (Exhibit 55, AGO 945.)

The credible evidence of record does not support the conclusion that respondent prescribed Adderall to R.P. and L.R.

IMPROPER DISPOSAL OF MEDICAL WASTE

31. The second amended accusation also alleges that respondent reused needles from one patient to another, he failed to dispose of needles properly, and he failed to properly dispose of medical waste by flushing it down the toilet.

Complainant relied on the testimony of three former employees of respondent to support these contentions: Alyssa Schumacher, Ashley Parsons, and Raquel Reyes, and a Newport Beach Police Department report[12] related to

[12] The report was received in evidence and analyzed under *Lake v. Reed* (1997) 16 Cal.4th 448. In the *Lake* case, the California Supreme Court determined that law enforcement reports are admissible in administrative hearings and noted that law

respondent's May 24, 2016, arrest for driving under the influence of controlled substances and photographs showing boxes of used syringes police found in respondent's car. (Exhibits 84 and 86.)

Alyssa Schumacher testified she worked for respondent from April 2016 to November 2016 as a back-office assistant who handled certain aspects of billing and put away patient charts.

Ms. Schumacher stated she saw "irregularities" with regards to the disposal of needles and, on one occasion, saw blood and body fat from a liposuction procedure flushed down the toilet. Ms. Schumacher said during the time she worked there she did not see a medical waste company pick up waste and she never saw a bill from a such a company.

Ms. Schumacher said she observed "improprieties" involving needles at the office. As she put it, respondent left everything on the counter, including needles, after procedures. She said needles were placed in designated containers, and these containers were placed into a bigger container. Ms. Schumacher or another person

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enforcement officers' direct observations memorialized in such reports were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and admissions by a party memorialized in such reports were admissible under Evidence Code section 1220. (*Id.* at pp. 461-462.) Other hearsay statements contained in such reports may be used to supplement or explain other admissible evidence, but such statements are not sufficient to support factual findings on their own unless they would be admissible over objection in a civil action. (*Id.* at p. 461, citing Gov. Code, § 11513.)

then took the needles and put them into a red container, a "sharp container" it seems, where the needles were supposed to be placed. Ms. Schumacher said there were boxes of used needles stored in cardboard boxes in the kitchen and in respondent's "cubby." Barbara Sloan, the office manager, took these boxes and a number of boxes from respondent's cubby and placed them in the trash.

Ms. Schumacher, additionally, said she witnessed needles being reused daily and respondent placed needles in rubbing alcohol. She said respondent used the remaining amount of "filler" after a client appointment on a different client and he diluted the filler. In his testimony, respondent stated that Ms. Schumacher was not involved in performing procedures at his office. It is, thus, unclear, what the foundation for her understanding regarding his reusing needles and filler was and this aspect of her testimony is not found credible.

32. Ashley Parsons worked for respondent as a front office administrative assistant from November 2016 to January 2017. During this time, she said that when the sharp container become too full, "Bobbie" placed the container in a larger container and she and "Bobbie" took it to a dumpster by Chase Bank. She said respondent was not involved in this. The container was in a larger trash bag and together they took the bag to the dumpster. Ms. Parsons said this did not happen too often, just when she was in the office. She estimated this occurred 10 times at most. Ms. Parsons did not see a medical waste company pick up medical waste. She did not see where the body fat or fluids were taken.

33. Raquel Reyes worked at respondent's office from April 2016 to December 2016.

Ms. Reyes stated when the sharp containers were full they were put in a brown box and placed on top of a cabinet. At some point, this box was taken to the "disposal" outside the office. Her testimony was vague regarding the circumstances of the disposal of the sharp containers.

34. The testimony of these three persons is looked at with some suspicion because Ms. Reyes and Ms. Parsons sued respondent after they stopped working for him, and Ms. Reyes, Ms. Parsons, and Ms. Schumacher all had poor opinions of respondent based on their work experience. Respondent, also, fired Ms. Schumacher for cause for allegedly stealing Vicodin,[13] though the circumstances of that incident were far from clear and Ms. Schumacher vigorously disputed she stole the medication. Suffice it to say, Ms. Reyes and Ms. Schumacher's poor opinion of respondent and their experience working at his office colored their testimony accordingly.

But, with this said, their testimony regarding respondent's practice of inappropriately disposing of used needles and biological waste is substantiated because, on May 24, 2016, police found respondent in possession of boxes of used needles after he was arrested for driving under the influence of controlled substances. Ms. Schumacher and Ms. Reyes were working at respondent's office on May 24, 2016. Respondent was not authorized to haul medical waste under Health and Safety Code section 117900. (Medical Waste Management Act, Part 14, Health & Saf. Code, §§

[13] Vicodin is a Schedule II controlled substance under Health and Safety Code section 11055 and dangerous drug under Business and Professions Code section 4022. It is not, as complainant states in the second amended accusation, a "benzodiazepine."

117600 to 118630, of Division 104 "Environmental Health.")[14] Under this law, haulers of medical waste are required to register with the California Department of Public Health pursuant to Health and Safety Code section 117900. As discussed later in this decision, complainant's expert, Daryl Hoffman, M.D., testified, as a matter of the standard of care, a doctor must use a registered medical waste hauler and disposal company to haul and dispose of medical waste. He cited the public health concerns of improper disposal of medical waste as the reason why use of a registered hauler is an important matter of public health and safety.

35. The circumstances of respondent's May 24, 2016, arrest are as follows:[15] On this date, at 8:43 p.m., Newport Police stopped respondent for suspicion of driving under the influence. The reporting officer observed respondent driving erratically and instituted a stop. When he talked to respondent he found him to have blood shot eyes and constricted pupils with occasional slurred speech. Respondent admitted he had taken Adderall and Ambien for which he claimed he had prescriptions. The reporting officer discovered a prescription bottle in the name of A.L. (not the A.L. who testified in this matter) which contained six Adderall pills, four Alprazolam pills, and 10 other pills the officer was not able to identify. Respondent did not have a prescription for these medications. The officer took the pills as evidence. He then performed a field sobriety test on respondent and determined respondent was unable to operate a motor vehicle safely and respondent was arrested. The charges, apparently, are pending. During the

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[14] See, for general information regarding the Medical Waste Management Program, www.cdph.ca.gov/Programs/CEH/DRSEM/Pages/EMB/MedicalWaste.aspx < Retrieved December 9, 2019 >

[15] The police report was admitted pursuant to *Lake v. Reed*, supra.

search incident to his arrest, the reporting officer "found hundreds of boxes of labeled used syringes." The officer opened one of the boxes and found hundreds of "uncapped" used syringes. The syringes were not in sharp containers. The officer took photos of these needles. These photos show that several medium sized boxes with one of the boxes opened showing used needles. One photo depicts a handwritten note attached to one of the boxes labeled "Needles Dispose." The officer did not seize the needles as evidence. After he was arrested, respondent asserted his Fifth Amendment privilege against self-incrimination. No inference is drawn regarding his assertion of this privilege.

36. Respondent testified that he was taking the needles, and the bottle containing Adderall and other pills for disposal to OC BioWaste, the medical waste hauling company he said he used.

Respondent's testimony is not found credible. Respondent did not explain why he took it upon himself to transport used syringes, at 8:43 p.m., to OC BioWaste, the medical disposal company he used and contracted, apparently, to pick up and haul waste from his office. Notably, respondent did not offer any document, log, or receipt to show that he, in fact, disposed of the needles at OC BioWaste after his May 24, 2016, arrest. Newport Police did not seize these needles and it must be assumed either respondent or OC BioWaste had such document(s). A log or receipt from OC BioWaste would have been natural information for respondent to provide in light of the charges in the second amended accusation. Considering that respondent also testified he was bringing the bottle of pills, which included Adderall, in his car for disposal, his testimony does not add up.

Regardless, as mentioned above, respondent was not registered to haul medical waste under Health and Safety Code section 117900 and, as discussed below, the

waste transportation company he purportedly used, OC Biowaste,[16] was also not registered with the California Department of Public Health as a medical waste hauler, according to a certification received into evidence from the California Department of Public Health. (Exhibits 85A and 85B.)

REUSING NEEDLES FROM ONE PATIENT TO ANOTHER

37. The evidence of record as a whole does not support drawing the inference that respondent reused needles. The fact that respondent improperly disposed of medical waste does not lead to this conclusion and Ms. Schumacher's and Ms. Reyes's testimony on this subject was vague. It was not clear either had personal

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[16] To document he appropriately disposed of medical waste and needles, respondent provided a copy of an agreement he had with OC BioWaste and invoices for 2013 to 2016. The invoices (Exhibit Z) state "Biowaste pick up and disposal" without any further detail in quantities of "1" or "2." Respondent did not submit or obtain logs, receipts or other documents that recorded the nature of the waste OC BioWaste obtained from his office. On rebuttal complainant called David Davis, Digital Forensic Associate with the California Department of Justice. Ms. Davis testified that that OC BioWaste had a limited digital profile which complainant argued means that respondent may have created OC BioWaste in digital form only after respondent received discovery from complainant. Complainant's argument is not persuasive and it cannot be found, based on the evidence, that respondent fabricated the existence of OC BioWaste as an entity. With this noted, because OC BioWaste is not registered with the California Department of Public Health to transport and dispose of medical waste, as discussed below, respondent did not use a registered company to transport medical waste and for this reason departed from the standard of care. (Exhibits 85 and 85A.)

knowledge that respondent reused needles. Moreover, respondent credibly testified that he did not reuse needles; he expressed sincere disgust that anyone would reuse needles. He noted that doing such makes no sense considering how little needles cost.

RESPONDENT'S ADMINISTRATION OF "BLACK MAGIC" TO PATIENTS FOR RECREATIONAL PURPOSES, INCLUDING PATIENTS H.L., A.B., AND R.P.[17]

38. The second amended accusation alleges that respondent administered "controlled substances" to patients H.L., A.B. and R.P., who was respondent's wife and, further, that he administered a medication likely to interfere with a patient's lifesaving reflexes outside a certified medical facility. H.L. did not testify and A.B. asserted her Fifth Amendment privilege on advice of her counsel and declined to answer questions. Complainant for these allegations relied on the testimony of R.P.

39. R.P. testified that she married respondent on August 25, 2013, separated in July 2014, and reconciled for a brief time in August 2015. Before she was married to respondent, she was also respondent's former patient. She started working at the clinic in December 2013 in an administrative supervisory capacity.

Starting in June 2014, respondent started injecting her with a narcotic cocktail he called "Black Magic." This concoction, she understood, contained a mixture of

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[17] This factual allegation that respondent administered "Black Magic" to three patients encompasses two assertions that respondent engaged in gross negligence: He "parenterally" administered controlled substances to patents H.L., A.B., and R.P. (¶ 38, subd. (b), of the second amended accusation), and he "administered medication likely to interfere with a patient's lifesaving reflexes outside a medical facility" (¶ 38, subd. (c), of the second amended accusation).

Demerol,[18] lidocaine and another substance. She said they used "Black Magic" recreationally and respondent injected himself with the concoction. The medication had a sedative, relaxing effect on her.

R.P. documented respondent's purported use of Black Magic through a series of photos taken from her phone and in text messages she received from respondent. These photos show respondent, it appears, in hotel bedrooms in the Newport Beach area without a shirt holding a syringe; other photos show a small travel bag with a package marked "Demerol," a package of syringes and unidentified bottles. One of the photos shows respondent with the travel bag open with an opened package that looks like the package of Demerol depicted in another photo. (Exhibit 38, AGO-0407.) The photos contain R.P.'s handwriting depicting the hotels by name, and location. (Exhibit 38.) R.P. depicted one of the dates as July 26, 2015. The décor appears typical of hotel bedrooms.

40. R.P. also forwarded to Investigator Driscoll an email purportedly from respondent dated March 5, 2016. (Exhibit 39, AGO 0426.) The email documented this exchange:

> [From R.P. at 10:58 a.m.]
>
> Thank you for the suggestion, however I do not feel comfortable going near your office. Post service at your

[18] Demerol is a Schedule II controlled substance under Health and Safety Code section 11055 and a dangerous drug under Business and Professions Code section 4022.

convenience assuming you won't delay it any longer. Thank you.

[From respondent at 11:25 a.m.]

Ok no worries I'll send it. Hey remember our friend Black Magic? She is in town and came by to see me and say hello and she asked for you. If you want to see her let me know. Have a great day.

41. In a text message dated May 16, 2015, which was sent at 9:00 a.m., respondent allegedly wrote to R.P. the following: "[R.P.] I'm checking to make sure you made it home safe. I never like you driving after black magic so quickly. I had a good time seeing you and it's unfortunate that it ended the same way as usual. . ." (Exhibit 43, AG 0971.)

Another text message captured from respondent's phone states, "No drama babe. Your [*sic*] not a side girl. I just want to believe in you and us again. My love for you hasn't changed. I do want to show me your healthy veins." R.P. appears to have sent photos of her arm showing her vein where respondent would inject her with "Black Magic." (Exhibit 41, AGO 0532.)

42. Respondent denied that he injected R.P. with this substance, noting that intravenous use of lidocaine would probably kill a person. He said that the photos showing him using a syringe depicted him using a syringe to inject himself with a medication to address an elbow injury and his doctor, Li Wen, M.D., prescribed him this medication. He said the photos depicted him in his bedroom at his house. Dr. Wen testified that she prescribed respondent this nonnarcotic medication for use

intravenously and substantiated her testimony with medical records that document this treatment. Dr. Wen's testimony is found credible.

Respondent also stated that R.P. hacked his phone and computer to make it appear that the text messages were from him when in fact the messages were from R.P. To support this contention respondent called his private investigator, Majed Youssef. Mr. Youssef testified that he discovered a spy program in respondent's computer and, as he termed it, the computer was hacked and the phone "jail broken." He said that the text messages that were purportedly from respondent were, in fact, from R.P. Mr. Youssef did not explain how he reached this conclusion and his explanation was hard to follow. Further, he does not have training in digital technology or cybersecurity and, accordingly, his opinion that R.P. hacked respondent's computer and phone and used respondent's identity to create text messages and email is found not persuasive.

As a further part of his investigation on respondent's behalf, Mr. Youssef contacted the hotels R.P. identified in the photos she took. Respondent was on the phone with Mr. Youssef when he talked to persons at these hotels so that he was able to ask hotel staff if respondent had been a registered guest. Mr. Youssef said hotels told him over the phone that respondent was not registered at the times depicted in the photos.

Mr. Youssef, in addition, obtained letters from two persons who wrote that respondent was with them when respondent was supposedly at hotels with R.P. as R.P. identified the dates. The letters from these persons were admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d), and are considered only to the extent they supplement or explain respondent's testimony that he was not at the hotels, for part of the days, depicted in the photos.

43. Respondent testified that his relationship with R.P. was contentious and deteriorated to the point where after June 2015 he wanted to have nothing to do with R.P., as he put it. On June 28, 2015, he filed a police report where he accused her of stealing $15,000, 10 boxes of morphine, 10 boxes of Demerol, and surveillance camera system hard drive (Exhibit Q.) [19] He denied using "Black Magic." He said "Black Magic" was a narcotic used in the porn industry where R.P. sought work. Respondent described an incident of domestic violence in June 2015 where R.P. stabbed him and police were called. As a result, respondent obtained a restraining order against her. Also, R.P. contacted Child Protective Services (CPS) regarding his alleged use of "Black Magic" and his ability to care for his young daughter. He said she did this because he refused to pay for her car repairs and, as a result of her report to CPS, he was not able to see his daughter for two months. Respondent noted that he was required to take a drug test which was negative.

As he also phrased it, R.P. continued to be "obsessed" with him and he feared for his safety, his well-being, and his career, which he said she was threatening to destroy.

44. In assessing respondent's and R.P.'s credibility it is not necessary to resolve all the factual issues raised by the allegations that respondent administered the "Black Magic" concoction to R.P. for recreational purposes. This is most notably the

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[19] Respondent noted in the police report he filed that R.P. had access to the clinic. This raises a natural question why respondent would have entrusted R.P. with access to the clinic after December 16, 2014, when his sister observed her forging his signature for Adderall and told him this. Respondent's explanations at this hearing were illogical.

case regarding the text messages and emails where respondent supposedly mentioned "Black Magic."

But this evidence needs to be looked in the context of the evidence of record as a whole, and evidence in the record supports respondent's testimony that the photos depict him injecting himself with a non-narcotic medication for pain in his arm, which Dr. Wen prescribed. As noted, Dr. Wen's testimony that she prescribed respondent this medication to inject himself is found credible, and Dr. Wen's testimony was supported by medical records that recorded her treatment of respondent, which were admitted as evidence. It simply cannot be concluded, as complainant seemed to suggest, that Dr. Wen fabricated these records because she works at respondent's practice and has an ownership interest, apparently, in it.

With this stated, the pictures *appear* to depict respondent loading a syringe with an open box similar to the box marked "Demerol" depicted inside a travel bag in another photo. (Exhibit 38, AGO 0411.) However, close inspection of this photo makes identification of the box as a box of "Demerol" unclear and, as a result, a definitive conclusion regarding whether this box contained Demerol cannot be made.

45. R.P.'s testimony, in turn, needs to be assessed under the factors in Evidence Code section 780. When these factors are considered, R.P.'s testimony cannot be fully credited. There are several reasons for this conclusion: R.P.'s capacity for truthfulness is suspect considering she has been found to have forged respondent's signature to obtain a prescription for Adderall, which is a fraudulent and dishonest act. As discussed above, this conclusion has been made based on L.R.'s credible testimony that she saw R.P. using tracing paper to falsify respondent's signature for a prescription for Adderall.

In addition, R.P. has a number of reasons to have a biased opinion of respondent: Their relationship deteriorated between 2014 and August 2015, about the time the photos were taken, and the texts and emails were supposedly sent. During this time, R.P. had contacted CPS regarding respondent and respondent, in June 2015, obtained a domestic violence restraining order against her based on a violent incident at respondent's home at the time. In addition, on June 28, 2015, respondent filed a police report where he accused her of stealing $15,000, 10 boxes each of morphine and Demerol and video surveillance equipment. (Exhibit Q.)

BILLING FOR PROCEDURES THAT DID NOT OCCUR

46. For the allegation that respondent billed for procedures that did not occur, complainant relied on Ms. Schumacher's testimony.

Ms. Schumacher testified that she faxed info to Angie Hovhanessran at Vanguard Medical Billing, a third party billing contractor who was responsible for processing respondent's insurance claims. Ms. Schumacher stated she was asked, about two months before she left, to bill for procedures that did not occur. She said "Angie" would have respondent "backdate" the date of the procedure to have the procedure authorized. The "backdates" would be changed by white-out or by a whole new sheet with the patient information. She said that sometimes the patient's insurance expired so it was necessary to back date the date of the procedure.

Ms. Schumacher acknowledged she had no experience in medical billing and her job was limited to forwarding information regarding medical services respondent provided to Vanguard Medical Billing to process. She was unable to specifically identify procedures that were inappropriately billed. Her testimony was vague.

47. Ms. Hovhanessran testified in this matter. She is an employee at Vanguard Medical Billing and has processed respondent's medical billing claims for 10 years. Ms. Hovhanessran only has a professional relationship with respondent and has not worked for him as an employee. Her company has, as clients, surgical centers and other medical offices and has extensive experience billing insurance companies for medical services of all kinds.

Ms. Hovhanessran denied that she submitted fraudulent billing claims to insurance companies. She specifically, and credibly, denied Ms. Schumacher's claim that she asked her to "back date" information for insurance purposes. She said she communicated with Ms. Schumacher only if something was missing to process the claim. Ms. Hovhanessran said that she processed medical office visit consultations and sclerotherapy. She noted that Botox and filler treatments are not billable and she did not process claims for these procedures.

Ms. Hovhanessran detailed the process of billing insurance companies which includes the use of a "Superbill" sent by the doctor. She then processes the claim, using the appropriate medical billing codes, and collects the money from the insurance company. The insurance company issues an Explanation of Benefits (EOB). The EOB is sent to the patient and the doctor. To her knowledge, no patient complained to an insurance company that his or her insurance was billed for procedures that were not performed.

Ms. Hovhanessran's testimony that she appropriately billed insurance companies for procedures respondent performed was credible and is accepted over Ms. Schumacher's testimony that Ms. Hovhanessran asked her to backdate insurance claims and submit fraudulent claims. In contrast to Ms. Hovhanessran's role in processing respondent's claims, Ms. Schumacher was not responsible for the actual

billing for these services, her knowledge regarding the claim process was limited, and she had no experience in medical billing. She forwarded information to Ms. Hovhanessran for her to process.

Ms. Hovhanessran's testimony is, further, supported by respondent's credible testimony that Ms. Hovhanessran would call him to correct mistakes in information he provided Vanguard in order that she could resubmit the bill to an insurance company. Ms. Schumacher may have misinterpreted the corrected claims he submitted to Vanguard as fraudulent.

FAILING TO KEEP INVENTORIES FOR CONTROLLED SUBSTANCES

48. To support the contention that respondent failed to keep inventories for controlled substances, complainant cites respondent's own words to Investigator Driscoll on August 10, 2016, when the Administrative Warrant was executed. At that time, respondent told Investigator Driscoll "he did not have an inventory list of the [controlled substances] he kept at his office." (Exhibit 3, AGO-0010.) He, further, was unable to provide Investigator Driscoll with invoices or log sheets. (*Ibid.*)

Respondent did not materially dispute that he did not have inventories of controlled substances when the DEA executed the administrative warrant in August 2016. Respondent said that he suspected that R.P. stole the inventory sheets when she stole the Demerol and morphine. However, his testimony is hard to believe because he did not report R.P. stole the inventory sheets to the police in the report he filed on June 28, 2015. (Exhibit Q.)

Paradoxically, at the hearing, respondent submitted a document he claimed is an inventory sheet he said he showed the DEA when it conducted its inspection. (Exhibit TT.) The document contains following column section captions: "Pounds off

Diet", "Phentermine Bottles 37.5", "Hydrocodone Bottles 10/325 mg", "Date" and "Initials." The columns in handwriting have dates between June 1, 2016 to August 9, 2016 with initials of various persons but not respondent's initials. In the Phentermine and Hydrocodone columns handwritten notes include "13 unopen" "3 Case" "3 bottles and the names of persons who are unable to identify.

Respondent did not explain this document and it cannot be interpreted as an inventory sheet or log for controlled substances. Simply stated, it is not clear what the document recorded. In any event, his testimony that he showed this document to DEA agents on August 10, 2016 is not found credible in view of his admission to Investigator Driscoll that he did not have inventory sheets, or log sheets or invoices. (Exhibit 3, AGO-0010.)

ENGAGING IN SEXUAL RELATIONSHIPS WITH PATIENTS B.S. AND A.B.

49. There was no direct evidence that respondent had sexual relationships with B.S. and A.B. when they were his patients. Complainant seems to rely on inferences to be drawn from the record as a whole and a timeline elicited during cross examination of respondent where complainant sought to coordinate respondent's sexual relationship with both persons when they were his patients. The timeline complainant tried to identify at the hearing was, to say the least, difficult to follow and involves changes in respondent's relationship with both persons over the years. Regardless of this, respondent and B.S. denied they were in a sexual relationship when she was his patient. Complainant was not able to substantively counter their testimony. A.B.., as noted, did not testify.

RESPONDENT PRESCRIBED CONTROLLED SUBSTANCES, INCLUDING ADDERALL, TO PATIENTS FOR THE PURPOSE OF USING THIS MEDICATION FOR HIMSELF.

50. The evidence supporting the allegation that respondent prescribed controlled substances to patients for the purpose of using the medication for himself consists, for the most part, of R.P.'s and Ms. Schumacher's testimony. But, for the reasons stated above, R.P.'s testimony cannot be credited due to her clear bias against respondent and concerns about her capacity for truthfulness. As a result, her testimony that respondent prescribed Adderall to others for his own use is not a basis to support this contention.

Ms. Schumacher's testimony, also, cannot be credited to support this allegation because it was vague to the point it was hard to undertand; it appeared she did not have direct knowledge respondent was using third persons to obtain Adderall for himself. She testified that respondent, or B.S., would pick up medications from a near-by pharmacy. Ms. Schumacher did not identify the medications. She said respondent would use patient's birthdates or employees' birthdates to pick up prescriptions. Ms. Schumacher said "predominately" pills were being prescribed. At one point in her testimony Ms. Schumacher appeared to say she picked up these unnamed prescriptions for respondent and for B.S. Once she said she picked up an inhaler, other times she picked up prescriptions. Ms. Schumacher said that respondent was regularly taking "medications."

Other than R.P.'s and Ms. Schumacher's testimony, the material evidence to support this allegation is the bottle of Adderall prescribed to respondent's patient police found in his car on May 24, 2016, and his admission to the police he was taking Adderall. Respondent did not dispute at the hearing that the person identified on the bottle of Adderall was his patient. Respondent testified he was delivering this bottle of

Adderall to OC BioWaste for disposal and he was not taking Adderall at the time. His testimony here is not found believable considering what he told police and he had not filled a prescription for Adderall during this time, according to his patient profile in the CURES report complainant obtained. (Exhibit 4.) Thus, it is reasonable to conclude that respondent was using the Adderall found in his car on May 24, 2016, that was prescribed to his patient.

However, it is not reasonable to further find that, as alleged, respondent prescribed this Adderall to the patient whose name was on the bottle "for the purpose of using this medication for himself." A reasonable inference cannot be made to reach this conclusion based solely on the prescription bottle found in his car.

RESPONDENT SOLD PRESCRIPTIONS FOR CONTROLLED SUBSTANCES OUT OF HIS OFFICE

51. Complainant relies upon Ms. Schumacher's testimony to support the allegation that respondent sold prescriptions for controlled substances out of his office.

Her testimony in this regard is summarized as follows: Charts were not kept for all patients. B.S. "would come down with pills for $150 consultation" for about five patients. They would give their names and respondent would tell them to put patients into a specific exam room. Ms. Schumacher said there was no paperwork. They would leave with vial of pills. She said these persons paid and the invoice would just be for a consultation. Their invoices did not have patient's name. Ms. Schumacher said she never checked out patients. She stood next to somebody who did. She was not sure what kind of pills they were given; she noted that the only pills in locked cabinet was Vicodin. Ms. Schumacher said she heard respondent tell a patient "enjoy the Vicodin."

As she stated on cross-examination, Ms. Schumacher did not tell Investigator Driscoll when she met her at Ms. Schumacher's lawyer's office on August 24, 2017, that she heard respondent tell a patient "enjoy the Vicodin." (Exhibit 3, AGO-0034-0037.) She said she told Mr. Shaw this about three months before the hearing. It is noted that this specific factual allegation is not included among the other specific allegations in the second amended allegation, which was filed on July 26, 2019. (See Second Amended Accusation, ¶ 34, pps. 13-14, regarding summary of allegations based on Ms. Schumacher's observations.)

Ms. Schumacher's testimony cannot be credited to support the assertion that respondent sold controlled substances out of his office. Overall, her testimony was vague and it is not clear how to interpret what she said she saw. Ms. Schumacher did not sign out the patients and she did not see what pills patients took with them from the exam rooms. She said she stood next to an unnamed person who signed out patients. Her specific testimony that she heard respondent say "enjoy the Vicodin" to a patient or patients is discounted because she did not tell Investigator Driscoll this when she was interviewed on August 24, 2017.

Fundamentally, respondent was authorized to prescribe Vicodin and controlled substances. In and of itself prescribing these controlled substances and dispensing them out of his office do not lead to the instant conclusion, necessarily, he "sold" them out of his office. The more relevant issue seems to be whether respondent had inventories, or logs, for these controlled substances, conducted appropriate exams prior to prescribing controlled substances, and/or maintained adequate and accurate records for patients to whom he was prescribing controlled substances.

RESPONDENT FAILED TO KEEP ADEQUATE MEDICAL RECORDS FOR PATIENTS

52. Regarding this allegation, the evidence of record establishes that respondent failed to maintain adequate medical records for patients A.L., B.S., A.B., C.B., M.B., C.H., D.H., H.L., L.M., R.M. N.P., J.S. and A.W.

This conclusion is reached based, in large part, on what respondent told Investigator Driscoll on August 10, 2016, during the execution of the administrative warrant at his office. Respondent told Investigator Driscoll he "did not keep patient records," "he can improve on record keeping," and he was prescribing "Adderall to a select few patients that he trusts for ADD." (Exhibit 3, AGO 0011.) Despite this admission, at the hearing respondent produced detailed medical records for patient A.L. which documented his treatment of her and the Adderall and the benzodiazepine Clonazepam he was prescribing her between March 4, 2013, and July 8, 2016. As found above, respondent wrote these records after the DEA executed its warrant on August 10, 2016. If he had these records at the time of the warrant it is reasonable to infer he would have produced them and his explanation why he did not produce them, as discussed earlier, is not believable. His handwritten records, further, do not document he wrote these notes after August 10, 2016.

53. Respondent also did not produce records regarding his prescribing of Adderall to B.S. and A.B. As found earlier, respondent prescribed Adderall to both these individuals and he did not produce records to document he examined them before he prescribed them Adderall.

Testimony of Daryl K. Hoffman, M.D.

54. Complainant called Daryl K. Hoffman, M.D. to address whether respondent departed from standards of care regarding the allegations at issue in this matter. Dr. Hoffman is licensed to practice medicine in California. He obtained his Doctorate of Medicine from the University of New Mexico School of Medicine in 1985, worked as a surgical intern at Stanford University Medical Center, completed residencies in general surgery and plastic surgery in 1990 at Stanford University Medical Center and served as Chief Resident in Plastic Surgery at Stanford University Medical Center in 1991. He was certified by the American Board of Plastic Surgery in 1993. Dr. Hoffman has his own practice. He is on the Faculty at the School of Oncoplastic Surgery in Newport Beach. He has been Medical Director, Campbell Surgery Center, since 2014.

Dr. Hoffman reviewed the evidence of record in this matter and prepared a report addressing each issue raised in the causes for discipline. His testimony was consistent with his reports. Respondent did not challenge Dr. Hoffman's opinions or the standards of care he identified to the extent his opinions are supported by the facts in the record. Respondent challenged the factual bases for a number of Dr. Hoffman's conclusions. California courts have repeatedly underscored that an expert's opinion is only as good as the facts and reasons upon which that opinion is based. (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 924.)

THE FIRST CAUSE FOR DISCIPLINE EVALUATION AND ANALYSIS

55. With this guidance in mind, Dr. Hoffman's opinions are evaluated as they are identified under the First Cause for Discipline as follows:

56. Regarding the issue of prescribing controlled substances without prior medical exams, Dr. Hoffman identified the standard of care for prescribing controlled substances to require the physician to evaluate and document the diagnosis and medical need for the controlled substance. As he wrote in his report, if records were not kept for respondent's patients, "that would represent an extreme departure from the standard of care." [20]

Dr. Hoffman found that the evidence of record shows that according to the CURES reports, in addition to A.L. B.S., R.P. A.B. and respondent's sister, L.R., respondent prescribed Adderall to M.B., C.B., D.H., L.M. J.S., H.L. R.M., N.P., and A.W. There were no records documenting the reasons he was prescribing Adderall to them. B.S. records included a note dated March 17, 2016, in which B.S. denied neurological or psychiatric problems. In his testimony, respondent denied that he prescribed Adderall to anyone other than A.L. and, except for A.L., the other individuals were not his patient. His testimony, as noted above, is found not credible.

Dr. Hoffman concluded that because respondent did not have records to document the diagnosis and medical need for the Adderall, respondent committed an extreme departure from the standard of care when he prescribed Adderall to these patients. Dr. Hoffman's opinion is well-supported in the record and is accepted except

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[20] Concerning a plastic surgeon prescribing Adderall specifically, Dr. Hoffman commented it was unusual for a plastic surgeon to write Adderall prescriptions and he has never prescribed it. Dr. Hoffman added that he doesn't know of any medical need to prescribe Adderall to a patient related to a plastic surgery treatment. For the same reason, Dr. Hoffman also testified he did not understand why respondent kept Vicodin, Demerol and morphine at his office.

with regards to R.P. and L.R. It is found that respondent did not prescribe Adderall to both these persons. The evidence shows that respondent prescribed Adderall to multiple patients, including A.L., A.B., B.S. M.B., C.B., D.H., L.M. J.S., H.L. R.M., N.P., and A.W. without performing prior medical exams and without documenting the reasons he was prescribing Adderall. The credible evidence does not show that respondent prescribed Adderall to R.P. or L.R.

IMPROPER DISPOSAL OF MEDICAL WASTE AND NEEDLES

57. Dr. Hoffman identified the standard of care as follows: the standard of care requires that waste and needles be disposed of by a properly licensed medical waste disposal company and that logs are kept of such activity. With respect to the disposal of needles the standard of care requires that needles be disposed of in sharps containers before they are disposed of by a registered waste company. The proper disposal of waste and needles Dr. Hoffman noted is a matter of obvious public concern and health. He noted further that records of such disposals need to be kept.

Based on the statements of witnesses who stated both that respondent improperly disposed of needles and medical waste, Dr. Hoffman found that respondent committed extreme departures from the standard of care. The record supports Dr. Hoffman's testimony here in these respects: Respondent did not dispose of medical waste and needles by the use of a properly registered medical waste disposal company, and OC BioWaste was not registered with the California Department of Public Health to transport and dispose of medical waste. Respondent, similarly, was not registered with the California Department of Public Health to transport and dispose of medical waste. In addition, based on Ms. Schumacher's and Ms. Reyes's credible testimony, respondent improperly

disposed of needles and biological waste. Respondent, additionally, had in his possession on May 24, 2016 numerous used needles he was transporting to an unknown location.

It is stressed here that respondent did not produce records or logs that recorded the waste and needles OC BioWaste purportedly picked up at his office. OC BioWaste should have had this information available. OC BioWaste's invoices, which respondent submitted, do not detail the nature of the waste it obtained from respondent's office and respondent did not offer records or logs to document the medical waste he kept at his office. The fact that respondent did not produce this information allows the inference to be drawn that these logs do not exist.

RESPONDENT'S PURPORTED ADMINISTRATION OF "BLACK MAGIC" TO PATIENTS FOR RECREATIONAL PURPOSES

58. Dr. Hoffman identified the applicable standards of care as follows: medications should be indicated only for medical and not recreational purposes, any time a medication is administered it needs to be documented, and any time a medication is administered that is likely to interfere with a patient's lifesaving reflexes it must be administered in a certified facility pursuant to Health and Safety Code section 1248.1. Based on the witness statements Dr. Hoffman reviewed in Investigator Driscoll's investigative report, Dr. Hoffman concluded that respondent departed from this standard of care. However, Dr. Hoffman's opinion is not supported by credible evidence in the record as found earlier and his opinion on this issue is not accepted.

BILLING FOR PROCEDURES THAT DID NOT OCCUR

59. Dr. Hoffman identified the standard of care as to require a doctor to only bill for procedures that were performed. Based on the statements in Investigator Driscoll's report, he concluded that respondent did not bill for services he performed and back dated claims for insurance purposes. Dr. Hoffman's opinion is not accepted here because, as found earlier, the credible evidence does not establish that respondent improperly billed for medical procedures.

RESPONDENT FAILED TO KEEP INVENTORIES FOR CONTROLLED SUBSTANCES

60. Dr. Hoffman identified the standard of care as follows: a doctor is required to keep meticulous inventories of all controlled substances which indicate the controlled substances the patients received with a second person to witness the account. Dr. Hoffman found that because respondent did not keep track of controlled substances by means of logs or inventories he committed an extreme departure from the standard of care. Dr. Hoffman's opinion was well-based on the credible evidence of record and is found persuasive.

RESPONDENT ENGAGED IN SEXUAL RELATIONSHIPS WITH PATIENTS B.S. AND A.B.

61. Dr. Hoffman articulated the standard of care concerning this issue as follows: doctors must maintain professional relationships with patients. Dr. Hoffman stated that if respondent had sexual relations with patients, he departed from this standard of care and the departure was extreme. The evidence, however, does not

support a finding that respondent had sexual relations with patients, as found earlier. As a result, no departure is found with regards to this issue.

RESPONDENT PRESCRIBED CONTROLLED SUBSTANCES, INCLUDING ADDERALL, TO PATIENTS FOR THE PURPOSE OF USING THIS MEDICATION FOR HIMSELF

62. The standard of care for the prescriber of any medication is that the medication not be diverted from the patient to any other source. Dr. Hoffman concluded that respondent committed an extreme departure from this standard of care based on A.B.'s, R.P.'s and Ms. Schumacher's statements. As found above A.B. did not testify and R.P.'s testimony in this regard is not found credible. Ms. Schumacher's testimony was vague and cannot be credited to conclude he was prescribed Adderall through third persons to himself.

RESPONDENT SOLD PRESCRIPTIONS FOR CONTROLLED SUBSTANCES OUT OF HIS OFFICE

63. The standard of care requires that doctors only write prescriptions for indicated medications. Based on the statements of witnesses in Investigator Driscoll's report Dr. Hoffman found that respondent sold Vicodin and other medications out of his office. He found this departure to be extreme. Based on the above findings, his opinion on this issue is not supported by the credible evidence of record and is not accepted.

RESPONDENT FAILED TO KEEP ADEQUATE MEDICAL RECORDS FOR PATIENTS

64. The standard of care Dr. Hoffman articulated requires doctors to keep records on all patients. Dr. Hoffman found that respondent departed from this standard of care and the departure was extreme. Dr. Hoffman's opinion on this issue is

well-supported in the record. Respondent admitted to Investigator Driscoll on August 10, 2016 he did not keep patient records and, except for A.L., he did not produce records to document the reasons he was prescribing Adderall to multiple patients, including B.S. and A.B., or that he examined patients before he prescribed Adderall to them.

The Tenth Cause for Discipline and Evidence and Analysis

65. Respondent stipulated to the factual allegations in paragraphs 55, 57 and 58 in the Tenth Cause for Discipline. Respondent further stipulated to the admission of Exhibits 56 through 62, Investigator Driscoll's Investigation Report, photos depicting burns and scaring on Patient F.A., and receipts for treatment, records, a subpoena issued by HQIU for respondent to be interviewed relating to his care of F.A., and two reports from Dr. Hoffman.

As Dr. Hoffman wrote in his report, F.A. had an adverse reaction to a filler respondent injected into her nose on March 8, 2017. Her right eye and cheek were swollen and white spots appeared on her forehead. She called respondent's office to advise him she had a problem, sent him photos of her nose showing the infection. Respondent did not return her call. The receptionist told F.A. that respondent had left for the day and there was no way to contact him until Monday. The next day F.A. went to another doctor and discovered that she had an infection. Respondent admitted his employee failed to notify him of F.A.'s message for him and he found this unacceptable. Dr. Hoffman identified the standard of care as requiring the doctor to be available to treat emergencies following procedures he or she performs and respondent departed from this standard and this constituted a simple departure from the standard of care. Respondent's conduct represents, contrary to the allegation in the second amended accusation, a single negligent act.

The Eleventh Cause for Discipline and Analysis

66. Respondent also stipulated to the Eleventh Cause for Discipline which claims that respondent violated Section 2234, subdivision (h), because he failed to attend and participate in an interview with the board regarding his care and treatment of F.A. Respondent appeared at a scheduled interview with the board on December 20, 2017, but he refused to participate and said he wanted his lawyer to attend. Respondent then failed to appear for a June 19, 2018 interview. Respondent's lawyer's assistant advised Investigator Driscoll respondent had forgot about the interview and she was unable to attend the interview. Investigator Driscoll tried to work with respondent and his attorney to schedule this interview and propounded a subpoena to appear upon respondent on February 16, 2018. She was unable to schedule this interview. His attorney did not state whether or not respondent was able to attend the interview, however. Respondent did not have good cause for not attending and participating in the interview.

Twelfth Cause for Discipline Evaluation and Analysis

67. Complainant alleges in the Twelfth Cause for Discipline that Patient S.B. went to respondent to have her neck look better and she thought he would make two microscopic incisions that would tighten the neck area. Patient S.B. signed a consent form to have this procedure done. On November 16, 2015, this procedure was to be performed and respondent gave her two Xanax[21] at the Clinic. The Xanax knocked her out for two days, according to S.B. in her declaration. (Exhibit 72.)[22] On November 18,

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[21] Xanax, a benzodiazepine, is a controlled substance and dangerous drug.

[22] S.B.'s declaration was admitted as administrative hearsay. Her statement that the Xanax affected her is considered as background to the procedure respondent

2015, she went to respondent's Clinic and talked to respondent. He told her he modified the procedure she thought she was getting and, instead of the incisions in her neck, respondent injected her with fat cells under her eyes and lip area and performed liposuction on her neck and fact. She said she did not consent to these procedures.

Respondent did not have a signed consent form from Patient S.B. indicating she consented to these procedures. But, he testified he obtained informed consent from S.B. before he performed the procedure on her. Respondent stated that he also believed S.B.'s records were damaged when a water pipe burst at his clinic. His testimony is looked at with suspicion and is not credited for a couple of reasons: First, his testimony that S.B.'s records were damaged is found not credible in light of the evidence of record. The leak occurred well before S.B. underwent the procedure at his office. According to an invoice from a contractor respondent retained to fix this leak (Exhibit 71), the leak occurred in April 2015 and S.B. underwent the procedure in November 2015. Additionally, respondent did not sign a Certification of No Records document. B.S. signed a Certification of No Records on April 13, 2017 (Exhibit 66) and, as discussed earlier, her capacity for truthfulness is questionable. In the certification she signed, B.S. wrote, "Due to a water leak in our file room, charts were damaged and unfortunately [S.B.'s] chart was one of them." However, B.S. did not state S.B.'s chart was so damaged the records needed to be destroyed. In addition, respondent failed to comply with the subpoena to be interviewed regarding his care and treatment of Patient S.B. despite Investigator Driscoll's efforts. (Exhibit 63, AGO 0816.) An inference

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performed on her. Respondent did not dispute that the Xanax she took would have had a sedating effect on her.

is drawn that had he attended and participated in this interview he would have provided a statement in support of the allegation he failed to provide S.B. with adequate informed consent.

Accordingly, respondent failed to provide evidence that he provided S.B. with a drug-free discussion regarding informed consent to the procedure he performed on her.

Dr. Hoffman reviewed the evidence of record and articulated the standard of care as follows: a doctor must obtain informed consent from a patient prior to the patient having any psychoactive medication such as Xanax and to document the procedure and informed consent discussion. He concluded in his report that "Changing the procedure without providing and documenting a drug free discussion represents an extreme departure from the standard of care.

Dr. Hoffman's opinion that respondent failed to obtain drug-free informed consent from S.B. before he performed the procedure on her is supported in the record and is found persuasive.

Thirteenth Cause for Discipline and Analysis

68. Complainant alleges in the Thirteenth Cause for Discipline that respondent committed gross negligence by advertising that he was a board certified cosmetic surgeon on his website and claiming that he was board certified when he was not.

On his website respondent displayed a symbol for the American Society of Plastic Surgeons (ASPS). Respondent is not a member of ASPS.

Dr. Hoffman identified the standard of care to require that a doctor not claim he is board certified when he is not board certified and, further, not use the ASPS symbol indicating board certification unless one is a member of ASPS.

Dr. Hoffman found that respondent's departures from both standards of care were extreme. He noted in his report that the ASPS symbol displayed on his website lent respondent credibility and an "aura of excellence" to respondent's practice. He reached the same conclusion regarding respondent's claim he was board certified. Dr. Hoffman's testimony concerning his use of the ASPS symbol is found persuasive. Respondent acknowledged he inappropriately used the ASPS symbol. He said it was a mistake his website designer, Anna Silva, made. Ms. Silva testified and admitted she incorrectly used the ASPS symbol when she designed his website. She said respondent did not approve the use of the symbol. Even though she made this mistake, respondent is still responsible for the display of the ASPS symbol on his website.

Dr. Hoffman's testimony that respondent committed an extreme departure from the standard of care because he is not board certified is not found persuasive. Respondent testified that he is board certified by the International Association of Aesthetic Physicians (IAAP). He provided a letter signed by Karen Fostberg[23] from this organization dated April 9, 2019, that confirmed that respondent has been a member of this organization since 2008 and passed his written and oral examination in February 2012. The letter was admitted as administrative hearsay and is considered to the extent it supplements or explains respondent's testimony. Respondent, further, submitted documentation to substantiate that he attended IAAP conferences. Complainant argued that respondent manufactured the organization because IAAP

[23] The letter does not identify her position in the organization.

has a limited digital profile based on the testimony of Mr. Davis, Digital Forensic Associate with the Department of Justice . Complainant's assertion is not found persuasive. Respondent's testimony regarding his membership in this organization is found credible.

Respondent's Testimony

69. Respondent graduated from University of California Los Angeles Charles Drew School of Medicine and held residencies at University of Southern California Family Practice Residency Program in 1998 to 2000 and University of Arkansas for Medical Sciences from 2000 to 2003. From 2012 to 2016 he worked, according to his CV, at The Skin Care Clinic & Cosmetic Surgery Center, and since 2016 he worked at Bella Derma Face & Body Sculpting.

A good part of respondent's testimony was focused on the allegations that he used "Black Magic" and injected R.P. with it. He said that his charge is due to R.P.'s vindictiveness towards him because he ended their relationship in March 2015. He detailed his tumultuous relationship with R.P. and accused her of retaliating against him. In June 2015, he obtained a restraining order against her. In June 2016 he filed a police report in which he accused her of stealing Demerol, Morphine, $15,000 and the inventories for Demerol and Morphine from his office. He said he told the DEA agents who executed the warrant on August 10, 2016 that R.P. stole the inventory sheets. Investigator Driscoll's report does not record that he told DEA agents this.

Respondent denied he injected himself, or R.P., with "Black Magic". He said R.P. "staged" the photos to make it look like he was injecting himself with the concoction. He said R.P. was very vindictive towards him and wanted to ruin his career. Respondent stated he was not at the hotels with R.P. He said the pictures were from

his bedroom in his home and showed him injecting himself with the medication Dr. Wen prescribed. Respondent said the photos she took of the Demerol in the travel bag was from the Demerol she stole from his office. Respondent said one of the photos was altered to make it look like him. He stated he is allergic to morphine; he provided a record from his hospitalization during the time of this hearing where he reported he was allergic to morphine.

70. With respect to prescribing Adderall to the persons Dr. Hoffman identified, he said A.L. was the only person to whom he prescribed Adderall and he had records for her documenting his prescriptions to her. He said he did not produce these records to the DEA because she was not asked about A.L.; he was only asked about the persons identified in the list attached to the warrant. He denied he prescribed Adderall to any of the other persons identified in the CURES reports or whom the DEA identified in the list. He said, aside from B.S., these persons were not his patients and he had no reason to have records for them.

71. Respondent noted that B.S., R.P, and A.B., at various times between 2014 and 2016, forged his name on prescriptions and fraudulently obtained Adderall. Each of these persons worked as office managers at respondent's clinic. According to the evidence of record he knew, as early as December 2014, his signature was being forged to obtain Adderall. Respondent offered various unconvincing explanations why he took limited, or in some cases, no actions against the employees who were forging his signature. He acknowledged that in December 2014 his sister told him that R.P. was forging his signature for prescriptions. It is not clear what, if any, action he took against R.P. In fact, R.P. continued to have a key to the Clinic after December 2014, according to respondent in his testimony. He acknowledged that M.B. told him in October 2015 A.B. forged his signature. When he discovered this he "suspended" A.B.

as office manager at the clinic, but he did not report her to the police. On March 8, 2016, several months before A.B. supposedly confessed to him she forged his signature, respondent wrote CVS's "Privacy Office" that he learned A.B. had stolen one of his prescription pads and may have tried to use one of the prescriptions from the stolen pad. He said he did not realize the scope of A.B.'s fraud until March 2019, when he reviewed discovery complainant sent him in connection with this matter. He explained that he learned that A.B. had "multiple rehab, admissions" for drug abuse. He said that he "thought" he reported B.S. to the police for the fraudulent prescriptions she wrote, but he was reluctant to discharge her because she was having difficulty coping due to the loss of her father and brother. Respondent then said he did not report her to the police because she was "forthcoming" about what she had done.

Notably, even though three clinic office managers were able to access his prescription pad and forged prescriptions to obtain Adderall, respondent in his testimony did not accept any responsibility for their ability to access his prescription pad. At one point he testified his prescription pad was in a locked "cubby" and that somehow his key to this cubby was obtained and his prescription pad stolen. In B.S.'s case, she testified that she was able to access this prescription pad and selected individual scripts from it to obtain the medications to conceal her fraud.

72. Regarding the inventory sheets for the controlled substances, as mentioned earlier, respondent testified that R.P. stole these when she stole the Demerol and morphine. He added that the DEA audited the controlled substances he had in his office and the DEA was able to account for the controlled substances in his office.

73. Respondent took specific issue with Dr. Hoffman's testimony that he did not see the medical need for respondent to have kept Vicodin, Demerol and morphine at his clinic. He believed he was justified in keeping these controlled substances at his office. Respondent said he provided these controlled substances to patients because some of the procedures they underwent caused pain.

74. In answer to the question concerning what he now does differently to secure controlled substances in his office, respondent said he has installed video cameras in the office and he locks up narcotics in a safe. He also does random screens on all employees and performs background checks on them. Respondent did not testify when he initiated these steps.

75. Regarding inappropriate disposal of medical waste including needles, respondent denied that he disposed of body fluids in the toilet or that he threw needles in the trash. He said he used OC BioWaste to pick up and dispose of this waste. He referenced a letter from Rebecca Morris, Office Manager for OC BioWaste, dated May 7, 2019. This letter was admitted as administrative hearsay only and is considered only to the extent it supplements and explains respondent's testimony. In this letter she states that respondent had a contract with OC BioWaste since 2013. This contract, an "Agreement for Medical Waste Disposal Services" dated January 3, 2013 was signed by "David Miller" on behalf of OC BioWaste Disposal and was admitted. Respondent also included invoices from OC BioWaste and an agreement with respondent for medical waste disposal services dated January 13, 2013. As discussed earlier, the California Department of Public Health, in a certificate of no records, stated OC BioWaste is not registered with the Department of Public Heath to haul and dispose of medical waste as required under the Health and Safety Code. None of the documents from OC BioWaste contradicts this. In addition, the invoices respondent

submitted from OC BioWaste do not identify the nature of the waste picked up and no one from BioWaste testified to corroborate respondent's claims. It cannot be found, thus, that OC BioWaste picked up used needles and body fluids during the time Ms. Reyes and Ms. Schumacher worked at the Clinic.

76. Respondent denied he told police when he was stopped on May 24, 2016, that he was taking Adderall. He said the officer misquoted him. He said the bottle of Adderall with various pills in it belonged to A.L., who worked at the front desk at the clinic. He said another employee found the bottle where A.L. sat and gave it to him. He said he was taking the bottle to OC BioWaste to dispose of. As noted above, he did not provide proof that he, in fact, took this bottle to OC BioWaste for disposal and his testimony is found not believable.

77. In his testimony respondent directed his anger towards Investigator Driscoll. He accused her of falsifying what he told her by mischaracterizing and misquoting him. He denied telling her that he did not keep patient records. Respondent said that she destroyed exculpatory evidence that showed he tested negative for drugs when he submitted to a urine screen. He said that if she would be willing to do "anything" including twist his words.

His testimony here is found not credible. As discussed earlier, Investigator Driscoll recorded in the report she prepared, which was received into evidence pursuant to *Lake v. Reed*, supra, that respondent did not keep, except for B.S., patient records, he apologized for not having records, said he could improve on his record keeping, and he only prescribed Adderall to a few "trusted" patients. These statements are detailed, specific natural responses to the question Investigator Driscoll posed to him where she asked him why she was unable to locate more than one patient file. Parenthetically, it is noted, the one record he showed her, for B.S., did not document

that he prescribed her Adderall. As noted, if respondent had records for any patients, including A.L., the time for respondent to show these records to Investigator Driscoll was when the warrant was executed. He did not show her any such records.

78. Regarding his care and treatment of S.B. respondent stated he provided S.B. informed consent but pipes broke at the clinic and her records were destroyed. To support his testimony, as noted earlier, he cited an invoice in the amount of $4,885 and contract from a general contractor dated April 18, 2015, to "fix the leak in the filling [*sic*] and storage room." (Exhibit 71, AGO 0870.) According to this invoice and contract the leak occurred sometime in April 2015, well before respondent performed a neck lift on S.B. on November 16, 2015. Respondent did not connect the April 2015 leak with his failure to have documentation of his informed consent for the procedure he performed on B.S.

Also regarding the Xanax S.B. took around the time of her November 2015 procedure, respondent testified that S.B. picked up the prescription for Xanax and B.S. gave her a glass of water to take the pill. He did not, thus, deny that S.B. had taken this medication before he said he discussed the procedure with her.

79. Respondent offered scant evidence of rehabilitation. His evidence of rehabilitation consisted of his testimony that he now places controlled substances in a safe, he has installed video cameras, and he now does background checks on employees. He also submitted positive online reviews from patients. Respondent did not offer testimony from individuals who can attest to his character or his qualities as a physician.

Parties' Arguments

80. Complainant seeks the revocation of respondent's license because, as complainant said in closing, respondent is "beyond rehabilitation." The evidence showed that respondent's conduct jeopardized patient safety, and he disregarded public safety by failing to properly dispose of medical waste. Complainant asserted that her witnesses were credible and the evidence as a whole requires revocation of respondent's license.

81. In his closing comments, complainant's counsel suggested that respondent's license should be revoked because respondent created fraudulent entities, OC BioWaste and the IAAP organization, in order to make it appear these entities existed to defend himself against the charges in the second amended accusation. Complainant did not move to amend the charges to include these specific and new allegations as bases to impose discipline against respondent pursuant to Government Code section 11503. It is noted that complainant offered evidence in support of her argument on this point on rebuttal. Respondent was not, thus, given the chance to prepare a defense to these charges to the extent they are a separate and distinct basis to impose discipline. To the extent complainant seeks to claim that respondent committed dishonest or corrupt acts relating to OC BioWaste and IAAP, such allegations are not considered as a basis to impose discipline.

82. Respondent asserts that no discipline should be imposed and the charges dismissed. In his closing comments, respondent argued complainant did not prove the allegations in the second amended accusation. Respondent specifically challenged in closing the credibility of complainant's biases and their respective reasons for testifying against respondent.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act (Chapter I, Division 2, of the Business and Professions Code) is to assure the high quality of medical practice; in other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

The purpose of administrative discipline is not to punish, but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Burden and Standard of Proof

2. Complainant bears the burden of proof of establishing that the charges in the second amended accusation are true.

The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Statutes Regarding Causes to Impose Discipline

3. Section[24] 2227, subdivision (a), states:

> A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) His or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

[24] References are to the Business and Professions Code unless otherwise stated.

(5) Have any other action taken in relation to the discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

4. Section 2234 provides in part:

The board 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:

[¶] . . . [¶]

(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.

[¶] . . . [¶]

The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

[¶] . . . [¶]

(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an

interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

5. Section 2266 provides:

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.

6. Section 2221.1, subdivision (a), provides in pertinent part:

The board and the California Board of Podiatric Medicine shall investigate and may take disciplinary action, including, but not limited to, revocation or suspension of licenses, against physicians and surgeons and all others licensed or regulated by the board, or by the California Board of Podiatric Medicine, whichever is applicable, who, except for good cause, knowingly fail to protect patients by failing to follow infection control guidelines of the applicable board, thereby risking transmission of blood-borne infectious diseases from the physician and surgeon or other health care provider licensed or regulated by the applicable board to patients, from patients, and from patient to physician and surgeon or other health care provider regulated by the applicable board. In so doing, the boards shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant

to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board and the California Board of Podiatric Medicine shall consult with the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California to encourage appropriate consistency in the implementation of this section.

7. Section 2239, subdivision (a), provides as follows:

The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct.

The record of the conviction is conclusive evidence of such unprofessional conduct.

8. Section 2241, subdivisions (a) and (b), provide as follows:

(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

9. Section 2261 provides that "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

10. Section 2266 provides that failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

11. Section 2271 provides that: "Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct."

12. Section 17500 provides as follows:

> It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so

make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

13. Section 726 provides, subdivision (a), provides that 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 or under any initiative act referred to in this division."

Applicable Health and Safety Code Section Governing Disposal of Medical Waste

14. Health and Safety Code section 117900 provides as follows:

No person shall haul medical waste unless the person is one of the following:

(a) A registered hazardous waste hauler pursuant to the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20.

(b) A mail-back system approved by the United States Postal Service.

(c) A common carrier allowed to haul pharmaceutical waste pursuant to Section 118029 or 118032.

(d) A small quantity generator or a large quantity generator transporting limited quantities of medical waste with an exemption granted pursuant to either Section 117946 or Section 117976, respectively.

(e) A registered trauma scene waste practitioner hauling trauma scene waste pursuant to Section 118321.5.

Decisional Authority Regarding Standard of Care

15. The standard of care requires the exercise of a reasonable degree of skill, knowledge, and care that is ordinarily possessed and exercised by members of the medical profession under similar circumstances. The standard of care involving the acts of a physician must be established by expert testimony. (*Elcome v. Chin* (2003) 110 Cal.App.4th 310, 317.) It is often a function of custom and practice. (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 280.)

Courts have defined gross negligence as "the want of even scant care or an extreme departure from the ordinary standard of care." (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3rd 1040, 1052.) Simple negligence is merely a departure from the standard of care. Incompetence has been defined as "an absence of qualification, ability or fitness to perform a prescribed duty or function." (*Id.* at 1054).

Disposition Regarding Causes for Discipline

CAUSE EXISTS, IN PART, UNDER THE FIRST CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR CONDUCT CONSTITUTING GROSS NEGLIGENCE

16. Complainant proved by clear and convincing evidence that respondent committed gross negligence pursuant to Section 2234, subdivision (b), as follows:

As alleged in Paragraph 38, subdivision (e), respondent failed to dispose of needles properly, based on Dr. Hoffman's well-supported opinion as found above.

As alleged in Paragraph 38, subdivision (f), respondent failed to properly dispose of medical waste by flushing it down the toilet, based on Dr. Hoffman's opinion which was well-supported in the record as found above.

As alleged in Paragraph 38, subdivision (i), respondent failed to keep inventories for controlled substances, based on Dr. Hoffman's opinion which was well-supported in the record as found above.

As alleged in Paragraph 38, subdivision (j), respondent failed to keep adequate medical records for patients, based on Dr. Hoffman's opinion which was well-supported in the record as found above.

As alleged in Paragraph 38, subdivision (k), respondent prescribed dangerous drugs, including Adderall, without an appropriate prior medical examination and a medical indication, based on Dr. Hoffman's opinion which was well-supported in the record as found above.

Complainant did not prove by clear and convincing evidence that respondent committed gross negligence as alleged in the following subdivisions under Paragraph 38 of the First Cause for Discipline: Complainant did not prove that respondent engaged in a sexual relationship with patients B.S. and A.B., as alleged in subdivision (a); he administered controlled substances to patients parenterally for recreational purposes, including H.L., A.B., and R.P., as alleged in subdivision (b); he administered medication likely to interfere with a patient's lifesaving reflexes outside a certified medical facility, as alleged in subdivision (c); he reused needles from patient to another, alleged in subdivision (d); he billed for procedures that did not occur, as alleged in subdivision (g); he sold prescriptions for controlled substances out of his office, alleged in subdivision (h); he prescribed a controlled substance knowing it was to be used for a nonmedical purpose, as alleged in subdivision (l); or that he prescribed controlled substances, including Adderall, to patients for the purpose of using this medication for himself.

CAUSE EXISTS UNDER THE SECOND CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR REPEATED NEGLIGENT ACTS

17. Complainant proved by clear and convincing evidence that respondent committed repeated negligent acts pursuant to Section 2234, subdivision (c), based on the findings he committed gross negligence under the First Cause for Discipline as found immediately above.

CAUSE DOES NOT EXIST UNDER THE THIRD CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR DISHONEST/CORRUPT ACTS

18. Complainant did not prove, pursuant to Section 2234, subdivision (e), that respondent engaged in dishonest or corrupt acts as alleged in paragraphs 18 to 37 of the First Cause for Discipline. Complainant does not identify the specific conduct she believes constitutes dishonest or corrupt acts under this cause for discipline and it is difficult to identify the conduct complainant alleges constitutes dishonest or corrupt acts. With this noted, complainant did not prove that respondent sold medications out of his office, used or administered controlled substances for recreational purposes, or inappropriately billed for medical services that he did not perform as found above.

CAUSE DOES NOT EXIST UNDER THE FOURTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR SEXUAL MISCONDUCT

19. Complainant did not prove, pursuant to Section 726, that respondent engaged in sexual misconduct with patients based on the above findings.

CAUSE DOES NOT EXIST UNDER THE FIFTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR DANGEROUS USE OF DRUGS

20. Complainant did not prove by clear and convincing evidence that respondent engaged in the dangerous use of drugs pursuant to Section 2239 as alleged under the Fifth Cause Discipline based on the above findings.

CAUSE DOES NOT EXIST UNDER THE SIXTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR PRESCRIBING/ADMINISTERING CONTROLLED SUBSTANCES FOR A NON-MEDICAL PURPOSE

21. Complainant did not prove by clear and convincing evidence that respondent violated Section 2241, prescribing/administering controlled substances for a non-medical purpose based on the above findings.

CAUSE DOES NOT EXIST UNDER THE SEVENTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR FAILURE TO FOLLOW INFECTION CONTROL GUIDELINES

22. Complainant did not prove by clear and convincing evidence that respondent violated Section 2221.1. The evidence does not support a finding that respondent knowingly failed to follow the board's infection control guidelines and thus, by failing to do so, risked the transmission of air-bore infectious diseases. Dr. Hoffman offered no testimony in this regard and, without his expert opinion or the opinion of another expert, no conclusion can be made regarding this allegation.

CAUSE DOES NOT EXIST UNDER THE EIGHTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR CREATING A FALSE MEDICAL DOCUMENT

23. Complainant in the Eighth Cause for Discipline alleges that respondent falsified medical records as alleged in paragraphs 20 through 37. However, in these paragraphs, "in ordinary and concise language," complainant has not made this factual assertion regarding the claim he falsified medical records to allow respondent to

prepare a defense to this allegation. (Gov. Code § 11503.) Complainant, further, did not move to amend the second accusation to add this charge under Government Code section 11507. Although, as noted above, it appears respondent falsified A.L.'s records after the DEA executed the Administrative Warrant on respondent on August 10, 2016, complainant did not allege this in the amended accusation. Accordingly, the allegation under this cause for discipline is dismissed.

CAUSE EXISTS UNDER THE NINTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR FAILING TO MAINTAIN ADEQUATE AND ACCURATE RECORDS

24. Complainant proved by clear and convincing evidence that respondent failed to maintain adequate and accurate records in his care and treatment of patients pursuant to Section 2266 based on the findings reached in this decision. Respondent admitted to Investigator Driscoll on August 10, 2016, that he did not keep patient records and he could do better in terms of his record keeping. As found above, he did not have patient records for any of the persons to whom he was prescribing Adderall.

CAUSE EXISTS UNDER THE TENTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR NEGLIGENT ACTS

25. Complainant proved by clear and convincing evidence that respondent committed a negligent act pursuant to Section 2234, subdivision (c), with regards to his care and treatment of Patient F.A. based on the findings reached in this decision. As found, based on Dr. Hoffman's credible testimony, respondent failed to respond to F.A.'s request for assistance after she had an adverse skin reaction to a procedure he performed on her on March 8, 2017.

CAUSE EXISTS UNDER THE ELEVENTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR FAILURE TO ATTEND/PARTICIPATE IN BOARD INTERVIEW

26. Complainant proved by clear and convincing evidence that respondent failed to attend or participate in two scheduled interviews with the board on December 20, 2017 and June 19, 2018 regarding his treatment of Patient F.B. pursuant to Section 2234, subdivision (h).

CAUSE EXISTS UNDER THE TWELFTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR GROSS NEGLIGENCE

27. Complainant proved by clear and convincing evidence that respondent engaged in gross negligence in his care and treatment of Patient S.B. Dr. Hoffman credibly testified, with support in the record, that respondent committed an extreme departure from the standard of care when he failed to provide S.B. with a drug-free discussion with her regarding informed consent.

CAUSE EXISTS, IN PART, UNDER THE THIRTEENTH CAUSE FOR DISCIPLINE TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE FOR GROSS NEGLIGENCE

28. Complainant proved by clear and convincing evidence that respondent committed gross negligence in violation of Section 2234, subdivision (b), when he used the ASPS member symbol on his website indicating he is board certified by this organization as found above based on Dr. Hoffman's credible testimony. Complainant did not prove by clear and convincing evidence that respondent committed gross negligence pursuant to Section 2234, subdivision (b), when he advertised he was

board certified when he is not board certified. Respondent presented credible evidence that he is board certified by the IAAP as found above. By itself, respondent's conduct does not warrant the imposition of serious discipline.

CAUSE EXISTS UNDER THE FOURTEENTH CAUSE FOR DISCIPLINE, IN PART, TO IMPOSE DISCIPLINE AGAINST RESPONDENT'S LICENSE.

29. Complainant proved by clear and convincing evidence that respondent engaged in unprofessional conduct pursuant to Section 2271 when he falsely advertised that he was board certified by the ASPS when he displayed a symbol of this organization on his website. In fact, respondent he was not certified by this organization as found above and he should not have displayed the symbol of this organization.

CAUSE DOES NOT EXIST UNDER THE FIFTEENTH CAUSE FOR DISCIPLINE

30. Complainant did not prove by clear and convincing evidence that respondent engaged in a dishonest and/or corrupt act when he displayed the ASPS symbol on his website when he was not board certified by this organization. Respondent presented credible evidence that his website design mistakenly used this symbol. This was not an attempt on respondent's part to deceive the public.

The Board's Disciplinary Guidelines and Regulation Regarding the Degree of Discipline to Impose

31. With causes for discipline having been found, the determination now must be made regarding the degree of discipline and the terms and conditions to impose. In this regard, the board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016) states:

> The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

33. The determination whether respondent's license should be revoked or suspended includes an evaluation of the nature and severity of the conduct and rehabilitation and mitigation factors as set forth under California Code of Regulations, title 16, section 1360.1, which provides as follows:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
>
> (a) The nature and severity of the act(s) or offense(s).
>
> (b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

34. For the violations established, the board's disciplinary guidelines provide that revocation is the maximum discipline and provided the following minimum recommended terms and conditions:

- For gross negligence and repeated negligent acts under Business and Professions Code section 2234, subdivisions (b), (c), or failure to maintain adequate records under Business and Professions Code section 2266, revocation, stayed, and five years' probation, with conditions including an education course, prescribing practices course, medical record keeping course, professionalism program (ethics course), clinical competence assessment program, monitoring, solo practice prohibition, and prohibited practices. There is no recommended penalty for a violation of Section 2234, subdivision (h).

- For a violation of Business and Professions Code section 2271, a one-year probation with conditions including an education course, professionalism program, practice monitoring and prohibited practice.

Disposition Regarding the Degree of Discipline

35. As noted, the purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual, the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Fahmy, supra*, 38 Cal.App.4th at p. 817.) Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

The determination whether respondent's license should be revoked or suspended includes an evaluation of the nature and severity of the conduct and rehabilitation and mitigation factors as set forth under California Code of Regulations, title 16, section 1360.1, which provides as follows:

> When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:
>
> (a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

36. After considering the board's guidelines, and the factors under California Code of Regulations, title 16, section 1360.1, the evidence of rehabilitation respondent offered, and the evidence of record as a whole, it is determined that the public interest requires that respondent's license be revoked for these reasons: The nature and severity of respondent's conduct was very serious, reflected his disregard for his patients and the public health and safety at large, and occurred over an extended time frame. Respondent offered scant evidence that he is rehabilitated and that he would be amenable to probation.

37. Respondent engaged in a number of serious instances of misconduct, including gross negligence and repeated negligent acts, that involved his treatment of patients and the management of his office. These instances of serious misconduct included his prescribing of Adderall. As the credible evidence of record shows, respondent prescribed Adderall to numerous persons without examining them, and he

did not keep or maintain records regarding his prescribing of Adderall for these persons. Regarding how he prescribed Adderall, respondent's former patient A.L. provided the most credible and compelling testimony. She detailed the manner with which respondent prescribed Adderall to her: He invited her to have him prescribe Adderall for her then, without examining her, she went to his office, told staff she was there to pick up a prescription, waited in the waiting area, and she was brought a script signed by respondent which she filled. A.L. credibly testified he did not examine her. As found above, respondent's purported records for her were created after the DEA's Administrative Warrant was executed on August 10, 2016.

Respondent's testimony that he was the victim of his former office managers, with whom he had personal relationships at various times, and that these persons stole his prescriptions is as discussed earlier easily dismissed. As early as December 14, 2014 respondent knew one of these persons, R.P., forged a prescription for Adderall. Yet, he took no steps to secure his prescription pad. In March 2016, respondent learned that, as he claimed, A.B. was forging his prescriptions. Again, he took no steps to secure his prescription pad. At that point, respondent *certainly* should have taken concrete steps to secure his prescription pad, if not report, A.B. to the police if A.B. had in fact been forging his prescriptions. He did not say he took any such steps. That he did not report her to the police until, he said, March 2019, while the disciplinary action against him was pending, supports the conclusion that A.B. did not forge his prescriptions. Similarly, B.S.'s claim that she stole his prescriptions is also dismissed, as discussed above, given her lack of credibility and bias on respondent's behalf.

Respondent's failure to properly dispose of medical waste and used needles represented respondent's complete disregard for the public safety. As Dr. Hoffman testified, his failure to use a registered medical waste transportation company

represented an extreme departure from the standard of care due to the obvious public health issues raised by improper disposal of medical waste.

Respondent also committed gross negligence in his care and treatment of two cosmetic patients, S.B. and F.A. Respondent failed to obtain from S.B. informed consent for the procedure he performed on her. His testimony that S.B.'s records were destroyed by a leak is found not believable. He committed simple negligence when he failed to respond to F.A. when she had an adverse reaction to a procedure he performed.

Respondent's failure to have inventory sheets for the controlled substances he kept in his office also represented a serious instance of misconduct, represented an extreme departure from the standard of care per Dr. Hoffman, constitutes gross negligence and warrants the imposition of serious level of discipline. Respondent's explanation that R.P. stole the inventory sheets is found particularly not credible.

38. In essence, respondent's practice of medicine seemed to be in a state of chaos. Persons, according to him, were stealing his prescription pad and forging his signature to obtain Adderall, he did not have inventory sheets for controlled substances in his office to account for the Demerol, morphine and other controlled substances in his clinic, Demerol and morphine were stolen from his clinic, medical waste was not being disposed of properly, respondent failed to attend to one patient who had an adverse reaction to a procedure he performed on her, and he failed to obtain from another patient adequate informed consent before he performed a procedure on her.

Respondent offered scant evidence of rehabilitation and he took no responsibility for any of the problems at his office including inadequate record

keeping and his failure to secure his prescription pad. Instead of taking responsibility he blamed his employees, R.P., or a water leak that destroyed records. This is a consistent theme throughout his defense to the charges in this matter. He said investigating officers mischaracterized what he told them.

The only evidence he offered regarding rehabilitation is that now he puts his prescription pad in a safe and has installed video cameras, does background checks and random drug screens of his employees. Given the serious nature of the misconduct and unprofessional conduct that has been found, this evidence is insufficient to justify any discipline less than revocation of his license.

Finally, as an aggravating factor in favor of the imposition of this level of discipline, respondent did not cooperate with the board's investigation. Without good cause, he did not attend and participate in interviews with the board.

ORDER

Certificate No. A77181 issued to respondent, Michael Mario Santillanes, M.D., is revoked.

DATE: December 16, 2019

DocuSigned by:
Abraham Levy
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ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 26 20 19
BY ANALYST

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

In the Matter of the Second Amended Accusation Against: **MICHAEL MARIO SANTILLANES, M.D.** 2503 Eastbluff Dr. # 105 Newport Beach, CA 92660 **Physician's and Surgeon's Certificate No. A 77181,** Respondent.	Case No. 8002015018869 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Second Amended 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 November 21, 2001, the Medical Board issued Physician's and Surgeon's Certificate Number A 77181 to Michael Mario Santillanes, 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 October 31, 2019, unless renewed.

JURISDICTION

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

4. 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."

5. Section 2221.1 of the Code states in part:

"(a) The board and the California Board of Podiatric Medicine shall investigate and may take disciplinary action, including, but not limited to, revocation or suspension of licenses, against physicians and surgeons and all others licensed or regulated by the board, or by the California Board of Podiatric Medicine, whichever is applicable, who, except for good cause, knowingly fail to protect patients by failing to follow infection control guidelines of the applicable board, thereby risking transmission of blood-borne infectious diseases from the physician and surgeon or other health care provider licensed or regulated by the applicable board to patients, from patients, and from patient to physician and surgeon or other health care provider regulated by the applicable board. In so doing, the boards shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division

5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings."

6. Section 2227 of the Code authorizes the Board to discipline a licensee and obtain probation costs.

7. Section 2234 of the Code, states in part:

"The board 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.

"(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.

"(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.

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

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8. Section 2239 of the Code states in part:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct."

9. Section 2241 of the Code states in part:

"(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

"(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose."

10. Section 2242 of the Code states in part:

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

11. Section 2261 of the Code, states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

12. 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."

13. Section 2271 of the Code states: "Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct."

14. Section 2228.1 of the Code states:

"(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

"(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

"(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.

"(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

". . .

"(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendre or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does

include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

"(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

". . .

"(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

"(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

"(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

"(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

"(4) The length of the probation and end date.

"(5) All practice restrictions placed on the license by the board.

". . ."

ETHICAL PRINCIPLES

The medical profession has long subscribed to a body of ethical statements, set forth and adopted by the American Medical Association and known as *The Principles of Medical Ethics*. *The Principles of Medical Ethics* represent standards of conduct which define the essentials of honorable behavior for a physician. These principles establish that the relationship between a patient and physician is based on trust, and gives rise to an ethical obligation on the part of the physician to place the patient's interests above his or her self-interest.

PERTINENT DRUGS

15. **Adderall**, a mixture of d-amphetamine and l-amphetamine salts in a ratio of 3:1, is a central nervous system stimulant of the amphetamine class, and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for attention-deficit hyperactivity disorder and narcolepsy. According to the DEA, amphetamines, such as Adderall®, are considered a drug of abuse. "The effects of amphetamines and methamphetamine are similar to cocaine, but their onset is slower and their duration is longer." (Drugs of Abuse – A DEA Resource Guide (2017), at p. 50.) Adderall and other stimulants are contraindicated for patients with a history of drug abuse.

16. **Demerol**, a trade name for meperidine hydrochloride, is a narcotic analgesic, a dangerous drug as defined in Business and Professions Code section 4022 and a schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code. Demerol can produce drug dependence of the morphine type and therefore has the potential for being abused. Psychic dependence, physical dependence, and tolerance may develop upon repeated administration of Demerol and it should be prescribed and administered with the same degree of caution appropriate to the use of morphine. Because of the potential for interaction with other central nervous system depressants, Demerol should be used with great caution and in reduced dosage in patients who are concurrently receiving other narcotic analgesics, general anesthetics, phenothiazines, other tranquilizers, sedative-hypnotics, and other central nervous system depressants. Respiratory depression, hypotension, and profound sedation or coma may result.

17. **Vicodin,** a benzodiazepine, is a centrally acting hypnotic-sedative that is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used to treat pain and anxiety. It has a high risk for addiction and dependence and can cause respiratory distress and death when taken in high doses or when combined with other substances. The Drug Enforcement Administration (DEA) has identified

benzodiazepines, such as Vicodin, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2017 Edition), at p. 59.)

18. **Xanax** (alprazolam), a benzodiazepine, is a centrally acting hypnotic-sedative that is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the management of anxiety disorders. Concomitant use of Xanax with opioids "may result in profound sedation, respiratory depression, coma, and death." The Drug Enforcement Administration (DEA) has identified benzodiazepines, such as Xanax, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2017 Edition), at p. 59.)

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

19. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that Respondent engaged in unprofessional conduct and was grossly negligent based on the following circumstances.

20. Respondent is primarily engaged as a plastic surgeon who operates a cosmetic skin care clinic (Clinic). Amid allegations that Respondent had sexual relations with many patients and also administered controlled substances intravenously to patients, numerous witnesses and patients were interviewed. A.L.[1] began treatment for skin acne at the Clinic in or about 2011 or 2012. Respondent told her during an office visit that he could prescribe her Adderall. She paid him $100 in cash or with a credit card for each office visit, which usually lasted for three seconds and was specifically for Respondent to write Adderall prescriptions. She believed there was a patient chart for her at the Clinic. A.L. reported that Respondent often seemed "bizarre" and that the office was constantly in flux. CURES records indicate that Respondent prescribed Adderall 30 mg, or its generic form, to A.L. on approximately 14 occasions between March 2013 and January 2016.

[1] Patient and witness initials are used to protect their privacy. Respondent may learn the names of these individuals through the discovery process.

21. Respondent began treating R.P. as a patient in or about 2013. The two started dating and married in or about October 25, 2014. In or about December 2014, R.P. began working for Respondent at the Clinic. Respondent injected both R.P. and himself with a morphine concoction known as "black magic" after business hours at the office on numerous occasions prior to having sex. R.P. noted that Respondent would use sex toys on her while she was passed out naked at his house, then send the pictures to numerous people. R.P. indicated that Respondent was using "up coding" on bills sent to insurance companies in order to bill for more expensive procedures than were performed. Respondent told R.P. that he got A.B. hooked on "salts." R.P. indicated that she and Respondent would use morphine, and later added "salts" in order to party until 5:00 a.m.[2] R.P. noted that Respondent "lived" on Adderall and took it daily. Respondent wrote R.P., R.P.'s sister, L.M., A.B., and B.S. prescriptions for Adderall. R.P. recalled that Respondent charged $30 to a patient for writing a script for Adderall.

22. On one occasion, R.P. went to Respondent's house while A.B. was also present. Respondent injected both R.P. and A.B. with "black magic." A.B. became dizzy and went upstairs while R.P. and Respondent had sex downstairs. Respondent told R.P. about how he would have threesomes with A.B. and one of his patients. While working at the Clinic, R.P. indicated that a cap was placed on used syringes and then thrown into the trash by Respondent. She did not observe a biohazard bin at the Clinic. CURES records confirmed that Respondent prescribed Adderall, or its generic form, to R.P. on approximately five occasions between February 2014 and April 2015.

23. A.B. began working at the Clinic in or about March 2015 as the front desk coordinator. At that time, R.P., Respondent's wife was the office manager. A.B. and Respondent started a dating relationship. Respondent also provided A.B. with Botox, Restylane, and Juvederm treatments on multiple occasions. A.B. recalled that shortly after she started working at the Clinic, Respondent injected her with Demerol or morphine during a Botox procedure. He then started kissing her and everything was foggy thereafter. She believed Respondent may have

[2] R.P. provided multiple photos of Respondent holding a syringe and a vial of medication while shirtless in hotel rooms, as well as "black magic" bags containing Demerol, which will be produced in discovery.

sexually assaulted her. Respondent frequently prescribed her Adderall and instructed her to give him half her prescription. Respondent asked A.B. if she knew anyone else that Respondent could write scripts for Adderall and A.B. told Respondent about her sister, C.B. Respondent then began writing scripts for Adderall for C.B. and took these prescriptions for his own use.[3]

24. A.B. revealed that during the time she was employed at the Clinic, both she and Respondent were abusing drugs and alcohol continuously. They used code words for drugs, including calling them "skittles," and "candy." Adderall was also referred to as "salts." After business hours, Respondent and A.B. would party in the office, where he injected her with an unknown substance, later discovered to be Demerol, on multiple occasions. The injections caused her to get high, and on one occasion A.B. became so sick that she believed she was going to overdose. A.B. also observed Respondent injecting himself with Demerol. On one occurrence, A.B. observed Respondent injecting his ex-wife, R.P., at Respondent's residence. Respondent and R.P. got into an argument and Respondent told R.P. to leave. A.B. explained to Respondent that R.P. was too intoxicated to drive, but Respondent indicated he did not care.

25. A.B. observed Adderall and vials of Demerol "everywhere," including Respondent's office, car, and house. A.B. was also aware that Respondent wrote Adderall prescriptions for his sister, L.R, who would in turn give Respondent the prescriptions.[4] A.B. indicated that Respondent sold Vicodin and Adderall out of the Clinic. Patients would pay $100 for Adderall. A.B. observed another "Russian" female picking up Adderall for Respondent. Respondent would make fun of A.B. when she tried to stop using drugs and alcohol because her hands would shake. A.B. ended her relationship with Respondent in or about January 2016, and also quit her job at the Clinic at that time.

26. Once A.B. stopped working at the Clinic, she entered a drug and alcohol detoxification program. Following the rehabilitation program, Respondent asked A.B. to pick up a prescription for Adderall for him despite knowing that she was sober. After the DEA executed

[3] CURES reports noted that Respondent prescribed C.B. Adderall 30 mg, or its generic form, on five occasions from June 2015 through December 2015.

[4] CURES records for L.R. confirm that she was prescribed Adderall by Respondent on multiple occasions in late 2015. A.B. observed one of these prescription bottles at Respondent's house.

a search warrant at the Clinic, Respondent called A.B. and told her what to say to investigators regarding patient charts. He also indicated that he was recently pulled over by the police and was found to be in possession of a prescription bottle. CURES records indicated that Respondent prescribed Adderall 30 mg #120, or its generic form, to A.B. on approximately five occasions between June 2015 and January 2016, and once for Adderall 30 mg #90 during that time.

27. M.B. has been employed at the Clinic as an aesthetician/skin care therapist since approximately June 2015. Respondent treated her with cosmetic procedures, including injecting her with Botox and fillers[5] every three to four months. She does not have a medical chart at the Clinic to her knowledge

28. H.L. was looking for a job in or about March 2016, and knew B.S., the office manager at the Clinic and Respondent's girlfriend at the time. B.S. arranged for H.L. to come into the office for an interview with Respondent. B.S. provided H.L. with drugs believed to be Vicodin and Adderall. H.L. was told to give Respondent a massage and he would hire her if he liked it. H.L. was brought into an exam room by B.S., where Respondent was on an exam table. As H.L. began massaging Respondent, Respondent began touching H.L., and B.S. joined in. A sexual encounter occurred between the three of them. H.L. began working at the Clinic shortly after. B.S. would provide H.L. with Vicodin, Xanax, and Adderall in order to get high. On or about March 26, 2016, H.L. went over to Respondent's residence, where B.S. also lived. She was provided with wine, Vicodin, Xanax, and Adderall by Respondent and B.S. H.L. said that she was in a fog after that and does not remember how she got to the bedroom. She recalled that the three of them all had sex, but she felt like she was unable to move. She did not report the incident or go for a medical examination because she felt like it was her fault for placing herself into that situation.

29. In or about April 2016, B.S. asked H.L. to go to the pharmacy and have a prescription filled for Adderall so that Respondent and B.S. could take it on vacation with them. H.L. went to the pharmacy and picked up the prescription for Adderall. H.L. took half the tablets from the

[5] An injectable filler is a soft tissue filler injected into the skin to help fill in facial wrinkles, restoring a smoother appearance.

bottle and gave B.S. the remaining pills in the prescription bottle. CURES reports noted that Respondent prescribed H.L. Adderall 30 mg #120, or its generic form, on or about April 11, 2016.

30. R.R. began working at the Clinic in early 2016 after the entire office staff had quit. R.R. indicated that controlled substances were kept in a "cubby" used by Respondent. While B.S. was away from the office, Respondent would come on to her and she would inform him that it was unprofessional. Respondent invited R.R. over to his house multiple times. Respondent injected R.R. with Botox after she started her employment. On or about August 29, 2016, B.S. gave R.R. a "relaxing pill" so that Respondent could inject filler. She was not cautioned by Respondent not to drive after taking this medication. She started feeling abnormal and drove home.

31. Respondent directed R.R. to place used needles at the Clinic in a brown box, which Respondent would throw into the dumpster. She also observed used needles being left out in a metal dish for long periods of time. R.R. recalled that Respondent would bill insurance companies for sclerotherapy[6] and would instead do an injection for a filler. R.R. received many patient complaints about the Botox being watered down. R.R. observed Respondent reuse syringes from one patient to another if the syringe was not completely used. Respondent would dump blood and fat from procedures into the toilet. R.R. noted that she witnessed a male patient carrying a backpack come into the office and pay $500 for a "consultation." He then went to the back of the office with Respondent. Respondent provided this individual with a bottle of what was believed to be Vicodin. R.R. also observed Respondent hand out prescriptions without any charting. R.R. indicated that B.S. would ask employees to use their insurance to obtain medication for B.S. and Respondent.

32. A.S. began working at the Clinic in or about April or May 2016 as a back office assistant and biller. A.S. indicated that if a patient's insurance was nearing expiration, Respondent would back date the procedure. At times, Respondent would allow charts to pile up, then change dates when submitting billing claims to insurance companies. A.S. learned it was

[6] Sclerotherapy is an injection treatment that eliminates varicose and spider veins.

illegal to change dates and refused to engage in that tactic. She recalled an instance where a patient had $1500 worth of fillers (Restylane, Juvederm, and Botox), and Respondent instructed A.S. not to charge for the fillers, but instead bill the patient for sclerotherapy. Patients would complain on a regular basis about the fillers and Botox procedures. A.S. said that Respondent would never call them back. A.S. observed Respondent dumping blood and fat from procedures down the toilet on a daily basis. Respondent reused needles from one patient to another. She also witnessed Respondent take needles out of the Sharps container in his cubby and reuse them. She inquired whether that was illegal and whether Respondent was going to clean the needles. Respondent replied, "No, it's fine."

33. A.S. recalled the work environment was always very stressful and there were constantly sexual innuendos from Respondent. She witnessed Respondent inappropriately touching other female employees. A.S. witnessed Respondent diluting derma filler products. Respondent would draw a small amount of filler into a syringe, then largely dilute it with an unknown solution to be used on patients. A.S. indicated that Respondent would write prescription scripts for patients, then keep the prescriptions. Respondent instructed A.S. to retrieve patient charts, then call in a script to the CVS pharmacy next to the office using the patient's information. A.S. would be directed to pick up these prescriptions for B.S. at CVS that were intended for Respondent. A.S. observed Respondent taking pills throughout the day. A.S. was aware that other Clinic employees also picked up prescriptions at CVS and would give them to B.S.

34. According to A.S., Respondent did not keep a medical record for every patient. Several patients would come into the Clinic with backpacks, and go to the back of the office with Respondent. Respondent would then have B.S. go upstairs to obtain a box or bag of drugs and Respondent would provide it to the patient. The patient would then come to the front of the office and pay $150 in cash. There would be no chart or invoice for these transactions. A.S. estimated between 10-30 individuals came in for drugs in this manner while she was employed at the Clinic. The same individuals would come every couple of weeks. A.S. was directed by Respondent to purge patient charts prior to 2014. A.S. recalled that many patients were always coming back

with infections or burns after procedures at the Clinic. Once A.S. started creating boundaries with Respondent and refusing to change dates on billing submittals, he began to treat her worse. She left her employment at the Clinic in approximately November 2016.

35. A.P. worked at the Clinic from approximately November 2016 to January 2017. Respondent injected her with Botox on one occasion. Controlled substances were kept in an unlocked cupboard at the Clinic. Respondent would offer A.P. wine while she was working after hours and invited her over to his house. Patients would call the Clinic regularly to complain about fillers, Botox, and vein treatment. A.P. believed Respondent was diluting the fillers prior to injecting patients. A.P. never observed lot numbers for the fillers used on charts.

36. Respondent was served with an administrative inspection warrant on or about August 10, 2016, and he was unable to provide any invoices or log sheets regarding the controlled substances in his office. He did not have an inventory list of controlled substances. Respondent was shown a list of 12 patients, including M.B., A.B., C.B., C.H., D.H., H.L. R.M., N.P., L.R., J.S., B.S., and A.W. Each of the 12 patients had been prescribed Adderall, or its generic form, by Respondent on at least one occasion between 2013-2016, but Respondent could only locate a single patient chart for B.S. There was no indication of Attention Deficit Disorder (ADD) or narcolepsy in B.S.'s chart. In fact, B.S. had a history and physical dated March 17, 2016, that specified a negative psychologic review of symptoms. Respondent admitted he did not keep records for every patient. He indicated that he prescribed Adderall to a select few patients with ADD. Medical records were later found for C.B. There were no records of a diagnosis for which Adderall was indicated. Invoices were later found for D.H., L.R., and C.H. Absent from these patient invoices were records of a diagnosis for which Adderall would be indicated. No records were found for the other patients identified in the inspection warrant.

37. B.S. was also present during the administrative inspection warrant. She identified herself as Respondent's girlfriend, and also an employee at the Clinic. She confirmed Respondent had provided her with Adderall on 4-5 occasions. She indicated she also had a patient chart at the office, but was unable to locate it at the time. CURES reports confirm that Respondent prescribed Adderall 30 mg #120, or its generic form, to B.S. on three occasions

between July 2015 and January 2016. Respondent also prescribed B.S. numerous other prescriptions for controlled substances, including opioids, between July 2015 and February 2018.

38. Respondent Michael Mario Santillanes, M.D., committed unprofessional conduct and is subject to disciplinary action under section 2234, subdivision (b), of the Code in that Respondent was grossly negligent, including but not limited to the following:

a) Respondent engaged in a sexual relationship with patients B.S. and A.B.;

b) Respondent administered controlled substances to patients parenterally for recreational purposes, including patients H.L., A.B., and R.P.;

c) Respondent administered medication likely to interfere with a patient's lifesaving reflexes outside a certified medical facility;

d) Respondent reused needles from one patient to another;

e) Respondent failed to dispose of needles properly;

f) Respondent failed to properly dispose of medical waste by flushing it down the toilet;

g) Respondent billed for procedures that did not occur;

h) Respondent sold prescriptions for controlled substances out of his office;

i) Respondent failed to keep inventories for controlled substances;

j) Respondent failed to keep adequate medical records for patients;

k) Respondent prescribed dangerous drugs, including Adderall, without an appropriate prior medical examination and a medical indication;

l) Respondent prescribed a controlled substance knowing it was to be used for a nonmedical purpose;

m) Respondent prescribed controlled substances, including Adderall, to patients for the purpose of using this medication for himself.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts)

39. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code based on the following circumstances.

40. Paragraphs 18 through 37, above, are hereby realleged and incorporated by this reference as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonest/Corrupt Acts)

41. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code based on the following circumstances.

42. Paragraphs 18 through 37, above, are hereby realleged and incorporated by this reference as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Sexual Misconduct with a Patient/Violation of Ethical Principles)

43. Respondent's certificate to practice medicine is subject to disciplinary action for unprofessional conduct under section 726 of the Code, and a violation of ethical standards, in that Respondent engaged in sexual misconduct with patients during the time he was a physician based on the following circumstances.

44. The allegations of Paragraphs 18 through 37, above, are incorporated herein by reference as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Dangerous Use of Drugs)

45. Respondent is subject to disciplinary action under section 2239 of the Code based on the following circumstances.

46. The allegations of Paragraphs 18 through 37, above, are incorporated herein by reference as if fully set forth.

SIXTH CAUSE FOR DISCIPLINE

(Prescribing/Administering Controlled Substances for a Nonmedical Purpose)

47. Respondent is subject to disciplinary action under section 2241 of the Code based on the following circumstances.

48. The allegations of Paragraphs 18 through 37, above, are incorporated herein by reference as if fully set forth.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Follow Infection Control Guidelines)

49. Respondent is subject to disciplinary action under section 2222.1 of the Code based on the following circumstances.

50. The allegations of Paragraphs 18 through 37, above, are incorporated herein by reference as if fully set forth.

EIGHTH CAUSE FOR DISCIPLINE

(Creation of False Medical Documents)

51. Respondent is subject to disciplinary action under section 2261 of the Code based on the following circumstances.

52. The allegations of Paragraphs 18 through 37, above, are incorporated herein by reference as if fully set forth.

NINTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

53. Respondent is subject to disciplinary action under section 2266 of the Code based on the following circumstances.

54. The allegations of Paragraphs 18 through 37, above, are incorporated herein by reference as if fully set forth.

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts)

55. Respondent is subject to disciplinary action under section 2234. subdivision (c), of the Code in that Respondent engaged in unprofessional conduct and committed repeated negligent acts based on the following circumstances.

56. The allegations of Paragraphs 18 through 37, above, are incorporated herein by reference as if fully set forth.

57. F.A. was treated at the Clinic by Respondent, who injected fillers into her eyes and nose on multiple occasions from approximately June 2013 through March 2017. On or about Friday, March 8, 2017, F.A. was injected with fillers in her nose by Respondent, but she was

unclear what substance he used to inject her. She noticed significantly more bleeding than normal. The next day, she felt a throbbing pain and a lot of bruising. She attempted to contact Respondent at the Clinic on or about the morning of March 10, 2017, as her condition had worsened. F.A.'s right eye and cheek were swollen and there were white spots on her forehead. She explained to the receptionist that she was having a bad reaction. She sent the Clinic pictures of her nose. F.A. did not receive a response from Respondent and she called again around noon. She was told Respondent was in with a patient. By 3:00 p.m., Respondent still had not called back and F.A. called the Clinic again. She was told by reception that Respondent had left for the day, there was no way of contacting him, and that he would not return until Monday. The following day, F.A. sought treatment from a dermatologist, who indicated F.A. had suffered an adverse reaction to the fillers due to a vascular occlusion.[7] On or about March 13, 2017, F.A. saw Respondent at the Clinic. Respondent downplayed the seriousness of the reaction and told her it was just an infection. After the Board initiated an investigation regarding this conduct, Respondent failed to attend or participate in two scheduled interviews with the Board on or about December 20, 2017, and on June 19, 2018.

58. Respondent Michael Mario Santillanes, M.D., is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (c), of the Code in that Respondent committed repeated negligent acts by not being available when F.A. required his assistance for an adverse reaction to his procedure.

ELEVENTH CAUSE FOR DISCIPLINE

(Repeated Failure to Attend/Participate in Board Interview)

59. Respondent is subject to disciplinary action under section 2234, subdivision (h), of the Code based on the following circumstances.

60. The allegations of Paragraphs 54 through 57, above, are incorporated herein by reference as if fully set forth.

TWELFTH CAUSE FOR DISCIPLINE

[7] Vascular occlusion is a blockage of a blood vessel, usually with a clot. Vascular occlusion is a recognized risk to injectable fillers.

(Unprofessional Conduct: Gross Negligence)

61. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that Respondent engaged in unprofessional conduct and was grossly negligent based on the following circumstances.

62. On or about November 16, 2015, Respondent performed a neck lift on S.B., which left her neck deformed. Prior to the procedure, Respondent told S.B. that the procedure would be non-invasive, quick, and easy. She informed Respondent that she did not want any fillers due to having a very bad reaction to fillers 20 years before. On the day of the procedure, S.B. filled out a consent form and paid for the procedure. She was then given two Xanax at the Clinic, which she had previously never taken. She was never informed of any risks or complications from the procedure. Following the procedure, she had two black eyes, a fat lip, and her neck looked "horrible." She went into the Clinic on or about November 18, 2015, and asked Respondent what happened to her face. Respondent indicated that he had injected fat cells under her eyes and lip area. He claimed that she had agreed to this modification prior to the procedure on her neck. She also learned that Respondent had performed liposuction on her neck and face, even though she had not consented to that procedure. S.B. confronted Respondent about not approving the unwanted injections given her history of an adverse reaction to fillers. Respondent insisted that she had approved of the injections. S.B. indicated one of the employees, A.B., admitted that she did not believe S.B. knew what she was signing after taking the Xanax pills.

63. Respondent Michael Mario Santillanes, M.D., is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b), of the Code in that Respondent was grossly negligent in his care and treatment of S.B. by altering the procedure without providing her with a drug free discussion regarding informed consent.

THIRTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

64. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that Respondent engaged in unprofessional conduct and was grossly negligent based on the following circumstances.

65. On or about October 11, 2017, the Board received a complaint that Respondent is advertising as a board certified cosmetic surgeon, when in fact he is not board certified. An investigation into the allegations revealed that Respondent is advertising through promotional materials as a board certified cosmetic surgeon, and he also includes the American Board of Medical Specialties (ASPS) member symbol on his website, indicating that he is board certified. It was determined through the investigation that Respondent is not board certified as a cosmetic surgeon.

66. Respondent Michael Mario Santillanes, M.D., is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b), of the Code in that Respondent was grossly negligent, including but not limited to the following:

a) Advertising as board certified cosmetic surgeon when he is not board certified;

b) Using the ASPS member symbol on his website indicating that he is board certified.

FOURTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: False Advertising)

67. Respondent is subject to disciplinary action under section 2271 of the Code in that Respondent engaged in unprofessional conduct and engaged in false advertising based on the following circumstances.

68. The allegations of Paragraphs 63 through 65, above, are incorporated herein by reference as if fully set forth.

FIFTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dishonest/Corrupt Acts)

69. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code based on the following circumstances.

70. The allegations of Paragraphs 63 through 65, above, are incorporated herein by reference as if fully set forth.

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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 A 77181, issued to Michael Mario Santillanes, M.D.;

2. Revoking, suspending or denying approval of Michael Mario Santillanes, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Michael Mario Santillanes, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Michael Mario Santillanes, M.D., if placed on probation, to disclose the disciplinary order to patients pursuant to section 2228.1 of the Code; and

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

DATED:
July 26, 2019

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

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