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

In the Matter of the Accusation Against: David Thomas Robles, M.D. Physician's and Surgeon's Certificate No. A 105427 Respondent.	Case No.: 800-2017-034733

DECISION

The attached Proposed Decision 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 December 17, 2021.

IT IS SO ORDERED: November 17, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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

In the Matter of the Accusation Against:

DAVID THOMAS ROBLES, M.D.,

Physician and Surgeon's Certificate No. A 105427,

Respondent.

Agency Case No. 800-2017-034733

OAH No. 2020090352

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 20, 21, 22, 23, 27, 28, and 29, 2021. William Prasifka (Complainant) was represented by Edward Kim, Deputy Attorney General. David Thomas Robles, M.D. (Respondent) was represented by Courtney E. Pilchman, Attorney at Law.

At the hearing, the ALJ was provided with Exhibits 4, 5, 8, 9, 10, 11, 12, 14, 15, 17, 19, 20, 23, 24, 25, 26, and 27, which all contained confidential information protected from disclosure to the public. Redaction of the documents to obscure this information was not practicable and would not provide adequate privacy protection.

To prevent the disclosure of confidential information, the ALJ issued a Protective Order providing that Exhibits 4, 5, 8, 9, 10, 11, 12, 14, 15, 17, 19, 20, 23, 24, 25, 26, and 27 shall be placed under seal following their use in preparation of the Proposed Decision. These exhibits shall remain under seal and shall not be opened, except by order of the Medical Board of California (Board), by OAH, or by a reviewing court. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order provided that such documents are protected from release to the public.

At the hearing, on September 28, 2021, Complainant amended the Accusation to add paragraph 62 as follows: "Paragraphs 8 and 9 of this Accusation are hereby incorporated as though fully set forth herein."

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on September 29, 2021.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 1, 2008, the Board issued Physician's and Surgeon's Certificate Number A 105427 to Respondent. That license is scheduled to expire on January 31, 2022.

2. On July 14, 2020, Complainant filed the Accusation while acting in his official capacity as the then Executive Director of the Board. Respondent filed a Notice of Defense, and this hearing ensued.

Respondent's Employment and Sexual Misconduct

3. Respondent graduated from medical school in 2004 and thereafter completed his internship and dermatology residency. In 2008, Respondent began employment as a dermatologist for Kaiser Permanente. In November 2010, he began working as a dermatologist at Chapparal Medical Group (CMG).

4. CMG operates about 26 to 28 offices. Respondent first worked at the Upland clinic (CMG Upland), and he was the sole dermatologist there for many years. The practice was very busy, with approximately 50 patients per day. Respondent supervised about 20 to 30 employees, including physician assistants (PAs) and nurse practitioners (NPs) who helped provide patient care. The clinic also employed several medical assistants (MAs) who helped with front office clerical duties and with back-office duties such as assisting Respondent, the PAs, and the NPs with patients and procedures.

5. Team Care Enterprises, Inc., doing business as Administrative Resources (Team Care or Administrative Resources) employs non-physician staff such as MAs for medical offices including CMG. Consequently, the MAs hired by Team Care are employees of, and managed by, Team Care. Team Care manages approximately 400 employees at various locations throughout the Inland Empire and Greater Los Angeles area. Team Care also provides credentialing, contracting, accounting, and internet technology services for CMG. At the times in question, Avitus Group was a co-employer with Administrative Resources.

6. Although Respondent supervised the employees of CMG Upland, he was not directly involved in the hiring, discipline, or termination of staff. However, he was able to speak to the office manager if there were any problems with staff.

7. When Respondent began working at CMG Upland, he was notified in writing of proper professional behavior and sexual harassment prohibitions in the medical field. As part of the credentialing process for CMG, Respondent was required to obtain staff privileges at San Antonio Hospital (SAH). Although he never admitted patients at SAH, on March 22, 2011, he signed an acknowledgment of his understanding of the staff code of conduct. The code of conduct defined disruptive behavior and inappropriate behavior including sexual harassment.

VICTIM B.S.

8. Victim B.S. testified at the administrative hearing in a forthcoming and professional manner. She presented as a very credible witness.

9. Victim B.S. worked as an MA in the front office at CMG Upland beginning around 2011 when she was 19 years old.

10. Victim B.S. recalled Respondent was very "flirtatious," and she witnessed office staff joking with Respondent, but never saw any female staff flirting with Respondent. Although she heard rumors about Respondent sleeping with staff and patients, Victim B.S. understood those sexual encounters were consensual and "not rape."

11. When Victim B.S. worked with Respondent at CMG Upland, she observed Respondent's remarks and actions were "perverted" and promiscuous, all of which she found inappropriate. Victim B.S. specifically recalled Respondent commenting, "Damn! You're fine!" or "Damn! Baby stacked!" to describe females. Respondent once talked about having anal intercourse with his wife.

12. On one occasion, Respondent inappropriately commented about Victim B.S.'s large breasts and told her she was attractive. Victim B.S. swore at him, and thereafter Respondent refrained from making such comments to her.

13. In 2012 or early January 2013, Respondent inappropriately touched Victim B.S.'s breasts. Respondent's office was located near the chart room where Victim B.S. would obtain and re-file charts, and Respondent would walk by the chart room shelves when he entered and exited his office. When Victim B.S. was reaching up to access a chart on a high shelf, Respondent walked in front of her, face-to-face, and touched her breasts with his hands. He did not say anything when he touched her breasts, but he was smiling. Because she strives to "hold [her]self accountable," Victim B.S. recalled pondering whether she was "the problem." However, she concluded Respondent purposely touched her breasts because he could have opted to walk behind her but instead chose to take the route in front of her.

14. Victim B.S. did not report Respondent's inappropriate touching to her supervisor. After discussing the incident with her mother, Victim B.S. decided, since she was young, "without authority," and "the only colored girl" in the office other than one of the PAs, she would "get her time" in while applying for a job at another medical office. Victim B.S. eventually obtained employment elsewhere, and she submitted her letter of resignation to the office manager at the time, Lynn Torrez.

15A. Although Victim B.S. never filed a complaint with her supervisor about Respondent's inappropriate behavior, in January 2013, the assistant office manager, Leah Spencer, approached Victim B.S. and spoke to her about Respondent's behavior.

15B. In a January 10, 2013 report, Ms. Spencer noted Victim B.S.'s statements as follows:[1]

> [Victim B.S.] said that [Respondent] had been inappropriate with her and others in the office.....[Victim B.S.] said she was concerned that it would be her word over the doctor's and she would get in trouble.....[Victim B.S.] stated that [Respondent] touched her breast once. She said that he made inappropriate comments about her breast. [Victim B.S.] stated that [Respondent] showed her a picture on his phone of him and his girlfriend having anal sex.

(Exhibit 8, pp. A148.)

15C. Thereafter, Respondent received a February 5, 2013 letter from CMG Medical Director Robert Hall, D.O., notifying Respondent of the prohibition on sexual harassment.[2] The letter stated:

> This letter is in reference to the meeting you had with me and Adrienne Walker on February 1, 2013. Administrative Resources received several complaints against you

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[1] The statements in the January 10, 2013 report were admitted as administrative hearsay, to supplement or explain Victim B.S.'s testimony and other direct evidence. (Gov. Code, § 11513, subd. (d).)

[2] The contents of the February 5, 2013 letter are admitted only as evidence of prior notice to Respondent of sexual harassment prohibition.

> regarding sexual harassment in your office. Because of these complaints an investigation was prompted and conducted by Avitus Group . . . and Administrative Resources HR Representative Adrienne Walker and the findings of the investigation were reviewed with you.
>
> [CMG] has a strict policy against sexual harassment in the workplace. You were given a copy of what defines sexual harassment. Unwelcome verbal, visual, or physical conduct of a sexual nature is a Federal and State crime and will not be protected by malpractice or company insurance. You are expected to follow the highest professional and moral ethics in the workplace and any future employee complaints regarding sexual harassment will be investigated and if you are found to be responsible your employment will be terminated for cause immediately. If you need to take time off for counseling we highly encourage you to do so.

(Ex. 8, p. A145.)

15D. (1) On February 8, 2013, Respondent and Office Manager Lynn Torrez signed a Corrective Action Form which indicated it was a Final Warning. (Exhibit 8, pp. A149-A150.) The form noted the following previous corrective actions: "[Respondent] has been counseled several times regarding his 'Friendly' behavior in the office by both the Office Manager and HR Resources Manager." (*Id.* at p. A149.) The incident addressed in the Corrective Action form was described as follows:

> On January 10, 2013, HR received a complaint regarding inappropriate behavior which included, touching, inappropriate sexual comments and innuendoes, purpose of sexual activity, and showing of pictures of an offensive sexual nature. These complaints prompted an investigation with the staff in which . . . staff confirmed [Respondent's] inappropriate behavior[.]

(Exhibit 8, p. A149.)

(2). Under the section entitled Goals and Timeframe for Improvement, the following was noted:

> [Respondent] is to immediately reframe [*sic*] from any type of behavior that is unwarranted. [Respondent] is expected to follow the highest professional and moral ethics in the work place. We are requesting that [Respondent] take all necessary actions including counseling.

(Exhibit 8, p. A150.)

(3). The Corrective Action form noted, "If any further complaints regarding sexual harassment in which you were provided the definition of sexual harassment is made and investigated in which you are found to be responsible your employment will be terminated for cause immediately." (Exhibit 8, p. A150.) Just above Respondent's signature is a section stating: "EMPLOYEE'S COMMENTS: Human Resources has reviewed the above situation with me and my comments are given below." (Exhibit 8, p. A150). The section was left blank and no comments by Respondent were listed.

16A. At the administrative hearing, Respondent testified the incidents with Victim B.S. 2013 were "a long time ago," he "vaguely remember[s] her," and he did not recall "any specifics or details." However, he denied intentionally touching Victim B.S.'s breasts.

16B. Given Respondent's lack of clear recall of the incidents and Victim B.S.'s very credible testimony, Victim B.S.'s recollection of events was more convincing than Respondent's denial. The clear and convincing evidence established that Respondent engaged in inappropriate communication with Victim B.S. and the nonconsensual touching of Victim B.S.'s breasts.

17. On July 19 and 20, 2013, Respondent participated in a Medical Ethics and Professionalism course at the University of California, Irvine (exhibit 9, p. A1428), as required by the probation order in a prior Board disciplinary proceeding (see Factual Finding 71.) Respondent completed the required six-month and one-year follow up components by February and July 2014, respectively.

VICTIM 1

18. Victim 1 testified at the hearing in an earnest and respectful manner. She presented as a credible witness.

19. Victim 1 began working at CMG Upland beginning around 2013 or 2014 when she was approximately 20 years old. While attending school to become an MA, Victim 1 was placed at CMG Upland through an externship program. After completing her approximately one-month externship, Victim 1 was offered a full-time position at CMG Upland, and she accepted the position.

20. While Victim 1 worked at CMG Upland, Respondent engaged in nonconsensual, inappropriate conduct (detailed below).[3] The misconduct began during Victim 1's externship, but she accepted the offer of full-time employment because she needed a job as an MA.

21. Victim 1's duties at CMG Upland first involved filing and administrative work, but she later began assisting Respondent with patients. This included charting patient concerns and procedures performed, preparing patients for examinations, setting up necessary tools in examinations rooms for procedures, assisting with biopsies by injecting lidocaine at excision locations, and acting as a chaperone when Respondent saw female patients.

22. Respondent's inappropriate behavior with Victim 1 ranged from flirtatious gestures and inappropriate comments to unwanted touching.

23. Respondent would often wink, blow kisses, or pucker his lips in a kissing motion when passing Victim 1, or when she was with a patient. He would also mouth the words, "I love you."

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[3] The details of Respondent's misconduct were established by Victim 1's credible testimony, supplemented by her recordation of Respondent's actions in a notebook (Exhibit 10). Victim 1 began documenting Respondent's misconduct in the notebook around December 2014. Victim 1 documented events as they happened as well as prior events as she recalled them. Victim 1's testimony was also supplemented by the testimony of Bridgett Smith and Adrienne Walker and by documentation in Respondent's personnel record (Exhibit 8.)

24. On at least one occasion, Respondent's made unwanted contact and inappropriate comments when Victim 1 was in Respondent's office. Respondent pressed his body against hers, then sat down and pushed his chair back to block Victim 1 from leaving his office. He touched his penis through his pants, and said, "Look how you make me feel. It is almost . . . hard." Respondent then asked Victim 1 if she would touch his penis.

25. On another occasion, Victim 1 went to Respondent's office to inform him they had a lot of patients to see. Respondent said, "Hey! What does it look like down there?" When Victim 1 asked what he meant, Respondent answered, "Your snatch [meaning her vaginal area]. I bet it is really hairy down there."

26. In addition to the inappropriate comments, Respondent engaged in several instances of unwanted physical contact with Victim 1.

27. When Victim 1 accompanied Respondent into a patient examination room, he would frequently engage in a variety of uninvited touching. Respondent often rubbed Victim 1's upper arm or grabbed her hand. Respondent would also approach Victim 1 from behind and place his fingers into her scrub pants and caress the bare skin on her lower back. Additionally, Respondent would pull down the back collar of her scrub shirt to expose her tattoo which she preferred to keep covered because she felt it was unprofessional to reveal the tattoo at work. When the unwanted touching occurred, Victim 1 would mouth the word "stop," but Respondent would just giggle.

28. Respondent's behavior was apparently noted by a patient on at least one occasion when Respondent was standing close to Victim 1 and impermissibly caressing her back. The patient asked if Victim 1 was Respondent's girlfriend, which she was not.

29. On at least one occasion, when Victim 1 was holding a hypodermic needle in her hand to inject lidocaine into a patient's biopsy area, Respondent crept up behind her and placed his fingers under the waistband of her scrub pants to caress her bare skin. Victim 1 could not move away because she was worried about incorrectly injecting the lidocaine and injuring the patient. On at least one occasion, while Victim 1 was about to inject a patient with lidocaine, Respondent approached and stood so close behind her, he would be able to smell her hair.

30. On one occasion, while Victim 1 assisted NP Kayastha, who was in the process of performing an excision under Respondent's supervision, Respondent leaned up against Victim 1 from behind, slightly lifted her scrub shirt and caressed her back and buttocks. Victim 1 did not want to distract NP Kayastha while she was excising a patient's skin, so Victim 1 tried to move to the side to "shake him off," and she mouthed the word "stop."

31. On several occasions when Victim 1 was behind a counter making entries in patient charts, Respondent would stand really close to her and try to caress her legs. There was very little room behind the counter, and if someone passed behind the person standing at the counter, the person at the counter had to press their body against the counter to allow the person to pass. Victim 1 did not recall any reason for Respondent to pass behind the counter, but he would pass by and touch her.

32. On other occasions, Respondent's behavior was more aggressive and consisted of unwanted kissing and touching Victim 1's buttocks and breasts.

33. On at least one occasion when Victim 1 was in an examination room by herself, Respondent entered and cornered Victim 1. He grabbed her hands and held her wrists up against her body so that the back of his hands facing her clothes were

pushed up against her breasts. Respondent also tried to kiss Victim 1, and when she would not reciprocate, he would kiss her neck. Victim 1 would try to "curl up in a ball" so he could not kiss her or touch her inappropriately.

34. On December 1, 2014, Victim 1 finally complained to the office manager, Bridgett Smith, about Respondent's actions. Victim 1 had previously refrained from complaining because she feared she would lose her job and that Respondent would ensure she was not hired by any future employer. Victim 1 viewed Respondent as a very powerful and respected physician. Victim 1 requested that her complaint remain anonymous.

35. Ms. Smith documented the encounter as follows:

> December 1, 2014 [Victim 1] came into my office and stated she wanted to speak with me about something private. [Victim 1] stated that [Respondent] has been touching her in a uncomfortable and unprofessional way. I asked her to explain what she was talking about she states that [Respondent] has been touching her buttocks, rubbing against her body.....[Victim 1] did tell me that she told [Respondent] to stop touching her and to stop talking to her about his private parts. . . . I told both [Victim 1] ..... that I would speak with [Respondent] so we can put a stop to this.....I spoke to [Respondent] and told him that there has [*sic*] been some complaints about him touching staff inappropriate[ly] and that's not acceptable and cannot and will not happen again. [Respondent] assured me that it

would not happen again. I reported this to Adrienne Walker [at Human Resources].

(Exhibit 8, p. A176.)

36. Respondent later approached Victim 1 and asked about the complaint. Since Victim 1 wanted to remain anonymous, she denied complaining to management. Despite the complaint, Respondent's inappropriate comments and actions continued. Victim 1 also sensed Respondent "seemed to have some animosity towards [her]."

37. On December 29, 2014, when Victim 1 was in an examination room by herself, Respondent grabbed her wrist and tried to touch her breast with the back of his hand.

38. On January 7, 2015, Victim 1 was speaking to NP Pratibha Kayastha about a two-drawered antique cabinet in the office that Victim 1 offered to refurbish. Respondent walked by and commented to Victim 1, "Why? So you can put your thongs in the top drawer and your dildos in the bottom?"

39. On January 15, 2015, Victim 1 reported to Ms. Smith that Respondent asked her to help him with a patient and when Victim 1 told Respondent she was trying to catch up with her paperwork, Respondent said he could "get her written up." (Exhibit 8. p. A177.)

40. On the morning of January 19, 2015, Victim 1 complained again to Ms. Smith and informed Ms. Smith that she was going to report Respondent to Human Resources (HR). Victim 1 reiterated she wanted her complaint to remain confidential. However, when Respondent walked into the building that day, he confronted Victim 1 about her complaint.

41. On the evening of January 19, 2015, Victim 1 left a voicemail for Adrienne Walker at HR asking to speak to her about Respondent. Ms. Walker assisted the office managers with CMG clinical operations regarding all employees and acted as HR manager for all MAs at CMG Upland.

42A. On January 20, 2015, NP Kayastha followed Victim 1 into an examination room and showed Victim 1 a text from Respondent. NP Kayastha told Victim 1 that she had spoken to Respondent by phone, and Respondent said Ms. Smith had informed him Victim 1 was pursuing a complaint against him. NP Kayastha asked Victim 1 if this was true. Victim 1 felt NP Kayastha was being aggressive, and she fearfully denied making the complaint.

42B. After the encounter with NP Kayastha, Victim 1 contacted Ms. Smith who was at the CMG Chino Hills office. Victim 1 told Ms. Smith she was afraid of being alone and of what Respondent might do. Ms. Smith returned to CMG Upland to ease Victim 1's fears.

42C. Later that day, NP Kayastha again spoke with Victim 1 and tried to persuade her not to report Respondent touching her and joking around with her. (Exhibit 10, p. A2336.)

43. On January 21, 2015, Victim 1 met with Adrienne Walker from HR to inform her of Respondent's inappropriate conduct. Victim 1 provided Ms. Walker with the notebook she used to document Respondent's misconduct. After the meeting, Victim 1 was transferred to work at another CMG location.

44. After Victim 1 was transferred, Respondent sent Ms. Smith a text, stating, "I don't want anyone knowing the circumstances of the MA move please. If you tell [PA] Jane she will tell someone and it will spread." (Exhibit 6.)

45. From January 21 to 26, 2015, Ms. Walker conducted an investigation of the complaints against Respondent, and she met with several people who worked in the CMG Upland office. While Respondent's conduct was characterized by some as joking, Ms. Walker decided, based on similar allegations in 2013, that immediate action should be taken to address the issue. (Exhibit 8, p. A178.) She recommended a meeting between Respondent and management and that he take a sexual harassment training class at his own expense. (*Id.* at p. A179.)

46A. On May 14, 2015, CMG sent a letter to Respondent regarding the sexual harassment complaints against him. Specifically, the letter stated:

> This letter is in reference to the complaints alleging sexual harassment by you. [CMG] and Teamcare Enterprise have taken these allegations seriously. Because of these complaints an investigation was prompted and conducted by Teamcare Enterprise HR Representative Adrienne Walker. [CMG] has a strict policy against sexual harassment in the workplace. A copy of what defines sexual harassment was given. Unwelcome verbal, visual, or physical conduct of a sexual nature is a Federal and State crime and will not be protected by malpractice or company insurance. You are expected to follow the highest professional and moral ethics in the workplace. [CMG] is requiring for you to attend a sexual harassment training course at your own expense within the next 45 days from the date of this letter. If you are unable to take or prove to the company completion of

such training you will be put on an administrative suspension without pay until you have taken such course.

(Exhibit 8, p. A143.)

46B. In June 2015, Respondent completed a California Harassment Prevention Training course as required by CMG.

47A. At the administrative hearing, NP Kayastha testified on Respondent's behalf. She left CMG in about 2015, and she is currently employed as an NP at another medical office.

47B. NP Kayastha testified she is "very much" familiar with Respondent because he "was and is" her mentor. She met him in 2014 while doing her elective clinical rotation for her NP certification, and she recalls Respondent was kind to her.

47C. Although NP Kayastha does not currently work with Respondent, they have kept in touch and have a social relationship. They know each other's children, and NP Kayastha is friends with Respondent and his daughter. She noted that her husband "loves [Respondent] as well." NP Kayastha and Respondent also have a continuing relationship as mentor/mentee. If she has a complicated dermatology case, she will text Respondent so he can help guide her. She stated, "He is my forever mentor."

47D. NP Kayastha wrote a letter of support for this hearing on Respondent's behalf which she testified was to "vouch for his moral character while working for him and now [to] say the same thing about him." She noted "It was my honor to do that." She confirmed the statements in her letter were true and that she "wrote it from [her] heart."

47E. Although Respondent offered NP Kayastha's testimony as a percipient witness, her relationship with Respondent and her apparently strong feelings about his character render her a less impartial percipient witness regarding Respondent's conduct toward Victim 1.

48. To contradict Victim 1's recollection of Respondent's unwanted touching as set forth in Factual Finding 30, NP Kayastha denied seeing such an event. NP Kayastha recalled that, when they worked on patients together, Victim 1 would typically stand on the opposite side of the patient from NP Kayastha. She also recalled Respondent entering the room when she and Victim 1 were treating patients, and she never saw anything unusual happen. She insisted she would have seen if Respondent rubbed Victim 1's thigh, and she never saw that happen. However, as Victim 1 testified credibly, Respondent caressed her back area, not her thigh. Additionally, since NP Kayastha was concentrating on excising the patient's skin at that time, she would not necessarily have witnessed Respondent touching Victim 1's back. Consequently, NP Kayastha's testimony was insufficient to contradict Victim 1's credible recollection of the event set forth in Factual Finding 30.

49. To contradict Victim 1's recollection of Respondent's inappropriate comment set forth in Factual Finding 38, NP Kayastha testified she did not recall overhearing this comment. NP Kayastha's testimony was insufficient to contradict Victim 1's credible recollection of the comment as set forth in Factual Finding 38.

50A. NP Kayastha insisted she never saw Respondent act inappropriately with Victim 1. She stated she was "very shocked" at Victim 1's allegations, and "knowing [Respondent's] personality, I cannot imagine him trying to harm her in any way."

50B. NP Kayastha denied Respondent ever made jokes that violated boundaries. However, she acknowledged that, when interviewed by a Board investigator in 2019, she stated Respondent has "a joking personality," and "sometimes he doesn't know his boundaries." (Exhibit 4, p. A80.) NP Kayastha insisted her statement did not pertain to anything physical or Respondent touching MAs, but that she was referring only to Respondent talking "in a friendly way." Her concept of maintaining boundaries means "not saying more than you have to, and not asking about families, and not telling anyone how [they] look." Throughout her testimony, NP Kaystha repeated adamantly that Respondent "has a very good sense of humor." She maintained that Respondent did not treat staff inappropriately but was "very friendly" and had "friendly jokes" with his staff. However, sometimes she had to tell him, "Doctor, you are friendly, and you mean it in a nice way [but] people might take advantage of you." Regarding any inappropriate touching, NP Kayastha insisted Respondent "would never do that to anyone. He is a humble man and good dad and good person in this society."

50C. NP Kayastha's testimony was insufficient to contradict Victim 1's credible testimony regarding Respondent's misconduct.

51. Respondent offered the testimony of Cindy Toscano as a percipient witness. Ms. Toscano also wrote a letter of support for this hearing on Respondent's behalf. Ms. Toscano worked with Respondent and Victim 1 at CMG Upland in 2014. She testified she never saw Respondent say anything inappropriate to Victim 1 or touch Victim 1 inappropriately. Ms. Toscano's testimony that she did not see Respondent's misconduct was insufficient to contradict Victim 1's credible testimony.

VICTIM 4

52. In addition to Victim 1, Victim 4 testified credibly about Respondent's inappropriate comments at CMG Upland. Victim 4 worked as a payroll manager at CMG's Pomona location. In about 2015, while visiting CMG Upland as a patient, Victim 4 was walking in front of Respondent, and she heard him comment that he would like to "hit that" (slang expression meaning "to have sex with"). At the time, Respondent was standing with a male MA. It was unclear whether he intended Victim 4 to overhear his comment.

Complaint to Board

53A. On July 17, 2017, Ms. Smith filed a complaint with the Board regarding Respondent's continued sexual harassment at CMG.

53B. Ms. Smith testified credibly at the administrative hearing. She confirmed Respondent used profanity with employees and that she had received complaints of him engaging in sexual harassment. She also noted she filed the complaint because she was concerned about Respondent's actions toward newly-certified MAs because she feared such harassment could cause them to leave the medical field entirely.

Expert Opinions

54. Complainant offered the expert opinions of Andrew Breithaupt, M.D., and Suzanne Fidler, M.D., to establish the standard of care and Respondent's deviation from that standard of care. On stipulation, both Dr. Breithaupt's and Dr. Fidler's reports were admitted into evidence.

55. In his expert report, Dr. Breithaupt opined, "The verbal and physical sexual harassment of multiple employees by [Respondent] constitutes an extreme departure from the standard of care." (Exhibit 17, p. 2474.)

56A. In her expert report, Dr. Fidler noted the standard for professional behavior and what constitutes unprofessional conduct as follows:

> Professional misconduct is behavior generally unacceptable to the medical community. It is unprofessional conduct to engage in unwanted sexual advances, unwelcome sexual contact, intimidating behavior, or sexual assault. Physicians are expected to adhere to acceptable professional standards and follow appropriate code of conduct at all times. They are never permitted to sexually assault anyone anywhere or at any time. Professional boundaries must be maintained.
>
> Sexual harassment includes sexual assault, persistently asking others for dates, unwelcome sexual flirtation, sexual advances or propositions, and unwanted touching, particularly intimate areas. Sexual harassment includes verbal comments of a sexual nature or that conveys a sexual innuendo. This constitutes unprofessional conduct[.]

(Exhibit 19, p. A2491.)

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56B. In her report, Dr. Fidler opined that Respondent engaged in unprofessional conduct which also constituted an extreme departure from the standard of care. Specifically, Dr. Fidler stated:

> As a physician, [Respondent] is expected to engage in appropriate and professional behavior at all times. He must professionally interact with all members of the healthcare team. Regardless of rank, all members of the healthcare team are expected to be treated with respect and to work in a safe environment. However, some staff who had worked with [Respondent] described situations where [Respondent] engaged in unprofessional conduct consisting of sexual harassment, unwanted physical contact, and sexual comments. [¶] . . . [¶]]
>
> [Respondent's] behavior is unacceptable. There is absolutely no justification for a physician to engage in this conduct. Repeated acts of inappropriate and unwanted touching and sexual comments have no place in a medical setting. [¶] . . . [¶]]
>
> This pattern of unprofessional conduct revealed through multiple examples of incidents involving multiple females and repeatedly occurring over a period of time constitutes an extreme departure from the standard of care.

(Exhibit 19, pp. A2492, A2496, and A2498.)

56C. In her report, Dr. Fidler opined that Respondent engaged in boundaries violations and disruptive behavior which also constituted an extreme departure from the standard of care. Specifically, Dr. Fidler stated:

> Physicians are expected to act professionally at all times. . . . They must conduct themselves in a professional manner and always respect professional boundaries.
>
> Healthcare providers are expected to work in an environment that is safe. The effective delivery of care to patients requires a collaborative healthcare team. Disruptive behavior or behavior that undermines a culture of safety is prohibited. This conduct interferes with patient care and creates a hostile environment in a healthcare organization. Examples of disruptive behavior include verbal abuse, sexual harassment, threatening words, behavior reasonably interpreted as intimidating, sexual advances, or unwelcome physical contact. When a physician engages in disruptive behavior, it creates a stressful and negative work environment and interferes with other workers' effective functioning. [¶]……[¶]
>
> [Respondent] engaged in multiple instances where he violated professional boundaries. Although no patient harm occurred, violating professional boundaries reflect[s] upon the physician's professional integrity. [Respondent's] failure to comply with established professional standards posed significant risk to members of the healthcare team in

> providing care to patients. For example, [Victim 1] documented in her notebook examples where [Respondent] was engaging in sexual harassment toward her while she was attending to patients.....This unacceptable behavior could distract the healthcare professional's attention to the patient and potentially cause patient harm.
>
> It is unprofessional for a physician to violate professional boundaries. The workplace must be free of any unwelcome physical contact, sexual advances, sexual comments or another other type of disruptive behavior. [Respondent's] refusal to stop harassing some of the female employees working at [CMG] was unacceptable.
>
> [Respondent's] violation of professional boundaries and engaging in disruptive behavior constitutes an extreme departure from the standard of care.

(Exhibit 19, pp. A2498, A2499, and A2501.)

57. Dr. Fidler testified credibly and without contradiction at the administrative hearing, and she expounded on her opinions regarding physicians' disruptive behavior and its effect on safety and quality of care. Dr. Fidler reiterated that sexual misconduct such as Respondent's, including inappropriate contact and communications of a sexual or offensive nature, constitutes disruptive behavior which can disrupt the health care team from delivering care to patients and contribute to

poor patient outcomes. Dr. Fidler pointed out that, in 2008, the Joint Commission[4] issued a Sentinel Event Alert, warning healthcare institutions to address behavior that undermines a culture of safety. The Joint Commission's 2008 Sentinel Event Alert stated, in part:

> Intimidating and disruptive behaviors can foster medical errors, contribute to poor patient satisfaction and to preventable adverse outcomes, increase the cost of care, and cause qualified clinicians, administrators and managers to seek new positions in more professional environments. Safety and quality of patient care is dependent on teamwork, communication, and a collaborative work environment. [¶] . . . [¶] Any behavior which impairs the health care team's ability to function well creates risk.

(Exhibit 21, p. A2507.)

58. Dr. Fidler also clarified that her opinions (regarding Respondent engaging in unprofessional conduct and an extreme departure from the standard of care) remained the same even if the proven allegations were only those pertaining to Victim 1. Dr. Fidler credibly opined, based on Respondent's conduct with Victim 1, he

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[4] The Joint Commission is a national organization charged with overseeing and collaborating with healthcare institutions that provide Medicare and Medicaid services. The Joint Commission inspects facilities and ensures that patient safety measures are implemented. The Joint Commission also issues Sentinel Event Alerts to prevent adverse effects on patient care.

committed unprofessional conduct, engaged in sexual harassment and disruptive behavior, and consequently committed an extreme departure from the standard of care. Dr. Fidler confirmed Respondent's conduct remained unprofessional conduct, even if it was consensual, because it constituted disruptive conduct which is not permitted in a medical setting. Any type of disruptive behavior could interfere with the efficient collaborative delivery of healthcare and is thus unacceptable in a healthcare setting. For example, when an MA is entering information in patients' charts, and Respondent approaches and attempts to inappropriately touch the MA, that could affect the MA's ability to concentrate and to accurately place information in the patients' charts.

59. Respondent offered the testimony of percipient witness Elvia Guzman. Ms. Guzman also wrote a letter of support for this hearing on Respondent's behalf, voicing her support of Respondent and lauding him as a role model in the Latino community. Ms. Guzman testified she did not notice any disruption in patient care in 2014-2015. This testimony was not persuasive and did not disprove Respondent's unprofessional conduct, sexual misconduct, boundary violations, and disruptive behavior. Dr. Fidler's report and testimony, and the 2008 Joint Commission Sentinel Event Alert, noted only that disruptive behavior creates a risk to patient safety and quality of care. This risk and other potential adverse effects were highlighted to explain why unprofessional conduct and disruptive behavior are concerning. Actual disruption is not necessary to establish that Respondent engaged in unprofessional conduct, sexual misconduct, boundary violations, and disruptive behavior. In fact, the Accusation, at paragraph 10 alleges, "Respondent's failure to comply with established professional standards posed significant risk to members of the healthcare team in providing care to patients." (Exhibit 1.)

Failure to Participate in Board Interview

60A. On October 31, 2019, Board Investigator Joseph Vaughn conducted an interview of Respondent. He first asked Respondent about his care and treatment of Victim 4, and Respondent answered those questions. Investigator Vaughn then asked Respondent questions about the sexual harassment of Victim 1 and Victim 2,[5] including whether Respondent knew Victim 1 and Victim 2, whether he sexually harassed female employees, and specifically whether he sexually harassed Victim 1 or Victim 2. For each of the questions pertaining to sexual harassment, Respondent's attorney informed Investigator Vaughn, "We are not going to answer that question." Her stated reason for refusal to answer was that the interview had been "noticed" only "as to patient quality and care." (Exhibits 14 and 15, p. A2459.)

60B. At the administrative hearing, Respondent confirmed that he had not answered the questions about Victim 1 and Victim 2 because he had not been served with notice about sexual harassment allegations and was not prepared to answer those.

61A. On June 19, 2020, Investigator Vaughn conducted a follow-up interview of Respondent regarding the sexual misconduct allegations against Respondent. After administering the oath to Respondent, Investigator Vaugh began asking questions pertaining to the sexual misconduct allegations. The specific questions Investigator

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[5] In addition to Victims 1 and 4, the Board investigation involved Respondent's purported misconduct with Victims 2 and 3. Although the Accusation alleges Respondent's misconduct with Victims 2 and 3, neither of these purported victims testified at hearing. Consequently, the allegations pertaining to Victims 2 and 3 were not established at hearing and are not considered as bases for discipline.

asked included: "Do you have an independent recollection of [Victim 3]?"; "Did [Victim 3] work for you?"; "Do you know what her job title was?"; "Do know what Victim 3's job duties were for you?"; "Do you know [Victim 2]?"; "Did you ever sexually harass an employee named [Victim 2]?"; "Do you know [Victim 1]?"; "Did you ever sexually harass an employee named [Victim 1]?" (Exhibit 24.) After each question, Respondent's counsel interjected, "On advice of counsel, [Respondent] respectfully declines to answer that question." Investigator Vaughn then asked Respondent's counsel, "I have approximately 49 questions. Is he going to decline to answer all 49 questions?" She responded, "Correct." (*Ibid.*) Investigator Vaughn then concluded the interview.

61B. At the administrative hearing, Respondent confirmed he did not answer Investigator Vaughn's questions at the June 19, 2020 interview on advice of counsel. He added that he "had an NDA [i.e., non-disclosure agreement] that would have prohibited us." The NDA to which he was apparently referring was a non-disclosure agreement in a civil lawsuit brought by one of the victims. (See e.g., Exhibit 8B.) The confidentiality provisions of such settlement agreements typically, and in this case did, pertain only to non-disclosure by the complainant/victim and did not prohibit disclosure by Respondent. (Exhibit 8B, p. A4650.)

62. Respondent provided no valid basis, either during his June 19, 2020 Board interview, nor during his testimony, for refusing to answer at least some of Investigator Vaughn's questions. Consequently, his refusal constituted a failure to participate in the June 19, 2020 Board interview. (See also Legal Conclusion 5.)

Respondent's Testimony

63. At the administrative hearing, Respondent sought to characterize his misconduct as attempted camaraderie and inclusivity. He described his relationship

with staff as "joking" and "playful." Respondent testified that his management style was born of his "humble nature" and a "desire to be on the same playing field" as his staff." He noted he had "good intentions," and his "desire to treat everyone equally and with respect" caused him "to overlook that power differential that is implied" with the title of "doctor."

64A. Regarding Victim 1, Respondent testified "there was mutual consensual playfulness that we had, and we would joke a lot and be goofy at times." Respondent recalled a time at work when Victim 1 had styled her hair elegantly, and she "pulled him in" saying, "Let's take a prom picture," and Respondent "was uncomfortable with everyone there." Respondent did not detail the circumstances leading up to the event. He also did not indicate at what point in time it occurred (i.e., whether it was at the beginning of Victim 1's employment or during the time when she had already made complaints to management). Moreover, this event does not disprove Respondent's unprofessional conduct as detailed by Victim 1 and as analyzed by Dr. Fidler.

64B. When asked about engaging in sexual innuendo with Victim 1, Respondent did "not recall specifically," but admitted it "was certainly possible given the playful nature [they] had." Respondent acknowledged that some of the comments he made were "inappropriate," and he is "regretful." However, he insisted it was "clear" to him that it was "fun and consensual," and he believed they "both crossed the lines of boundaries" and there was "playful joking and mutual back and forth." Nevertheless, he admitted it was not "the right thing" and he would not do it again.

64C. Respondent denied inappropriately touching Victim 1, insisting that he would never "go up to grab her private parts." Other than denying "grabbing" Victim 1's private parts, Respondent did not specifically address other touching that occurred, such as attempting to kiss Victim 1, lifting Victim 1's scrub shirt and touching her lower

back, pulling her scrub shirt down to expose her tattoo, and standing close to her and trying to caress her legs when she was making entries in patient charts. Respondent asserted that "things are exaggerated," and he and Victim 1 merely had "this mutual playfulness." Respondent's self-serving characterization of his relationship with Victim 1 and his generalized denial of "grabbing" were insufficient to contradict Victim 1's credible testimony about Respondent's inappropriate touching.

65A. Respondent sought to assure the Board of his current understanding of appropriate professional behavior in the medical setting. He acknowledged his prior management style was "too relaxed an atmosphere," and "in hindsight [he] would do things differently." He now realizes the title of "doctor" embodies professionalism and there is "no room for that type of joking" in medical practice. He stated he has come to realize "that it sets you up for boundary crossing or the perception of boundary crossing and increases one's vulnerabilities."

65B. Before 2015, Respondent had not internalized appropriate professional behavior and boundaries despite his warning from CMG in 2013 (see Factual Finding 15) and despite completing the Medical Ethics and Professionalism course from 2013 to 2014 (see Factual Finding 17). Respondent "definitely wish[es]" the 2013-2014 professionalism course had altered his management style. However, he did "not think it completely resonated with [him]" because he "was so fixated on the fact that [he] did not want to demonstrate arrogance and wanted to be liked." According to Respondent, "it took a few years of therapy and self-reflection" and now "more than ever" what he learned has sunk in. He contended that "it took time to completely change who [he was] as a person," and "it does not happen overnight."

65C. Through his therapy sessions, Respondent reflected on his desire to be liked and to be "the cool doctor" which "created vulnerabilities" and resulted in

crossed boundaries. However, Respondent again insisted the boundary crossing "was consensual and mutual." Nevertheless, Respondent stated he "accept[ed] full responsibility for [his] actions."

65D. Respondent pointed out his misconduct "was a long time ago, and not who I am today and not how I practice." He assured the Board that he has "grown" in the past seven years, and he is "a different person now." He now realizes "the power differential exists, and people will perceive that whether [he] want[s] them to or not, so [he has] to maintain boundaries by minimizing personal disclosures." Respondent maintained that in the past seven years, "there has been no boundary crossing" because he is "more aware" of what types of behavior can lead to boundary violations. Since 2015, there have been no complaints of inappropriate behavior against him.

66. Respondent sees approximately 1,000 patients per month, and he has seen over 100,000 patients during his entire employment at CMG. He has never had any patient assert that he has engaged in inappropriate sexual behavior.

67. Respondent has worked at CMG's Rancho Cucamonga location for the past three years. He is the only dermatologist at that location, and there are no PAs or NPs there. Respondent works with approximately 10 to 12 other employees.

68. On August 31, 2020, Respondent completed a California Manager Harassment Training course.

69. On June 12 to 13, 2021, Respondent again participated in a Medical Ethics and Professionalism course at the University of California, Irvine (Exhibit G, pp. B126-B127. As part of that course, he is required to complete six-month and one-year follow up components. During the course, Respondent designed a personalized

"Stratified Boundaries/Ethics Protection Plan" to prevent any further boundary violations. (Exhibit F, p. B28-29.) Respondent's plan included the following:

> [I] will create and nurture a culture based on accountability where there is a zero tolerance for sexual harassment, where rights are protected and where violations are actively prevented.
>
> [I] will set an example from the top down of respectful behavior toward all individuals. Embedding into the culture that harassment will not be tolerated and that the organization will be a workplace that is respectful of all employees. [¶] . . . [¶]
>
> [I] will continually protect and support the physical and psychological safety of staff.
>
> [I] will minimize self-disclosure at work and with employees and colleagues.

(Exhibit F, pp. B28-B29.)

Character Evidence

70A. Respondent has the support of several patients, physicians, MAs and other colleagues, who testified and submitted letters on his behalf.

70B. MA Candice Chacon testified and submitted a letter on Respondent's behalf. She has known Respondent for 11 years and worked with him several years

ago. In her testimony and her letter, she described Respondent as respectful and "great" with patients. (Exhibit E, p. B18.)

70C. Respondent's current MAs at CMG Rancho Cucamonga, Yasmin Rodriguez, and Victoria Cha, testified on his behalf. They have worked for Respondent over two years, and they confirmed that he is respectful with staff and patients. Neither of them has ever seen him sexually harass any employees. In their testimony and letters, Ms. Rodriguez and Ms. Cha collectively described Respondent as hardworking and professional. (Exhibit F, pp. B34 and B44.)

70D. Additional employees at CMG Rancho Cucamonga submitted letters on Respondent's behalf. Office Manager, Marilu Iturralde; receptionist, Nadya Mendoza; and MAs, Anthony Gonzalez, Jacob Anderson, and Daniel Camarena collectively described Respondent as a caring physician, and they praised his professionalism. (Exhibit E, pp. B23-B24; Exhibit F, pp. B33, B35, B42, and B43.)

70E. Patients, Jacqueline Gilham, Chikya Percy, and Nancy Brocato submitted letters on Respondent's behalf describing him as professional, respectful, and caring. (Exhibit E, p. B25; Exhibit F, p. B39 and B40.)

70F. Physicians, Chris Harper, M.D.; Omer Aba-Omer, M.D.; William Kivett, M.D., and David Fann, D.O., submitted letters on Respondent's behalf collectively describing him as a hardworking and dedicated physician with exceptional clinical knowledge. (Exhibit E, p. B20, B22, and B26; Exhibit F, pp. B37-B38.)

70G. Sandy Bannister, former Director of Operations and Business Development with CMG/Administrative Resources, worked with Respondent from 2018 to 2019. Ms. Bannister observed that Respondent took the sexual harassment allegations against him seriously and that he "spent considerable time working on

himself so that he will not cross or be perceived to cross any boundaries in the future." (Exhibit F, p. B46.)

Disciplinary Considerations

71. For purposes of determining the degree of discipline to be imposed in this matter, the following is considered: In a Decision and Order, effective August 24, 2012 (Probation Order), adopting a Stipulated Settlement and Disciplinary Order, the Board revoked Respondent's license, stayed the revocation and placed Respondent on probation for 59 months on specified terms and conditions, including abstaining from alcohol consumption, submitting to random biological fluid testing, undergoing medical and psychological evaluations, and completing a professionalism/ethics course. The Probation Order arose from Respondent's criminal convictions for driving under the influence of alcohol in 2003 and in 2009. Respondent successfully completed the requirements of the Probation Order.

72. As noted in the preamble, at hearing, Complainant amended the Accusation to add paragraph 62 under the section entitled "Disciplinary Considerations." Paragraph 62 reads: "Paragraphs 8 and 9 of this Accusation are hereby incorporated as though fully set forth herein." The section of the Accusation entitled "Disciplinary Considerations," specifies matters considered when determining the appropriate level of discipline. Such matters typically include prior license discipline, prior convictions, and prior warnings by the Board. Paragraphs 8 and 9 allege Respondent's conduct with Victim B.S. that must be proven by clear and convincing evidence to establish current cause for discipline for sexual misconduct (but not for gross negligence, as the application of that cause for discipline is based on facts before July 14, 2013; see Legal Conclusion 3.) The allegations in paragraphs 8 through 9 will not be considered as "disciplinary considerations" since they do not

pertain to already-established prior discipline, prior convictions, or prior Board warnings.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations in this case is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit, and unequivocal – so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. The Board has the authority to revoke or suspend a physician's license for engaging in unprofessional conduct. (Bus. & Prof. Code, §§ 2004, 2234.) Unprofessional conduct includes: gross negligence (Bus. & Prof. Code, § 2234, subd. (b)); repeated negligent acts (Bus. & Prof. Code, § 2234, subd. (c)); failure of a licensee, absent good cause, to attend and participate in a Board interview (Bus. & Prof Code, § 2234, subd. (g)); and sexual misconduct, defined as "inappropriate contact or communication of a sexual nature" (Bus. & Prof. Code, §§ 2234, 805.8).

3A. Business and Professions Code section 2230.5 provides in pertinent part:

> (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or

within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. [¶] . . . [¶]

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

3B. California Code of Regulations, title 16, section 1356.2 provides, in pertinent part:

(a) For purposes of Section 2230.5 of the code, the word "discovers" means, with respect to each act or omission alleged as the ground for disciplinary action:

(1) the date the board received a complaint or report describing the act or omission.

(2) the date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the ground for disciplinary action against the same individual.

(b) For purposes of this section:

(1) "Complaint" means a written complaint from the public or a written complaint generated by board staff that names a particular physician.

3C. The complaint with the Board was filed on July 17, 2017. Insofar as the allegations against Respondent allege sexual misconduct, Business and Professions Code section 2230.5, subdivision (e), requires the accusation to be filed before July 17, 2020, or within 10 years after the act or omission, whichever is earlier. Regarding Victim B.S., the sexual misconduct occurred in 2013, requiring the accusation to be filed by the earlier of July 17, 2020, or early 2023. Regarding Victims 1 and 4, the misconduct occurred in 2014 and 2015, requiring the accusation to be filed by the earlier of July 17, 2020, or around 2024. The Accusation in this matter was filed July 14, 2020. Consequently, any alleged sexual misconduct regarding Victim B.S. and Victims 1 and 4 falls within the applicable statute of limitations period.

3D. Insofar as Complainant is alleging that Respondent's actions constitute gross negligence/repeated negligence, the limitation period set forth in Business and Professions Code section 2230.5, subdivision (a), applies. Regarding Victim B.S., any accusation alleging gross negligence/repeated negligence should have been filed by the earlier of July 17, 2020, or around 2019 to early 2020. Consequently, any alleged gross negligence/repeated negligence regarding Victim B.S. falls outside the applicable statue of limitations period. Accordingly, Complainant did not include Victim B.S. in Dr. Fidler's analysis of gross negligence/repeated negligence.

4A. Gross negligence is defined as "the want of even scant care or an extreme departure from the ordinary standard of conduct." (*Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184, 196-197.) Dr. Fidler's report and credible,

uncontradicted testimony established that Respondent's misconduct with Victim 1 constituted an extreme departure from the ordinary standard of conduct.

4B. Cause exists to discipline Respondent's physician's and surgeon's license for unprofessional conduct, pursuant to Business and Professions Code section 2234, subdivisions (b) and (c), in that Respondent committed gross negligence and repeated acts of negligence through his misconduct with Victim 1, as set forth in Factual Findings 18 to 51, 54, and 56 to 58.

5A. Business and Professions Code section 2234, subdivision (g), requires licensees to attend and participate in Board investigatory interviews. Respondent appeared at, but refused to meaningfully participate in, the June 19, 2020 Board interview. He confirmed at hearing that, in refusing to answer any questions, he was relying on advice of counsel and that the non-disclosure provision of a settlement agreement precluded his participation. This assertion of compelled non-disclosure was not persuasive. As noted in Factual Finding 61, the confidentiality provisions of such settlement agreements typically, and in this case did, pertain only to non-disclosure by the complainant/victim and did not prohibit disclosure by Respondent. (Exhibit 8B, p. A4650.) Moreover, as Complainant persuasively noted, Business and Professions Code 2220.7, subdivision (a), prohibits a physician from including a provision in any civil settlement agreement which would prohibit another party from cooperating with the Board. Such a provision is "void as against public policy" (Bus. & Prof. Code, § 2220.7, subd. (b)), and any physician who violates section 2220.7 is subject to disciplinary action (Bus. & Prof. Code, § 2220.7, subd. (c)). Any such confidentiality agreements are contrary to public policy because they prevent the Board from fulfilling its statutory responsibility to investigate and prosecute violations of the Medical Practice Act. (See *Mary R. v. R. & R. Corp* (1983) 149 Cal.App.3d 308, 316-317.) Consequently,

Respondent's assertion of any non-disclosure agreement did not establish good cause for his failure to participate in the June 19, 2020 Board interview.

5B. During closing argument, Respondent's counsel raised for the first time the argument that "the groping could arise to the level of a criminal act" and Respondent has the right to assert his Fifth Amendment rights. However, this argument is misleading because there was no evidence that Respondent asserted his Fifth Amendment privilege or that he intended to assert this privilege at the time of the Board interview.

5C. Cause exists to discipline Respondent's physician's and surgeon's license for unprofessional conduct, pursuant to Business and Professions Code section 2234, subdivision (g), in that Respondent failed, without good cause to participate in a Board interview, as set forth in Factual Findings 61 and 62.

6. Cause exists to discipline Respondent's physician's and surgeon's license for unprofessional conduct, pursuant to Business and Professions Code sections 2234 and 805.8, in that Respondent committed sexual misconduct against Victim B.S. and Victim 1, as set forth in Factual Findings 8 through 15B, 18 to 51, 54, and 56 to 58.

7. Cause exists to discipline Respondent's physician's and surgeon's license for general unprofessional conduct in his interactions with Victims 1 and 4, pursuant to Business and Professions Code section 2234, as set forth in Factual Findings 18 to 52, 54, and 56 to 58.

8A. Complainant established that Respondent engaged in gross negligence/repeated negligence through his misconduct with Victim 1, general unprofessional conduct with Victims 1 and 4, and sexual misconduct with Victim B.S. and Victim 1. Respondent also failed, without good cause, to participate in the July 19,

2020 Board interview. The remaining question is the nature of the discipline to be imposed against Respondent's license for his violations.

8B. Business and Professions Code section 2229 provides, in pertinent part:

> (a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.
>
> (b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

8C. Business and Professions Code section 2227, subdivision (a), provides:

> (a) 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, . . . and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the division.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

(4) Be publicly reprimanded by the division.

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

9. California Code of Regulations, title 16, section 1361, subdivision (a), provides: "In reaching a decision on a disciplinary action . . . the [Board] shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) [(Guidelines)]." The Guidelines set forth recommended maximum and minimum discipline for certain violations. For unprofessional conduct and gross negligence, the maximum recommended discipline is revocation, and the minimum recommended discipline is five years' probation with specified terms and conditions. In determining what level of discipline is appropriate, a licensee's disciplinary history, mitigation, and rehabilitation are considered.

10A. In this case, Respondent does have a prior history of Board discipline, but it involves alcohol abuse which he sufficiently addressed through his successful completion of all conditions of the Probation Order. Regarding Respondent's current violation of failure to participate in the 2020 Board interview, this arose from his reliance on advice of counsel which proved faulty. Regarding the remainder of Respondent's current violations, which involve Respondent's sexual harassment of

prior MAs, Respondent asserts that he is sufficiently rehabilitated and thus deserving of continued licensure.

10B. (1) Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933; *In the Matter of Brown, supra.*) At hearing, Respondent vacillated between expressions of remorse and justification for his sexual misconduct. He acknowledged the sexual innuendo in which he engaged was inappropriate and he was "regretful," but then insisted it was "clear" to him that the banter was "fun and consensual," and he believed he and Victim 1 "both crossed the lines of boundaries" and there was "playful joking and mutual back and forth." He then admitted it was not "the right thing," and he would not do it again. While Respondent expressed remorse for his misconduct, he is apparently still struggling to accept full responsibility for his actions.

(2) Different witnesses from different perspectives can come way from the same experience with different impressions of what happened. There are often lapses in the ability to see, hear, or recognize an event's impact on someone else and the effect of one's behavior on someone else. Respondent's sexual misconduct violations were borne from his inability to recognize that, given his position of authority, what he believed was mutual joking was in fact sexually explicit commentary that could have offended others, even unintentionally. Respondent was also apparently unable to recognize that, due to power dynamics, what he characterized as mutual playfulness could have caused discomfort and crossed the line into unwanted touching. Whether this lack of comprehension arose from a psychological block or mere vanity, Respondent had no prior motivation to change his behavior because his

employer did little to dissuade his misconduct other than issuing several ineffectual warnings. Such a tacit acceptance of his misconduct apparently perpetuated Respondent's belief in the propriety of his actions, and he evidently still retains some hesitation to acknowledge full responsibility for his actions.

10C. However, remorse alone does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) It has been almost seven years since Respondent's last reported sexual misconduct. In the interim, he has continued to work at CMG without further incident. Respondent also participated in counseling sessions that addressed emotional issues which may have prompted his sexual misconduct. He has also re-taken the professionalism/ethics course and is working to solidify what he has learned there.

10D. It was incumbent on Respondent to corroborate his assertions of current professionalism and character to alleviate any concern that he is inclined to engage in further sexual harassment if he were allowed continued licensure. Respondent's colleagues' testimony and letters verified his professionalism and respectful conduct for the past few years. Additionally, the letter from Ms. Bannister, Director of Operations and Business Development with CMG/Administrative Resources from 2018 to 2019, confirmed Respondent took the sexual harassment allegations against him seriously and that he "spent considerable time working on himself so that he will not cross or be perceived to cross any boundaries in the future." (Factual Finding 70G.)

11A. The totality of the evidence established that Respondent has made sufficient progress in his rehabilitation that revocation of his license is unwarranted and would be unduly punitive. The public health, safety, and welfare will be adequately

protected by placing Respondent on probation for five years with specified terms and conditions.

11B. Respondent previously completed a professionalism/ethics course from 2013 to 2014, and he recently underwent the classroom component of a professionalism/ethics course with an expected six-month and one-year follow-up, the completion of which would satisfy California Code of Regulations, title 16, section 1358.1, and optional condition 16 of the Guidelines. Consequently, the order below will not require him to retake a professionalism/ethics course for the third time. However, he will be required to complete a professional boundaries program, as set forth in optional condition 17 of the Guidelines. Additionally, given Respondent's testimony that his counseling sessions have helped him work through the potential impetus for his sexual misconduct, he will be required to undergo psychotherapy to continue his rehabilitation process and to solidify his ability to practice medicine with female staff in a professional manner.

ORDER

Physician's and Surgeon's Certificate Number A 105427, issued to Respondent, David Thomas Robles, M.D., is revoked. However, the revocation is stayed, and Respondent is placed on probation for five years upon the following terms and conditions.

1. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent,

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

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

2. Obey All Laws

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

3. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

4. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

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

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

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5. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

6. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current

version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for Respondent residing outside of California, will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

7. Violation of Probation

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

8. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate

and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

9. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

10. Psychotherapy

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

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall

cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

11. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of Respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24-hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate Respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

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

The program has the authority to determine whether or not Respondent successfully completed the program.

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

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12. Completion of Probation

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

DATE: 10/26/2021

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings

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

In the Matter of the Accusation Against: **David Thomas Robles, M.D.** **9190 Haven Avenue, #210** **Rancho Cucamonga, CA 91730** **Physician's and Surgeon's Certificate No. A 105427,** Respondent.	Case No. 800-2017-034733 **ACCUSATION**

PARTIES

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

2. On or about September 1, 2008, the Board issued Physician's and Surgeon's Certificate Number A 105427 to David Thomas Robles, 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 January 30, 2022, unless renewed.

JURISDICTION

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

STATUTORY PROVISIONS

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

5. Section 2234 of the Code, states:

> The 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.
>
> (d) Incompetence.
>
> (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct that would have warranted the denial of a certificate.
>
> (g) The 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.

6. Section 805.8 of the Code, states, in pertinent part, "'Sexual misconduct' means inappropriate contact or communication of a sexual nature."

FACTUAL ALLEGATIONS

7. The Board received a complaint that Respondent has "been harassing his female

employees since before I took over the office [on November 23, 2013]," and that "there were several cases of harassment on file for [Respondent]," and that at the time of the complaint, he "continues to harasses females in the office." The complaint also stated that when an attractive female patient or Pharmaceutical Sales Representative came to the office, Respondent would spend more time with them than if they were "average" in appearance when "he will be out of the exam room within 5-6 minutes." The complaint further stated that Respondent had harassed new recently graduated medical assistants and that he had been instructed to work with male medical assistants, and that Respondent has used favoritism to have other employees cover for him. The complaint stated that Respondent spoke profanity to an employee because she did not "want to be on his side" of the office and that employee called complainant in tears. The complaint stated, "the Sexual Harassing / Verbal Abuse has to stop [and Respondent] should not be able to continue to do this."

8. Since at least 2012, Respondent has worked as a doctor / Medical Director of Dermatology at a medical clinic that employed several female medical assistants (Clinic). During his employment at the Clinic, several female medical assistants have complained about Respondent's unprofessional conduct against them and others, including[1] that he engaged in inappropriate, disrespectful, and harassing behavior, and sexual misconduct, including inappropriately touching female employees, including their breasts, buttocks and private areas; making sexual comments, references, innuendo to other employees, patients and guests at the clinics where he worked, including proposals for sexual activity; sharing offensive stories and images; using intimidation; and engaging in unwanted physical contact (collectively all of the above unprofessional conduct is referred to hereinafter as, "Abusive Conduct").

9. In or around January 2013, the human resource/employment authority at Respondent's Clinic received complaints that two female employees at the Clinic had been touched inappropriately by Respondent. In or around 2012-2013, Respondent touched the first complaining woman's buttocks and her "private area," and had shown her a picture of himself engaged in anal sex with a woman. In or around 2012-2013, Respondent told the second

[1] As used herein, "including" means "including, but not limited to."

complaining woman that he had "messed around" with the previous medical assistant and that they would "make out" in different places in the office and had almost been caught. Respondent also touched her breast and made inappropriate comments about her breasts. She further stated that Respondent showed her a picture on his phone of his girlfriend having anal sex with him. Each of these employees was reluctant to come forward due to a fear of losing their job.

Victim 1

10. Victim 1 worked as a medical assistant for Respondent starting in 2014 through 2015, initially as a trainee and later as a medical assistant, in or around September 2014. Respondent committed Abusive Conduct, including sexual misconduct, with Victim 1 on multiple occasions, including in the presence of patients. Respondent's failure to comply with established professional standards posed significant risk to members of the healthcare team in providing care to patients.

11. Victim 1 began as an extern for Respondent while she was still a student at a school to obtain her credentials as a medical assistant. As such, she was dependent on Respondent to successfully complete her program and graduate and Respondent aggressively made this fact known to her. He would threaten to call Victim 1's school which would result in negative consequences for Victim 1. Victim 1's duties included office administrative work such as printing out schedules, organizing, attending to supplies, cleaning and charting, and progressed to patient care with Respondent.

12. Initially, his unprofessional conduct towards Victim 1 consisted of inappropriate comments and unwanted physical contact. He would "wink and blow kisses" and position himself so close to Victim 1 that he could smell her hair and neck. His conduct progressed to more aggressive behavior. He would grab his penis and say, "Look at it, its not even half way hard" and "Just grab it; you want to see it!" Although she would try to look away, he would laugh and try to grab her. He would frequently attempt to grab her and touch her thigh while she was attending to the patient charts. She would make coffee for him and he would corner her and touch her body and press his penis against her body through his clothes. His conduct steadily became worse and ultimately included, touching her breasts and buttocks. Although Victim 1

objected to Respondent's conduct, Respondent would invariably laugh off her objections to his unwanted contact and offensive behavior.

13. Respondent required a medical assistant to accompany him when he went into a patient examination room. Respondent's unwanted physical contact towards Victim 1 included rubbing her arm and grabbing her hands. When Victim 1 would enter an exam room, Respondent would rub her upper arm and grab her hand as she spoke to a patient. On many occasions, patients would have the wrong impression about their relationship, and ask whether Victim 1 was Respondent's girlfriend based on Respondent's Abusive Conduct against Victim 1. He even gave her a nickname. On each occasion when inappropriate conduct occurred, Victim 1 would firmly say to Respondent, "You need to stop, you are not funny!"

14. Victim 1 attempted to avoid Respondent by strategically moving to the back of the exam room by the window. However, Respondent would sneak up behind Victim 1 and aggressively and violently try to kiss her on the lips, which she would attempt to block with her hands, and he would respond by groping her breasts and buttocks, and would forcibly kiss her on the cheek and neck. It was difficult for Victim 1 to resist Respondent due to his strength as a man. Eventually she had to resort to curling into a ball to avoid him.

15. On at least three occasions, Respondent engaged in Abusive Conduct against Victim 1 while she was with patients, including touching Victim 1's breasts, hips, and other sensitive body parts during medical procedures.

a. On one occasion, Respondent inappropriately touched Victim 1 as she was injecting local anesthetic into a patient, prior to an excision procedure. As she was holding the needle, Respondent stood very close to her and rubbed her arms and shoulders, and then rubbed her thighs and squeezed her hips. Victim 1 felt that this was very dangerous to the patient as she was holding a needle puncturing the patient's skin.

b. On another occasion, while Victim 1 was with a patient, Respondent, placed his fingers into Victim 1's scrub pants and touched her bare skin.

c. On another occasion, when Victim 1 was with a patient, Respondent pulled her shirt down on her back to expose her tattoo which was lower than her shoulder and could not be

seen if she wore normal shirts as they were meant to be worn, and she could feel his fingers on her back where her tattoo was located.

16. Respondent also touched Victim 1 in the presence of a patient while another medical practitioner performed an excision. At that time, he lifted up Victim 1's scrub skirt and caressed her bare skin to her hip. Victim 1 did not want to distract the medical practitioner during the excision and resorted to stepping from side to side, giving him a stern stare and aggressively whispering, "Stop!" Respondent then left the room laughing.

17. Respondent often made inappropriate comments to Victim 1, including, "What does it look like down there?" In response she would inquire, "Down where, doctor?" And he would point to her vagina and say, "What does your snatch look like, I bet you're all hairy down there, huh?" Victim 1 would then reply, "You really want to do this right now?" And Respondent would say, "I just want that snatch." On another occasion he remarked that her buttocks were so rotund that she could not put her back to touch the wall. When Victim 1 told Respondent to cease his behavior, he would say that he just could not help himself.

18. One common method that Respondent used to grope Victim 1 was to grab her wrists and hold her hands close to her cheek and then touch her breasts with the back of his hands.

19. Respondent's bad behavior towards Victim 1 worsened as his marriage with his wife began to deteriorate.

20. On or about December 29, 2014, while Victim 1 performed her normal duties stocking one of the exam rooms at the Clinic, Respondent came into the room and shut the door behind him. He then approached Victim 1 and grabbed both of her wrists – she tried to pull away and told him to stop. While he was holding her wrist, Respondent lowered his hands so he could slide his hand along her breast. She tried to fight him off and told him to stop. Once she got away from him, she left the exam room. He followed her out of the room laughing at her.

21. On or about December 30, 2014, Victim 1 was at the desk at the medical assistant station. She performed her normal duties printing schedules for the day when Respondent came up to her and sat in a vacant chair immediately beside her, and put his hand on her thigh. She told him to stop, but he just laughed. Victim 1 tried standing up, but he was able to push her down to

prevent her from standing up. Respondent then stated to her, "Where are you going? You know you want me."

22. On or about January 7, 2015, in the afternoon, Victim 1 discussed a patient with a nurse practitioner. The desk was in one of her normal work areas. During this time, she was leaning over the desk. Respondent walked past the desk behind her and yelled, "smack" as if he slapped her buttocks. She ignored him. Victim 1 then spoke to the nurse practitioner about Victim 1 cleaning a two-drawer file cabinet in the office. Respondent heard their conversation and said, thongs for the top drawer and dildos for the bottom drawer. Respondent and the nurse practitioner laughed at Respondent's statement.

23. On or around January 13, 2015, Respondent approached Victim 1 from behind and touched her buttocks.

24. Victim 1 complained to management about Respondent's behavior. On or about January 19, 2015, Victim 1 spoke to the office manager about her complaint.

25. On or about January 20, 2015, the nurse practitioner confronted Victim 1 about Respondent's concern that she made a complaint to human resources. The nurse practitioner was very sympathetic to, and protective of, Respondent, and instructed her to tell them [management] that Respondent never touched her. Respondent also implored Victim 1 not to report him to management.

Victim 2

26. In or around October 2014, Victim 2 began working at the Clinic as an extern. Later, upon completing her course work, Victim 2 began working with Respondent in her first job practicing as a medical assistant. After a few months, Respondent began committing Abusive Conduct, including sexual misconduct, against Victim 2 on multiple occasions. Initially, he exclaimed that he was instrumental in hiring her and it was because she was pretty. He would say she was only hired because she was pretty. Later, Respondent started speaking to Victim 2 in an inappropriate manner, and his conduct steadily worsened. Respondent began touching Victim 2 inappropriately.

27. Respondent made an inappropriate comment in front of a 14-year-old about her

figure. He commented on the young girl's figure and his anticipation of her figure when she grew older.

28. Respondent's Abusive Conduct towards Victim 2 included entering rooms while Victim 2 was cleaning and telling her that looking at her made him "hard" (as in obtaining an erection of his penis). He would ask her to bring him water, and then say to her, "stick your finger into your butthole and stir it into my drink." Respondent would make these types of comments when he was alone with Victim 2.

29. Respondent asked Victim 2 if he could see her breasts and questioned whether they are pointy or round. He would stare at her and state that she had a "black girl's butt."

30. Respondent would tell Victim 2 that he had a massage on his lunch break and that it involved a "happy ending."

31. Although Victim 2 told Respondent to stop, and that she was married, his Abusive Conduct towards her continued. He told her that he loved her and asked if he could ejaculate on her pregnant stomach.

32. In or around late November to early December 2014, Respondent told Victim 2 that he wanted to see her stomach in order to visualize it while "jacking off" [ejaculating]. He also asked if she could urinate on him. He touched her on her thigh as well.

33. Respondent touched Victim 2's hips and buttocks on a regular basis (twice per week or more). Often this occurred while she was treating patients. Patients would lie face down during procedures and Respondent would engage in his inappropriate touching of Victim 2 while patients were unable to see his actions. Although she would protest, Respondent would merely laugh at her.

34. Respondent touched Victim 2's breasts repeatedly. Although she tried to avoid his unwanted groping, he would surprise her and catch her off guard.

35. Victim 2 regularly worked with Respondent to assist with patient treatment. Often, as she waited while Respondent reviewed a patient chart before entering the treatment room, Respondent touched Victim 2's breasts, buttocks, hips, and arms and also attempted to kiss her.

36. Victim 2 also worked on patient charts at a counter area with an elevation high

enough to block the view of her body from the chest down. The area behind this counter was barely large enough for two people to fit tightly, such that one would risk touching the other if passing behind this counter. When Victim 2 would be charting behind this counter, Respondent would regularly come behind her and touch her buttocks, legs and hips in a manner that could not be seen from the other side of the counter, and he even did this in the presence of patients. Victim 2 felt compelled to maintain her composure in the presence of patients, so she would attempt not to react, but simply move herself to get away from Respondent.

37. Victim 2 was pregnant and eventually started to physically show her pregnancy. Respondent said her being pregnant was sexy and made comments suggesting that he was the father.

38. Respondent also showed Victim 2 his penis through his pants. He tried to kiss her, but she would attempt to avoid him, and as a result he would kiss the back of her neck. Eventually, Victim 2 complained to the Clinic's management, and the human resources department of the Clinic's management company issued a warning to Respondent and instructed him to take coursework on sexual harassment.

39. On or about January 19, 2015, the office manager approached Victim 2 and inquired about Respondent's conduct. Victim 2 provided some information to the office manager about Respondent's conduct. Later that day, Respondent also apologized saying he was sorry for touching Victim 2. He stated that he was very vulnerable at the time because his wife was leaving him.

40. During the next few days (following on or about January 19, 2016), Respondent ceased his Abusive Conduct against Victim 2, but told Victim 2, "I can't touch you because [office manager] said I can't, but I love you." However, after this brief reprieve, Respondent's Abusive Conduct against Victim 2 restarted, including his unwanted touching and offensive remarks toward her.

41. On or about January 21, 2015, Victim 2 met with the human resources director and provided additional examples of Respondent's Abusive Conduct towards Victim 2, including his erection comments and his touching of her buttocks and breasts.

Victim 3

42. Victim 3 worked for Respondent as a medical assistant from September 2012 to October 2017. According to Victim 3, Respondent was known as a pervert at the Clinic. He also commented to her about other female employees and patients regarding their body parts, including remarks about other employees' buttocks and breasts. He also criticized some employees about their looks.

43. Victim 3 acted as a chaperone for Respondent and witnessed that after a patient would leave, Respondent would make sexual comments about the patients.

44. On one occasion, Victim 3 was sitting at her desk working, and Respondent came up to her and said, "heard you like Snickers bars," and then held a Snickers candy bar in his hand by his pelvic region, simulating a penis and laughing. On another occasion, Victim 3 was at the Clinic in the morning and was cleaning an examination room after a patient had just left. She was leaning over while cleaning a table and she caught Respondent looking down her shirt.

45. In more recent years, Respondent would make negative comments relating to Victim 3's age. He called her old, and ugly and stated, "You're the ugly one in the group; Your boobs are saggy;" "Your butt is flat;" "You're just Jealous;" and said "that's [age and appearance] why you don't have a boyfriend."

Victim 4

46. Victim 4 worked as a payroll manager for the clinic for two years in or around 2015 through 2016. Respondent committed Abusive Conduct against Victim 4 and witnessed him commit Abusive Conduct against other employees. On one occasion, she walked in front of Respondent and he stated, "I would like to hit that."

47. On another occasion, while she worked at the Clinic, she went to see Respondent at the Upland office in the afternoon to have a growth removed from under her eye. While she was walking in the hall towards the treatment room in front of Respondent, she saw Respondent's reflection in a window making hand gestures behind her, simulating she had a large rear end and heard him make inappropriate comments.

48. In another incident, Victim 4 took her friend to the Upland dermatology office for

treatment with Respondent.

49. Although Victim 4 was previously told by human resources that Respondent was not supposed to be alone with female medical assistants, while Victim 4 and her friend were waiting in the treatment room, Respondent came in with a female medical assistant. While everyone was in the treatment room, Respondent was sexually harassing the medical assistant. The medical assistant was against the wall facing the north and Respondent was standing beside the medical assistant. While he was standing beside her, he was rubbing the side of his body against the side of her body.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence and Repeated Negligence)

50. Respondent David Thomas Robles, M.D. is subject to disciplinary action under section 2234, subdivisions (b) and (c), in that he sexually assaulted six different women with whom he worked at a medical clinic. The circumstances are as alleged in paragraphs 7 through 49, inclusive are incorporated herein by reference as if fully set forth, and represent repeated acts of gross negligence and/or negligence, including as follows:

a. Respondent engaged in multiple instances of boundaries violations, including, assault, sexual harassment and/or intimidation.

b. Respondent's Abusive Conduct, including sexual assault, inappropriate touching, and unwanted physical contact, constituted behavior that undermined patient safety.

c. Respondent's disruptive behavior renders him unsafe to practice medicine and threatens the health and safety of patients.

SECOND CAUSE FOR DISCIPLINE

(Failure to Participate at a Subject Interview)

51. Respondent is subject to disciplinary action under section 2234, subdivision (g) in that he (as the subject of an investigation) failed, in the absence of good cause, to attend and participate in an interview by the Board. The circumstances are as follows:

52. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

53. Respondent refused to answer questions and participate in an interview with an investigator during a Board investigation of Respondent, including on or about each of October 31, 2019 and June 19, 2020. When asked about the victims and other events alleged in this Accusation, Respondent refused to participate and answer questions at the interview by the Board's investigator without good cause.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Boundaries Violations/Sexual Misconduct)

54. Respondent is subject to disciplinary action under sections 2234 and 805.8 of the Code in that he committed sexual misconduct which constitutes unprofessional conduct. The circumstances are as follows:

55. The allegations of the First and Second Causes for Discipline are incorporated herein by reference as if fully set forth, and represent acts of unprofessional conduct.

56. Each instance of boundaries violations, assault, sexual harassment, intimidation and/or Abusive Conduct, including sexual misconduct (as defined in Code section, 805.8, subdivision (a)(5)), by Respondent, constitutes unprofessional conduct."

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

57. Respondent is subject to disciplinary action under section 2234 in that he committed unprofessional conduct, generally. The circumstances are as follows:

58. The allegations of the First, Second and Third Causes for Discipline are incorporated herein by reference as if fully set forth, and represent acts of unprofessional conduct.

59. As stated below, Respondent was subject to probation during the time he committed the unprofessional conduct alleged in this Accusation. As such, the order staying the revocation of Respondent's Physician's and Surgeon's certification would have been subject to tolling had the facts as alleged herein, been known to the Board and set forth in an accusation at that time.

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DISCIPLINARY CONSIDERATIONS

60. To determine the degree of discipline, if any, to be imposed on Respondent David Thomas Robles, M.D., Complainant alleges that on or about July 27, 2012 (effective August 24, 2012), in a prior disciplinary action titled *In the Matter of the Accusation Against David Thomas Robles, M.D.* before the Medical Board of California, in Case Number 11-2010-208580, Respondent's Physician's and Surgeon's certificate was revoked, but the revocation was stayed, and he was placed on probation for fifty-nine months, with terms and conditions, for admitted unprofessional conduct, in connection with having been convicted of driving under the influence of alcohol. That decision is now final and is incorporated by reference as if fully set forth herein. The circumstances are that on September 27, 2009, Respondent was in an auto accident – a police officer found his Volkswagen sedan lying across several lanes of a highway on its side. At the time, the officer smelled alcohol on Respondent's breath, and noticed that his eyes were red and watery.

61. To determine the degree of discipline, if any, to be imposed on Respondent David Thomas Robles, M.D., Complainant further alleges that Respondent was charged with driving under the influence in 2009, and that he suffered a previous conviction. On June 20, 2003, while in his last year of medical school, and serving his internship at USC Medical Center, Respondent was arrested for, and later convicted of, driving under the influence. His blood alcohol was a 0.14, which was far above the legal limit.

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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 105427, issued to David Thomas Robles, M.D.;

2. Revoking, suspending or denying approval of David Thomas Robles, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering David Thomas Robles, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: JUL 14 2020

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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