

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

**In the Matter of the First Amended  
Accusation Against:**

**FREDERICK SCOTT DATTEL, M.D.**

**Physician's and Surgeon's  
Certificate No. C 139597**

**Case No.: 800-2018-044693**

**Respondent.**

**DECISION**

**The attached Stipulated Settlement 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 August 23, 2023.**

**IT IS SO ORDERED: July 24, 2023.**

**MEDICAL BOARD OF CALIFORNIA**



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**Laurie Rose Lubiano, J.D., Chair  
Panel A**

1 ROB BONTA  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 COLLEEN M. MCGURRIN  
Deputy Attorney General  
4 State Bar Number 147250  
California Department of Justice  
5 300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
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7 *Attorneys for Complainant*

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

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

14 **FREDERICK SCOTT DATTEL, M.D.**  
15 **Kansas City Pediatrics**  
1004 Carondelet Drive, Suite 300  
16 **Kansas City, MO 64114**

17 **Physician's and Surgeon's Certificate**  
18 **Number C 139597**

19 Respondent.

Case No. 800-2018-044693

OAH No. 2022100124

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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

22 **PARTIES**

23 1. Reji Varghese (Complainant) is the Interim Executive Director of the Medical Board  
24 of California (Board). His predecessor brought this action solely in his official capacity and  
25 Complainant is represented in this matter by Rob Bonta, Attorney General of the State of  
26 California, by Colleen M. McGurrin, Deputy Attorney General.

27 2. Respondent Frederick Scott Dattel, M.D. (Respondent) is represented in this  
28 proceeding by attorney Derek F. O'Reilly-Jones, Esq. of Bonne Bridges Mueller O'Keefe &

1 Nichols, whose address is 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562.

2 3. On or about December 4, 2015, the Board issued Physician's and Surgeon's  
3 Certificate Number C 139597 to Frederick Scott Dattel, M.D. (Respondent). The Physician's and  
4 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in  
5 First Amended Accusation No. 800-2018-044693, and will expire on September 30, 2023, unless  
6 renewed.

7 **JURISDICTION**

8 4. First Amended Accusation No. 800-2018-044693 was filed before the Board, and is  
9 currently pending against Respondent. The First Amended Accusation and all other statutorily  
10 required documents were properly served on Respondent on January 13, 2023. Respondent  
11 timely filed his Notice of Defense contesting the First Amended Accusation.

12 5. A copy of First Amended Accusation No. 800-2018-044693 is attached as exhibit A  
13 and incorporated herein by reference.

14 **ADVISEMENT AND WAIVERS**

15 6. Respondent has carefully read, fully discussed with counsel, and understands the  
16 charges and allegations in First Amended Accusation No. 800-2018-044693. Respondent has  
17 also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated  
18 Settlement and Disciplinary Order.

19 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
20 hearing on the charges and allegations in the First Amended Accusation; the right to confront and  
21 cross-examine the witnesses against him; the right to present evidence and to testify on his own  
22 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
23 production of documents; the right to reconsideration and court review of an adverse decision;  
24 and all other rights accorded by the California Administrative Procedure Act and other applicable  
25 laws.

26 8. Respondent freely, voluntarily, knowingly, and intelligently waives and gives up each  
27 and every right set forth above.

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

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

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

14. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in First Amended Accusation No. 800-2018-044693 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate Number C 139597 issued to Respondent FREDERICK SCOTT DATTEL, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. PREScribing PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices 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

1 been approved by the Board or its designee had the course been taken after the effective date of  
2 this Decision.

3 Respondent shall submit a certification of successful completion to the Board or its  
4 designee not later than 15 calendar days after successfully completing the course, or not later than  
5 15 calendar days after the effective date of the Decision, whichever is later.

6 2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective  
7 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in  
8 advance by the Board or its designee. Respondent shall provide the approved course provider  
9 with any information and documents that the approved course provider may deem pertinent.  
10 Respondent shall participate in and successfully complete the classroom component of the course  
11 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
12 complete any other component of the course within one (1) year of enrollment. The medical  
13 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing  
14 Medical Education (CME) requirements for renewal of licensure.

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

20 Respondent shall submit a certification of successful completion to the Board or its  
21 designee not later than 15 calendar days after successfully completing the course, or not later than  
22 15 calendar days after the effective date of the Decision, whichever is later.

23 3. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
24 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
25 Chief Executive Officer at every hospital where privileges or membership are extended to  
26 Respondent, at any other facility where Respondent engages in the practice of medicine,  
27 including all physician and locum tenens registries or other similar agencies, and to the Chief  
28 Executive Officer at every insurance carrier which extends malpractice insurance coverage to

1 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
2 calendar days.

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

4 4. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE  
5 NURSES. During probation, Respondent is prohibited from supervising physician assistants and  
6 advanced practice nurses.

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

10 6. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby  
11 ordered to reimburse the Board its costs of investigation and enforcement, including, but not  
12 limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena  
13 enforcement, as applicable, in the amount of \$15,357.50 (fifteen thousand three hundred fifty  
14 seven dollars and fifty cents). Costs shall be payable to the Medical Board of California. Failure  
15 to pay such costs shall be considered a violation of probation.

16 Payment must be made in full within 30 calendar days of the effective date of the Order, or  
17 by a payment plan approved by the Medical Board of California. Any and all requests for a  
18 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with  
19 the payment plan shall be considered a violation of probation.

20 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to  
21 repay investigation and enforcement costs, including expert review costs (if applicable).

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

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

27 8. GENERAL PROBATION REQUIREMENTS.

28 Compliance with Probation Unit

1 Respondent shall comply with the Board's probation unit.

2 Address Changes

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

8 Place of Practice

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

12 License Renewal

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

15 Travel or Residence Outside California

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

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

22 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
23 available in person upon request for interviews either at Respondent's place of business or at the  
24 probation unit office, with or without prior notice throughout the term of probation.

25 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
26 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
27 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
28 defined as any period of time Respondent is not practicing medicine as defined in Business and



1 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
2 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
3 Respondent resides in California and is considered to be in non-practice, Respondent shall  
4 comply with all terms and conditions of probation. All time spent in an intensive training  
5 program which has been approved by the Board or its designee shall not be considered non-  
6 practice and does not relieve Respondent from complying with all the terms and conditions of  
7 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
8 on probation with the medical licensing authority of that state or jurisdiction shall not be  
9 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
10 period of non-practice.

11 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
12 months, Respondent shall successfully complete the Federation of State Medical Boards' Special  
13 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
14 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
15 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

16 Respondent's period of non-practice while on probation shall not exceed two (2) years.

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

18 Periods of non-practice for a Respondent residing outside of California will relieve  
19 Respondent of the responsibility to comply with the probationary terms and conditions with the  
20 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
21 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
22 Controlled Substances; and Biological Fluid Testing..

23 11. COMPLETION OF PROBATION. Respondent shall comply with all financial  
24 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
25 completion of probation. This term does not include cost recovery, which is due within 30  
26 calendar days of the effective date of the Order, or by a payment plan approved by the Medical  
27 Board and timely satisfied. Upon successful completion of probation, Respondent's certificate  
28 shall be fully restored.

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

8       13. LICENSE SURRENDER. Following the effective date of this Decision, if  
9 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
10 the terms and conditions of probation, Respondent may request to surrender his or her license.  
11 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
12 determining whether or not to grant the request, or to take any other action deemed appropriate  
13 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
14 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
15 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
16 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
17 application shall be treated as a petition for reinstatement of a revoked certificate.

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

23       15. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for  
24 a new license or certification, or petition for reinstatement of a license, by any other health care  
25 licensing action agency in the State of California, all of the charges and allegations contained in  
26 First Amended Accusation No. 800-2018-044693 shall be deemed to be true, correct, and  
27 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding  
28 seeking to deny or restrict license.

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ACCEPTANCE

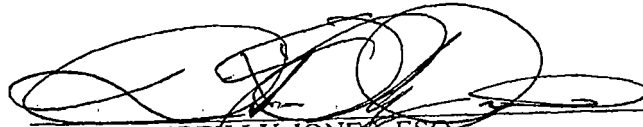
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Derek O'Reilly-Jones. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary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

DATED: 4-20-23

  
FREDERICK SCOTT DATTEL, M.D.  
Respondent

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

DATED: 04/20/2023

  
DEREK O'REILLY-JONES, ESQ.  
Attorney for Respondent

ENDORSEMENT

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

DATED: 4/20/2023

Respectfully submitted,

ROB BONTA  
Attorney General of California  
ROBERT MCKIM BELL  
Supervising Deputy Attorney General



COLLEEN M. MCGURRIN  
Deputy Attorney General  
Attorneys for Complainant

1 ROB BONTA  
Attorney General of California  
2 ROBERT MCKIM BELL  
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9 **BEFORE THE**  
10 **MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

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

Case No. 800-2018-044693

**FIRST AMENDED ACCUSATION**

15 **FREDERICK SCOTT DATTEL, M.D.**

16 **Kansas City Pediatrics**  
17 **1004 Carondelet Drive, Suite 300**  
**Kansas City, Missouri 64114**

18 **Physician's and Surgeon's Certificate**  
19 **Number C 139597,**

20 Respondent.

21 **PARTIES**

22 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his  
23 official capacity as the Executive Director of the Medical Board of California (Board).

24 2. On December 4, 2015, the Board issued Physician's and Surgeon's Certificate  
25 Number C 139597 to Frederick Scott Dattel, M.D. (Respondent). That Certificate was in full  
26 force and effect at all times relevant to the charges brought herein and will expire on September  
27 30, 2023, unless renewed.

28 //

## JURISDICTION

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

4. Section 2227 of the Code provides, in pertinent part:

(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, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his . . . license revoked upon order of the board.

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

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

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

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

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

## STATUTORY PROVISIONS

5. Section 2234 of the Code provides, in pertinent part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) . . . (e).

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

(g) . . . .

1           6.     Section 2228 of the Code provides, in pertinent part:

2                 The authority of the board or the California Board of Podiatric Medicine to  
3 discipline a licensee by placing him . . . on probation includes, but is not limited to,  
4 the following:

5                 (a) Requiring the licensee to obtain additional professional training and to pass  
6 an examination upon the completion of the training. The examination may be written  
7 or oral, or both, and may be a practical or clinical examination, or both, at the option  
8 of the board or the administrative law judge.

9                 (b) Requiring the licensee to submit to a complete diagnostic examination by  
10 one or more physicians and surgeons appointed by the board. If an examination is  
11 ordered, the board shall receive and consider any other report of a complete  
12 diagnostic examination given by one or more physicians and surgeons of the  
13 licensee's choice.

14                (c) Restricting or limiting the extent, scope, or type of practice of the licensee,  
15 including requiring notice to applicable patients that the licensee is unable to perform  
16 the indicated treatment, where appropriate.

17                (d) Providing the option of alternative community service in cases other than  
18 violations relating to quality of care.

19           7.     Section 2241.5 of the Code provides, in pertinent part:

20                (a) A physician and surgeon may prescribe for, or dispense or administer to, a  
21 person under his or her treatment for a medical condition dangerous drugs or  
22 prescription-controlled substances for the treatment of pain or a condition causing  
23 pain, including, but not limited to, intractable pain.

24                (b) . . . .

25                (c) This section shall not affect the power of the board to take any action  
26 described in Section 2227 against a physician and surgeon who does any of the  
27 following:

28                (1) . . . (2).

                  (3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior  
examination and the existence of a medical indication for prescribing, dispensing, or  
furnishing dangerous drugs or recommending medical cannabis.

                  (4) Violates Section 2242.1 regarding prescribing on the Internet.

                  (5) Fails to keep complete and accurate records of purchases and disposals of  
substances listed in the California Uniform Controlled Substances Act (Division 10  
(commencing with Section 11000) of the Health and Safety Code) or controlled  
substances scheduled in the federal Comprehensive Drug Abuse Prevention and  
Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal  
Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and  
surgeon shall keep records of his or her purchases and disposals of these controlled  
substances or dangerous drugs, including the date of purchase, the date and records of  
the sale or disposal of the drugs by the physician and surgeon, the name and address

1 of the person receiving the drugs, and the reason for the disposal or the dispensing of  
2 the drugs to the person, and shall otherwise comply with all state record-keeping  
3 requirements for controlled substances.

4 (6) . . . (7).

5 (d) A physician and surgeon shall exercise reasonable care in determining  
6 whether a particular patient or condition, or the complexity of a patient's treatment,  
7 including, but not limited to, a current or recent pattern of drug abuse, requires  
8 consultation with, or referral to, a more qualified specialist.

9 (e) . . . .

10 8. Section 2242 of the Code states:

11 (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section  
12 4022 without an appropriate prior examination and a medical indication, constitutes  
13 unprofessional conduct. An appropriate prior examination does not require a  
14 synchronous interaction between the Patient and the licensee and can be achieved  
15 through the use of telehealth, including, but not limited to, a self-screening tool or a  
16 questionnaire, provided that the licensee complies with the appropriate standard of  
17 care.

18 (b) . . . ."

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

### 22 COST RECOVERY

23 10. Effective January 1, 2022, section 125.3 of the Code was amended to provide, in  
24 pertinent part, as follows:

25 (a) Except as otherwise provided by law, in any order issued in resolution of a  
26 disciplinary proceeding before any board within the department . . . , upon request of  
27 the entity bringing the proceeding, the administrative law judge may direct a licensee  
28 found to have committed a violation or violations of the licensing act to pay a sum not  
to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order  
may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual  
costs are not available, signed by the entity bringing the proceeding or its designated  
representative shall be prima facie evidence of reasonable costs of investigation and  
prosecution of the case. The costs shall include the amount of investigative and  
enforcement costs up to the date of the hearing, including, but not limited to, charges  
imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of  
reasonable costs of investigation and prosecution of the case when requested pursuant

1 to subdivision (a). The finding of the administrative law judge with regard to costs  
2 shall not be reviewable by the board to increase the cost award. The board may  
3 reduce or eliminate the cost award, or remand to the administrative law judge if the  
4 proposed decision fails to make a finding on costs requested pursuant to subdivision  
5 (a).

6 (e) If an order for recovery of costs is made and timely payment is not made as  
7 directed in the board's decision, the board may enforce the order for repayment in any  
8 appropriate court. This right of enforcement shall be in addition to any other rights  
9 the board may have as to any licensee to pay costs.

10 (f) In any action for recovery of costs, proof of the board's decision shall be  
11 conclusive proof of the validity of the order of payment and the terms for payment.

12 (g) (1) Except as provided in paragraph (2), the board shall not renew or  
13 reinstate the license of any licensee who has failed to pay all of the costs ordered  
14 under this section.

15 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally  
16 renew or reinstate for a maximum of one year the license of any licensee who  
17 demonstrates financial hardship and who enters into a formal agreement with the  
18 board to reimburse the board within that one-year period for the unpaid costs.

19 (h) All costs recovered under this section shall be considered a reimbursement for  
20 costs incurred and shall be deposited in the fund of the board recovering the costs to  
21 be available upon appropriation by the Legislature.

22 (i) Nothing in this section shall preclude a board from including the recovery of the  
23 costs of investigation and enforcement of a case in any stipulated settlement.

24 (j) This section does not apply to any board if a specific statutory provision in that  
25 board's licensing act provides for recovery of costs in an administrative disciplinary  
26 proceeding.<sup>1</sup>

### 27 DRUGS REFERENCED

28 11. Fenortho – aka Fenoprofen Calcium 200mg (in capsules). Fenoprofen is a  
prescription non-steroidal anti-inflammatory drug (NSAID) used to treat mild to moderate pain  
and helps relieve arthritis symptoms, such as inflammation, swelling, stiffness, and joint pain.  
Other members of the NSAID class of drugs, sold over-the-counter, include ibuprofen (Motrin),  
indomethacin (Indocin), nabumetone (Relafen), naproxen (Aleve) and several others.

12. Lidocaine 5% Ointment. Lidocaine Ointment USP, 5% is an over-the-counter  
topical anesthetic agent (brand name Aspercreme) administered topically to relieve minor

<sup>1</sup> Effective January 1, 2022, subdivision (k) of Section 125.3, which exempted physicians  
and surgeons from paying recovery of the costs of investigation and prosecution by the Board,  
was repealed.



1 musculoskeletal pain, insect bites, sting relief, or sunburn.

2 13. Omeprazole and Sodium Bicarbonate 40mg (in capsule form). Omeprazole and  
3 sodium bicarbonate combination is a prescription medication used to treat excess stomach acid.  
4 For example, it is used to treat gastric and duodenal ulcers, erosive esophagitis, and  
5 gastroesophageal reflux disease (GERD). Omeprazole is a proton pump inhibitor that works by  
6 decreasing the amount of acid produced by the stomach. Sodium bicarbonate, also known as  
7 baking soda, is an antacid that neutralizes the excess acid in the stomach. Used in combination,  
8 omeprazole and sodium bicarbonate prevent upper gastrointestinal tract bleeding in seriously ill  
9 patients. Sometimes this medicine is used in combination with antibiotics (e.g., amoxicillin,  
10 clarithromycin) to treat ulcers associated with infection caused by the H. pylori bacteria (germ).

11 14. Calcipotriene 0.005% Cream (brand name: Dovonex) is used to treat plaque  
12 psoriasis (a skin disease in which red, scaly patches form due to increased production of skin cells  
13 on some areas of the body). Calcipotriene is in a class of medications called synthetic vitamin D3  
14 derivatives. It is not a cure; instead, it helps reduce the redness, thickness, and scaling that occur  
15 with psoriasis.

16 15. Diclofenac Sodium 3% Gel (brand name: Voltaren) is a non-steroidal anti-  
17 inflammatory drug (NSAID), sold in gel form. The 1% ointment is used for pain from arthritis of  
18 the hands or knees. The 3% skin gel is used to treat actinic keratosis, a skin problem that may  
19 become cancerous if not treated.

20 16. Econazole Nitrate, 1% Cream, is used to treat fungal skin infections such as  
21 athlete's foot, jock itch, and ringworm and works by preventing the growth of fungus. This  
22 medication is also used to treat a skin condition known as pityriasis (tinea versicolor), a fungal  
23 infection that causes a lightening or darkening of the skin of the neck, chest, arms, or legs.

24 17. Fluocinonide 0.1% Cream. This medication is a super high-potency corticosteroid  
25 used to treat a variety of skin conditions (e.g., psoriasis, eczema, dermatitis, allergies, rash). It  
26 acts by reducing the swelling, itching, and redness that can occur in these types of conditions and  
27 can heal the rough, scaly patches on the skin seen with psoriasis. Psoriasis can be treated with

1 Fluocinonide, but only by injection, not as a topical treatment.

2 18. Ibuprofen is a non-prescription, non-steroidal anti-inflammatory drug (NSAID)  
3 used for dental pain, fever, headaches or migraines, osteoarthritis, rheumatoid arthritis, or painful  
4 monthly periods. It can also relieve minor aches and pains caused by a cold, flu, or sore throat. It  
5 is marketed under a variety of brand names, including Motrin, Advil, Midol, among others.

6 19. Naproxen (brand name Aleve) is a non-prescription, non-steroidal anti-  
7 inflammatory drug (NSAID) used for dental pain, fever, headaches or migraines, osteoarthritis,  
8 rheumatoid arthritis, or painful monthly periods.

#### 9 STANDARD OF CARE

10 20. Adequate and accurate medical records are an indispensable component of good  
11 professional practice and the delivery of quality healthcare. Regardless of their form, (electronic  
12 or paper), the maintenance of complete and accurate medical records is a requirement of all health  
13 care providers and is enforced as a licensing standard for physicians in California by Business and  
14 Professions Code section 2266, which states, "The failure of a physician and surgeon to maintain  
15 adequate and accurate records relating to the provision of services to their patients constitutes  
16 unprofessional conduct."

17 21. The purpose of a medical examination is to obtain information about the patient  
18 sufficient to achieve a diagnosis (identifying a disease from its signs and symptoms), which is the  
19 starting point to initiating rational, evidence-based therapy. The results of that examination are  
20 placed in the patient's medical record in the form of a so-called SOAP note.

21 22. The SOAP note (an acronym for subjective, objective, assessment, and plan) has been  
22 the standard of care for medical documentation in the United States for at least a half-century. It  
23 is indispensable as a general cognitive framework for physicians to follow as they assess their  
24 patients and as a communication tool to document a patient's progress.

25 23. The four components of a SOAP note are Subjective, Objective, Assessment, and  
26 Plan.

- 27 • S - The Subjective component consists of the Patient's chief complaint or purpose

1 of the office visit or hospitalization. Also, the history of present illness  
2 (which describes the Patient's current condition in narrative form, from the time of  
3 initial sign/symptom to the present, beginning with the Patient's age, sex, and  
4 reason for visit, and then the history and state of experienced symptoms are  
5 recorded.

- 6 • O - Objective component. The objective section includes information observed or  
7 measured from the Patient's current presentation, such as vital signs and accurate  
8 measurements of age, height, and weight. Findings from physical examinations,  
9 including basic systems of cardiac and respiratory, the affected systems, the  
10 possible involvement of other systems, pertinent normal findings, and  
11 abnormalities, as well as physical presentation, characterization of discomfort or  
12 pain, psychological status, and results from laboratory and other diagnostic tests  
13 already completed should all be documented.
- 14 • A - Assessment component. At this point, a physician will document his  
15 differential diagnosis, a list of other possible diagnoses, usually in the order of  
16 most likely to least likely. The assessment will also include possible and likely  
17 causes or etiologies of the Patient's problem. The CPT/ICD-9 codes reported on  
18 the health insurance claim form or billing statement should reflect the  
19 documentation in the medical record. In addition, if it is a progress note since an  
20 earlier visit, the overall progress toward the Patient's goal from the physician's  
21 perspective should be recorded.
- 22 • P - Plan component. The plan is what the doctor will do to treat the Patient's  
23 concerns, for example, ordering laboratory studies, radiological workup, referrals  
24 to other specialties, procedures performed, medications given, and education  
25 provided. The plan will also include goals of therapy and patient-specific drug  
26 and disease state monitoring parameters. This should address each item of the  
27 differential diagnosis. For patients who have multiple health problems that are  
28 addressed in the SOAP note, a plan is developed for each problem and is

numbered accordingly based on severity and urgency for therapy. In addition, a note of what was discussed or advised with the Patient, as well as the timing for further review or follow-up, are included.

## FACTUAL ALLEGATIONS

RESPONDENT AND 24/7 CALL-A-DOC

24. Respondent is a board-certified pediatrician living in Missouri. He is licensed in 19 states: Alabama, California, Colorado, Florida, Indiana, Kansas, Minnesota, Missouri, North Carolina, North Dakota, New York, Ohio, Tennessee, Washington, Idaho, Nebraska, Utah, Michigan, and Kentucky.

25. Approximately seventy percent of his current practice is telehealth. In connection with the three cases described here, in 2017 he was an independent contractor working for "24/7 Call-A-Doc", a telemedicine platform. 24/7 Call-A-Doc, also known as 24 Hour Physicians, is a trade name or DBA of Telemedicine Corporation, a Delaware corporation, with headquarters at 8920 Wilshire Boulevard, Suite 310, Beverly Hills, California 90211.

26. When interviewed by Board representatives, Respondent stated that 24/7 Call-A-Doc would acquire patients seeking telemedicine who would then phone into a 24-hour nurse hotline, consent to telehealth, complete a patient history questionnaire, and be connected to a nurse who would take down further information. Then, in the form of a “live transfer,” the nurse would contact him with the patient on the line. He would be able to review the health profile and the consultation summary. It was his understanding, he said, that the nurse was supposed to stay on the phone throughout the patient encounter to take notes of the interaction between doctor and patient. Documentation of the encounter was kept in an electronic medical record on a secured portal, as well as an audio recording of the patient interaction, he was told. Those notes were available for later review and needed to be signed electronically, which in each instance he did, a day or several days after the patient encounter.

27. If medications were prescribed, he said, they would be faxed to a pharmacy in Florida affiliated with 24/7 Call-A-Doc. He was paid \$30 for every consultation whether or not

1 prescriptions were issued. He had no involvement in the pricing of drugs or share in any  
2 reimbursements. He was paid the same amount whether or not a prescription was written. The  
3 company would then bill the patient's insurance carrier using his NPI number and collect all  
4 reimbursements as its fee, he said.

5 28. He stopped working for this company in February 2018.

6 PATIENT 1<sup>2</sup>

7 29. Respondent encountered Patient 1 on the 24/7 Call-a-Doc telemedicine platform on  
8 one occasion, October 4, 2017.

9 30. A "Health Profile" in her chart reflects that Patient 1 was at the time a 41-year-old  
10 female, with a date of birth of September 14, 1976, and a residence address in Los Angeles,  
11 California. The Health Profile lists her height as 5 feet, 0 inches, with a weight of 160 pounds. It  
12 further documents her current use of Diclofenac.

13 31. The chart also contains a "Consultation Summary" dated October 4, 2017,  
14 electronically signed by Respondent two days later, on October 6, 2017. It lists the "Chief  
15 Complaint" as "Pain, (Lidocaine & Fenortho) & Calcipotriene Request."

16 32. The Consultation Summary documents a complaint of "sharp" pain in her "shoulder  
17 and hands," with an intensity of 10/10, experienced "occasionally" for "years," and which is  
18 growing neither worse nor better. Patient 1 reported that she was "not sure" how her problem  
19 began. She had tried rest, physical therapy, and both non-prescription and prescription  
20 medications in the past (listing her use of over-the-counter products Diclofenac, Tylenol, and  
21 ibuprofen), all of which reportedly afforded improvement of symptoms. The form contains a  
22 typed inquiry, "Fungal/psoriasis product request?" to which the answer given is "Yes," the only  
23 further elaboration or explanation given are "Location: Hands" and "Size: Several inches," and  
24 that she had not consulted with any other medical professional about it, nor tried any medications.

25 33. Respondent's recorded "Impression / Diagnosis" for Patient 1 was "pain in limb,"  
26 without any elaboration as to which limb was painful.

27 <sup>2</sup> The individual patients are referred to by numbers to protect patient privacy. Their  
28 identity will be disclosed to Respondent in discovery.

1 34. Finally, the chart contains faxed<sup>3</sup> prescriptions for:

- 2 • Fenortho 200mg (Fenoprofen Calcium) Capsules #200, to be taken 1 - 2 capsules four  
3 times a day (25 days' supply), with two refills.  
4 • Lidocaine Ointment 5% 50gm with instructions to apply one gram to affected area(s)  
5 two times per day (25 days' supply), with two refills.  
6 • Calcipotriene 0.005% Cream (Vitamin D3) 120 grams (30-day supply) with  
7 instructions to apply topically twice daily, with 2 refills.

8 35. When interviewed, Respondent recalled that Patient 1 "has a rash on his (sic) hands –  
9 that was fairly large in size and I assumed it probably was – was very likely a form of psoriasis . .  
10 . ." (This diagnosis is not recorded in the patient chart.) As his encounter with Patient 1 was by  
11 telephone, he had no way to visualize or to assist in the description or diagnosis of the patient's  
12 rash. Respondent failed to document the appearance of the rash, nor its onset, duration,  
13 symptoms, or any further features to support his undocumented diagnosis of psoriasis.

14 PATIENT 2

15 36. According to his records, Respondent encountered Patient 2 on the 24/7 Call-a-Doc  
16 telemedicine platform on one occasion, October 12, 2017.

17 37. A "Health Profile" in her chart reflects that she was at the time a 59-year-old<sup>4</sup> female,  
18 with a date of birth of February 5, 1959 and a residence address in Craig, Colorado.<sup>5</sup> The Health  
19 Profile records the patient's height as 4 feet 11 inches, and her weight as 210 pounds, a  
20 tetracycline allergy, and the current use of the following drugs: Lantus, Humalog, and Metformin.

21 38. The chart also contains a "Consultation Summary" dated October 12, 2017, whose  
22 contents were presumptively added by the 24/7 Call-a-Doc nurse. This document bears the

23  
24 <sup>3</sup> The prescriptions contain no pharmacy name, but list only a FAX number of 844-432-  
25 9867, which is associated with the Imperial Point Pharmacy, at 6401 North Federal Highway, in  
Fort Lauderdale, Florida. The drugs thus prescribed would presumably have been shipped from  
Florida to California.

26 <sup>4</sup> Assuming the date of birth to be correct, Patient 2 was 59 years of age, not 61 (as  
27 recorded on the Health Profile) nor 58 (as recorded on the Consultation Summary.)

28 <sup>5</sup> When the patient was located and questioned, she stated actually resided at the time in  
Oroville, California.

1 electronic signature of Respondent the following day, October 13, 2017. It lists the "Chief  
2 Complaint" as "Pain (Lidocaine & Fenorthol) & Omeprazole." The Consultation Summary  
3 documents the patient's complaint of "aching" pain in her "back and hip," 8 on a scale of 10,  
4 experienced "constantly" for "years," and which was "getting worse." Asked how the problem  
5 began, the response was "not sure." The Consultation Summary further records that the patient  
6 had not consulted other medical professionals about her problem and had not tried other  
7 medications for this condition. Finally, the form contained a printed inquiry: "acid reflux product  
8 request?" to which the recorded answer was "yes," further replying that acid reflux occurred  
9 constantly but that she had not consulted other medical professions about this problem and had  
10 tried no medications to address it.

11 39. Respondent's documented "Impression / Diagnosis" is listed as "pain in limb,"  
12 without elaboration. Contradictorily, an ICD-9 diagnosis code lists "Pain, low back."

13 40. Finally, the chart contains faxed prescriptions for:

- 14 • Fenorthol 200mg (Fenoprofen Calcium) Capsules #200, to be taken 1 - 2 capsules four  
15 times a day (25 days' supply), with two refills.
- 16 • Lidocaine Ointment 5% 50gm with instructions to apply one gram to affected area(s)  
17 two times per day (25 days' supply), with two refills.
- 18 • Omeprazole and Sodium Bicarbonate 40mg, with instructions to take 1 40mg capsule  
19 daily (30 days' supply), with 2 refills.

20 41. The medical record for Patient 2 fails to document any findings or reasoning  
21 supporting the prescription of a topical prescription analgesic (lidocaine ointment), or an  
22 uncommonly used prescription anti-inflammatory (Fenoprofen) for her back pain, rather than oral  
23 non-prescription non-steroidal anti-inflammatory drugs, such as ibuprofen or naproxen.

#### 24 PATIENT 3

25 42. Respondent encountered Patient 3 on the 24/7 Call-a-Doc telemedicine platform on  
26 three occasions: October 25, October 27, and November 30, 2017.

#### 27 1st Encounter, October 25, 2017

1        43. A "Health Profile" in his chart reflects that Patient 3 was at the time a 46-year-old<sup>6</sup>  
2 male, with a date of birth of February 25, 1972, and a residence address in Simi Valley,  
3 California. The Health Profile records the Patient's height as 6 feet and his weight as 195 pounds,  
4 with a history of neck fusion.

5        44. The chart also contains a "Consultation Summary" dated October 25, 2017, whose  
6 contents were presumptively added by the 24/7 Call-a-Doc nurse. This document bears the  
7 electronic signature of Respondent five days later, on October 30, 2017. It lists the "Chief  
8 Complaint" as "Pain (Lidocaine & Fenortho) & Omeprazole Request."

9        45. The Consultation Summary documents the patient's complaint of "aching" pain in his  
10 "back neck" with pain of 10 on a scale of 10, experienced constantly for five years, and which  
11 was getting worse. Asked how the problem began, the response was "work-related." The  
12 Consultation Summary further records that the Patient had consulted other medical professionals  
13 with a diagnosis of "pinched nerve." Lifting makes the pain worse. He reported having used  
14 lidocaine for pain relief, as well as rest, exercise, and prescription medications. Finally, the form  
15 contained this printed inquiry: "acid reflux product request?" to which the recorded answer was  
16 "yes," further replying that acid reflux occurred constantly, and that he had tried no medications  
17 to address it.

18        46. Respondent's "Impression / Diagnosis" is listed as "pain in limb," without elaboration.  
19 Contradictorily, an ICD-9 diagnosis code lists "Pain, low back."

20        47. Finally, the chart contains faxed prescriptions dated October 30, 2017, for:

- 21        • Fenortho 200mg (Fenoprofen Calcium) Capsules #200, to be taken 1 - 2 capsules four  
22        times a day (25 days' supply), with two refills.
- 23        • Lidocaine Ointment 5% 50gm with instructions to apply one gram to affected area(s)  
24        two times per day (25 days' supply), with two refills.
- 25        • Omeprazole and Sodium Bicarbonate 40mg, with instructions to take 1 40mg capsule  
26        daily (30 days' supply), with two refills.

27        <sup>6</sup> Assuming the date of birth to be correct, Patient 3 was 46 years of age, not 48 (as  
28        recorded on the Health Profile) nor 45 (as recorded on the Consultation Summary).



1        2nd Encounter, October 27, 2017

2        48. Patient 3's second encounter with Respondent was on October 27, 2017. A  
3 "Consultation Summary" for that date lists the "Chief Complaint" as "DME - TENS Unit." This  
4 document bears the undated electronic signature of Respondent.

5        49. The Consultation Summary documents the Patient's complaint of "sharp" pain in his  
6 "back" with pain of 10 on a scale of 10, accompanied by extremity weakness, experienced  
7 constantly for more than 180 days, and which was getting worse. Lifting makes the pain worse.  
8 He reported having used hydrocodone in the past for pain relief.

9        50. Respondent's "Impression / Diagnosis" is listed as by reference to ICD-9 diagnosis  
10 codes: M54.9, M51.16, M54.5, and M54.6.<sup>7</sup>

11        51. The plan is "prescribed TENS unit for pain relief in conjunction with current  
12 treatment."<sup>8</sup>

13        52. On the same day, October 27, 2017, Respondent recorded his plan to prescribe a back  
14 brace to aid with movement and promote stabilization and to prescribe a cervical posture pump<sup>9</sup>  
15 to promote pain relief in conjunction with current treatment.

16        53. The patient's chart contains three DME [durable medical equipment] letters of  
17 medical necessity electronically signed by Respondent on October 30, 2017, for the use of a

18        //

19        <sup>7</sup> The ICD Codes referenced in the case of Patient 3 include M54.9 (Dorsalgia,  
20 unspecified); M51.16 (Intervertebral disc disorders with radiculopathy, lumbar region); M54.5  
(low back pain or lumbago); M54.6 (pain in thoracic spine).

21        <sup>8</sup> TENS Unit – Transcutaneous electrical nerve stimulation (TENS) is a therapy that uses  
22 low voltage electrical current to provide pain relief. A TENS unit consists of a battery-powered  
23 device that delivers electrical impulses through electrodes placed on the surface of the skin at or  
24 near nerves where the pain is located or at trigger points. It is thought that the electric current  
25 stimulates nerve cells that block the transmission of pain signals, modifying the perception of  
pain and/or that nerve stimulation raises the level of endorphins, which are the body's natural  
pain-killing chemical, which in turn block the perception of pain. TENS therapy has been used or  
is being studied to relieve both pain from arthritis, fibromyalgia, tendinitis, bursitis, low back  
pain, and other conditions.

26        <sup>9</sup> A Cervical Posture Pump is a device that promotes appropriate positioning of the head  
27 and neck with an inflated cushion that stretches the head and neck joint, to relieve stiffness and  
28 promote flexibility by allowing for better joint separation than standard traction devices or  
activities.

1 TENS unit, a LSO<sup>10</sup> back brace, and a cervical posture pump.<sup>11</sup> The DME letters of medical  
2 necessity described the patient's chronic / intractable pain as severe and the assessment as  
3 guarded. However, the section of assessment objective findings (orthopedic findings/test(s),  
4 AROM/PROM's<sup>12</sup>, muscle spasms/guarding, radiographic findings, sensory responses - L/R  
5 upper extremity, lower extremity) were all left blank.

6 3rd Encounter, November 30, 2017

7 54. Patient 3's third and final encounter with Respondent was on November 30, 2017. A  
8 "Consultation Summary" for that date lists the "Chief Complaint" as "Calcipotriene Request."  
9 This document bears an electronic signature of Respondent on December 5, 2017.

10 55. The Consultation Summary documents the patient's complaint of a scar on his neck  
11 with a size of 4 inches resulting from surgery. In addition, he had dry, cracked skin on his hands  
12 and feet.

13 56. Respondent's "Impression / Diagnosis" is listed simply as "scar."

14 57. Finally, the chart contains a faxed prescription dated December 5, 2017, for  
15 Calcipotriene 0.005% Cream (Vitamin D3), 120 grams (30 days' supply), to be applied 1 - 2  
16 grams topically twice daily, with two refills.

17 58. The medical record for the patient fails to document any findings or reasoning  
18 supporting the prescription of a topical prescription analgesic (lidocaine ointment), or an  
19 uncommonly used prescription anti-inflammatory (Fenoprofen) for his back pain, rather than oral  
20 non-prescription non-steroidal anti-inflammatory drugs, such as ibuprofen or naproxen.

21 <sup>10</sup> LSO stands for Lumbar Sacral Orthosis, a rigid two-piece back brace extending from  
22 just below the breast bones down to the pelvis. It is used to stabilize the spine after surgery or in  
the event of a spinal fracture or injury to promote healing and decrease pain.

23 <sup>11</sup> Each of the DME Letters of Medical Necessity listed Respondent's address as 8920  
24 Wilshire Boulevard, Suite 310, Beverly Hills, California, the address of the Telemedicine  
Corporation (aka 24/7 Call-A-Doc), rather than his own office in Kansas City, Missouri.

25 <sup>12</sup> AROM & PROM are medical abbreviations. AROM refers to Active Range of Motion,  
26 and PROM to Passive Range of Motion. AROM means how far the patient can move a joint in  
27 any given direction without assistance. By contrast, PROM is assessed to determine the amount  
of movement possible at a joint. It is measured when the patient is relaxed, and a doctor, athletic  
28 trainer, or physical therapist moves the joint to the extreme end ROM to attain the maximum  
range existing for that joint.

59. The medical record for Patient 3 fails to document any findings or reasoning supporting treating the scar with topical prescription medication (Calcipotriene 0.005% cream<sup>13</sup>) rather than injection of the scar with a corticosteroid or fluorouracil, an anti-cancer medicine.

**FIRST CAUSE FOR DISCIPLINE**

(Failure to Maintain Adequate and Accurate Records)

60. By reason of the facts set forth in paragraphs 29 through 35 (Patient 1), 36 through 41 (Patient 2), and 42 through 59 (Patient 3) above, Respondent is subject to disciplinary action under Code section 2266 for failure to maintain adequate and accurate medical records for Patients 1, 2, and 3.

PATIENT 1

61. In the case of Patient 1, a 41-year-old 5-foot-tall woman weighing 160 pounds, complaining of "pain," of maximum intensity in her "shoulder and hands" (alternatively, but contradictorily, described as "pain in limb") experienced occasionally for years, there was no documentation of an effort by Respondent to determine the cause of her pain, or even its location (for example, which shoulder, or which limb). No diagnosis was recorded, only a repetition of the presenting complaint: "pain in limb", again without any elaboration as to which limb was painful. On the basis of that, both oral and topical pain remedies were prescribed. A presumptive, but undocumented, diagnosis of psoriasis was apparently achieved (based on Respondent's explanation at the subject interview), but without any ability on his part to observe or to document the appearance of her rash, nor its onset, duration, symptoms, or any other features to support such a diagnosis or course of treatment.

## PATIENT 2

62. In the case of Patient 2, a 50-year-old 4 foot, 11-inch, 210-pound lady, complaining of pain in her "back and hip" 8 on a scale of 10, experienced constantly for years, and getting worse, there was no documentation of an effort by Respondent to determine the cause of her pain, or even its location. Her actual age of 59 years was not computed from her date of birth but rather

<sup>13</sup> Calcipotriene is FDA-approved for the treatment of psoriasis and can be used off-label for other skin conditions such as vitiligo.

1 misstated twice as 58 and 61 years. Her state of residence was misstated as Colorado rather than  
2 California. The "Chief Complaint" contained a specific medication request, almost certainly  
3 provided by the 24/7 Call-A-Doc nurse, rather than the patient herself. No diagnosis was  
4 recorded, only a repetition of the presenting complaint: "pain in limb," again without any  
5 elaboration as to which limb was painful. Contradictorily, Respondent recorded an ICD-9  
6 diagnosis code, "Pain, low back." Despite such symptoms, the medical record reflects no  
7 consideration of a referral to orthopedics, nor any exploration of the disparity of her height and  
8 weight, almost certainly indicative of morbid obesity, in what was otherwise described as a  
9 healthy 59-year-old female. Respondent failed to document any findings or reasoning supporting  
10 his prescription of a topical analgesic (lidocaine ointment), or an uncommonly used prescription  
11 anti-inflammatory (Fenoprofen) for her back pain, rather than oral non-prescription non-steroidal  
12 anti-inflammatory drugs, such as ibuprofen or naproxen.

13 PATIENT 3

14 63. In the case of Patient 3, a 46-year-old male with a history of neck fusion, complaining  
15 of pain in his "back neck" 10 on a scale of 10, experienced constantly for five years, with  
16 extremity weakness, that was getting worse. Against the backdrop of having had a prior medical  
17 diagnosis of a "pinched nerve," there was no documentation of an effort by Respondent to  
18 determine the cause of the patient's pain, or even its location, variously recorded as a limb, in the  
19 low back, in the neck or the mid-back ('thoracic spine'). The patient's actual age of 46 years was  
20 not computed from his date of birth, but rather misstated twice as 48 and 45 years. The "Chief  
21 Complaint" on the first encounter contained a specific medication request (Lidocaine & Fenortho  
22 & Omeprazole), almost certainly provided by the 24/7 Call-A-Doc nurse, rather than the patient  
23 himself. As with Patient 1, Respondent failed to record a diagnosis, but only a repetition of the  
24 presenting complaint: "pain in limb," again without any elaboration as to which limb was painful.  
25 Contradictorily, Respondent recorded an ICD-9 diagnosis code, "Pain, low back." Despite such  
26 significant and persistent symptoms, the medical record reflects fail to reflect any consideration  
27 of a referral to orthopedics. Respondent further failed to document any findings or reasoning

1 supporting his prescription of a topical analgesic (lidocaine ointment), or an uncommonly used  
2 prescription anti-inflammatory (Fenoprophèn) for his back pain, rather than oral non-prescription  
3 non-steroidal anti-inflammatory drugs, such as ibuprofen or naproxen.

4 64. On the presentation of Patient 3 two days later, on October 27, 2017, again, the  
5 "Chief Complaint," rather than stating a medical complaint, contained the words "DME – TENS  
6 Unit" instead. On this occasion, the "Impression / Diagnosis" was expanded to include Dorsalgia,  
7 that is, back pain, intervertebral disc disorder with radiculopathy (that is, with a pinched nerve), in  
8 the lumbar region, and pain in the low back and thoracic spine. Respondent proceeded to prepare  
9 letters of medical necessity for a TENS unit, a LSO back brace, and a cervical posture pump, but  
10 left blank any objective findings, ranges of motion, the presence or absence of muscle spasms or  
11 guarding, radiographic or sensory responses, or sensations in the upper or lower extremities. The  
12 medical record for Patient 3 fails to document any findings or reasoning supporting the  
13 prescription of a topical prescription analgesic (lidocaine ointment), or an uncommonly used  
14 prescription anti-inflammatory (Fenoprofen) for his back pain, rather than oral non-prescription  
15 non-steroidal anti-inflammatory drugs, such as ibuprofen or naproxen.

16 65. On the presentation of Patient 3 the third time on November 30, 2017, again, the  
17 "Chief Complaint," rather than stating a medical complaint, instead contained a drug request  
18 ("Calcipotriene Request"). On this occasion, the "Impression / Diagnosis" was listed as "scar,"  
19 but with no further explanation than it was 4 inches in size and had resulted from surgery  
20 (presumptively -- based on a prior medical history on the first visit -- the result of neck fusion  
21 surgery.) Respondent prescribed Calcipotriene 0.005% cream, a drug used to treat psoriasis. The  
22 medical record fails to document any findings or reasoning supporting treating Patient 3's scar  
23 with topical prescription medication, rather than injection of the scar with a corticosteroid or  
24 fluorouracil, an anti-cancer medicine, nor any consideration given to referral of the Patient to a  
25 plastic or cosmetic surgeon.

26 66. Taken together, Respondent's record-keeping for Patients 1, 2, and 3 was neither  
27 adequate nor accurate. They reflect a persistent inattention to detail, a lack of interest or curiosity

1 about the origins or cause of the patients' conditions, a persistent failure to obtain a sufficient  
2 amount of information to permit a rational diagnosis, or to institute an evidence-based course of  
3 treatment to address, if possible, the underlying pathology, but instead aimed at simply  
4 suppressing symptoms. In each instance, the "Chief Complaint" contained a specific medication  
5 request, almost certainly provided by the 24/7 Call-A-Doc nurse, rather than by the patients  
6 themselves. Diagnoses recorded are either deficient or altogether absent. Moreover, reasoning  
7 supportive of the medications or devices prescribed is absent.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct)

10 67. By reason of the facts set forth in the First Cause for Discipline, Respondent is  
11 subject to disciplinary action under Code section 2234 for unprofessional conduct in his care and  
12 treatment of Patients 1, 2, and 3.

13 **PRAYER**

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

16 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 139597,  
17 issued to Respondent, Frederick Scott Dattel, M.D.;

18 2. Revoking, suspending or denying approval of Respondent's authority to supervise  
19 physician assistants and advanced practice nurses;

20 3. Ordering Respondent, Frederick Scott Dattel, M.D., to pay the Board reasonable costs  
21 of investigation and prosecution incurred after January 1, 2022.

22 4. If placed on probation, ordering him to pay the Board the costs of probation  
23 monitoring; and

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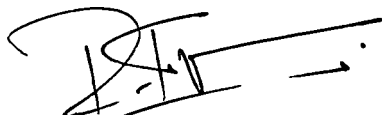
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5. Taking such other and further action as deemed necessary and proper.

DATED: JAN 13 2023



REJI VARGHESE  
Deputy Director  
Medical Board of California  
Department of Consumer Affairs  
State of California

*Complainant*

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