

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

In the Matter of the First Amended
Accusation Against:

Steven Jay Marcus, M.D.

Physician's and Surgeon's
Certificate No. G 33630

Respondent.

Case No.: 800-2019-062386

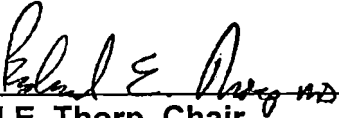
DECISION

The attached Stipulated Settlement and Disciplinary 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 October 20, 2023.

IT IS SO ORDERED: September 21, 2023.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, Chair
Panel B

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
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Attorneys for Complainant
7

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

12 In the Matter of the First Amended Accusation
Against:

13 STEVEN JAY MARCUS, M.D.
14 10647 Wilkins Avenue, # 306
Los Angeles, CA 90024-6090
15 Physician's and Surgeon's Certificate
16 No. G 33630,

17 Respondent.

Case No. 800-2019-062386

OAH No. 2023010194

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 **PARTIES**

22 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Rebecca L. Smith, Deputy
25 Attorney General.

26 2. Steven Jay Marcus, M.D. (Respondent) is represented in this proceeding by attorney
27 Peter R. Osinoff, whose address is 355 South Grand Avenue, Suite 1750, Los Angeles, California
28 90071.

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in First Amended
3 Accusation No. 800-2019-062386, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate.

5 10. Respondent does not contest that, at an administrative hearing, Complainant could
6 establish a prima facie case with respect to the charges and allegations in First Amended
7 Accusation No. 800-2019-062386, a true and correct copy of which is attached hereto as Exhibit
8 A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 33630 to
9 disciplinary action.

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

13 CONTINGENCY

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

24 13. Respondent agrees that if he ever petitions for early termination or modification of
25 probation, or if an accusation and/or petition to revoke probation is filed against him before the
26 Board, all of the charges and allegations contained in First Amended Accusation No. 800-2019-
27 062386 shall be deemed true, correct and fully admitted by Respondent for purposes of any such
28 proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 33630 issued
9 to Respondent Steven Jay Marcus, M.D. is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for three (3) years on the following terms and conditions:

11 1. **EDUCATION COURSE.** Within sixty (60) calendar days of the effective date of this
12 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
13 for its prior approval educational program(s) or course(s) which shall not be less than forty (40)
14 hours per year, for each year of probation. The educational program(s) or course(s) shall be
15 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified.
16 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition
17 to the Continuing Medical Education (CME) requirements for renewal of licensure. Following
18 the completion of each course, the Board or its designee may administer an examination to test
19 Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-
20 five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

21 2. **PRESCRIBING PRACTICES COURSE.** Within sixty (60) calendar days of the
22 effective date of this Decision, Respondent shall enroll in a course in prescribing practices
23 approved in advance by the Board or its designee. Respondent shall provide the approved course
24 provider with any information and documents that the approved course provider may deem
25 pertinent. Respondent shall participate in and successfully complete the classroom component of
26 the course not later than six (6) months after Respondent's initial enrollment. Respondent shall
27 successfully complete any other component of the course within one (1) year of enrollment. The
28 prescribing practices course shall be at Respondent's expense and shall be in addition to the

1 Continuing Medical Education (CME) requirements for renewal of licensure.

2 A prescribing practices course taken after the acts that gave rise to the charges in the First
3 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
4 the Board or its designee, be accepted towards the fulfillment of this condition if the course would
5 have been approved by the Board or its designee had the course been taken after the effective date
6 of this Decision.

7 Respondent shall submit a certification of successful completion to the Board or its
8 designee not later than fifteen (15) calendar days after successfully completing the course, or not
9 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

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

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

24 Respondent shall submit a certification of successful completion to the Board or its
25 designee not later than fifteen (15) calendar days after successfully completing the course, or not
26 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

27 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar
28 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,

1 that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
2 Respondent shall participate in and successfully complete that program. Respondent shall
3 provide any information and documents that the program may deem pertinent. Respondent shall
4 successfully complete the classroom component of the program not later than six (6) months after
5 Respondent's initial enrollment, and the longitudinal component of the program not later than the
6 time specified by the program, but no later than one (1) year after attending the classroom
7 component. The professionalism program shall be at Respondent's expense and shall be in
8 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

9 A professionalism program taken after the acts that gave rise to the charges in the First
10 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
11 the Board or its designee, be accepted towards the fulfillment of this condition if the program
12 would have been approved by the Board or its designee had the program been taken after the
13 effective date of this Decision.

14 Respondent shall submit a certification of successful completion to the Board or its
15 designee not later than fifteen (15) calendar days after successfully completing the program or not
16 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

17 5. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
18 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
19 where: 1) Respondent merely shares office space with another physician but is not affiliated for
20 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
21 location.

22 If Respondent fails to establish a practice with another physician or secure employment in
23 an appropriate practice setting within sixty (60) calendar days of the effective date of this
24 Decision, Respondent shall receive a notification from the Board or its designee to cease the
25 practice of medicine within three (3) calendar days after being so notified. Respondent shall not
26 resume practice until an appropriate practice setting is established.

27 If, during the course of the probation, Respondent's practice setting changes and
28 Respondent is no longer practicing in a setting in compliance with this Decision, Respondent

1 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
2 If Respondent fails to establish a practice with another physician or secure employment in an
3 appropriate practice setting within sixty (60) calendar days of the practice setting change,
4 Respondent shall receive a notification from the Board or its designee to cease the practice of
5 medicine within three (3) calendar days after being so notified. Respondent shall not resume
6 practice until an appropriate practice setting is established.

7 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision,
8 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
9 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
10 extended to Respondent, at any other facility where Respondent engages in the practice of
11 medicine, including all physician and locum tenens registries or other similar agencies, and to the
12 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
13 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
14 fifteen (15) calendar days.

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

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

19 8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
20 ordered to reimburse the Board its costs of investigation and enforcement, in the amount of
21 \$33,978.00 (thirty-three thousand nine hundred seventy-eight dollars and no cents). Costs shall
22 be payable to the Medical Board of California. Failure to pay such costs shall be considered a
23 violation of probation.

24 Payment must be made in full within thirty (30) calendar days of the effective date of the
25 Order, or by a payment plan approved by the Medical Board of California. Any and all requests
26 for a payment plan shall be submitted in writing by Respondent to the Board. Failure to comply
27 with the payment plan shall be considered a violation of probation.

28 The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility

1 to repay investigation and enforcement costs.

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

5 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
6 the end of the preceding quarter.

7 10. GENERAL PROBATION REQUIREMENTS.

8 Compliance with Probation Unit

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

10 Address Changes

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

16 Place of Practice

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

20 License Renewal

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

23 Travel or Residence Outside California

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

27 In the event Respondent should leave the State of California to reside or to practice
28 Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the

1 dates of departure and return.

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

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

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

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

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

27 Periods of non-practice for a Respondent residing outside of California will relieve
28 Respondent of the responsibility to comply with the probationary terms and conditions with the

1 exception of this condition and the following terms and conditions of probation: Obey All Laws;
2 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
3 Controlled Substances; and Biological Fluid Testing.

4 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
5 obligations (e.g., restitution, probation costs) not later than one-hundred twenty (120) calendar
6 days prior to the completion of probation. This term does not include cost recovery, which is due
7 within thirty (30) calendar days of the effective date of the Order, or by a payment plan approved
8 by the Medical Board and timely satisfied. Upon successful completion of probation,
9 Respondent's certificate shall be fully restored.

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

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

27 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
28 with probation monitoring each and every year of probation, as designated by the Board, which

1 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
2 California and delivered to the Board or its designee no later than January 31 of each calendar
3 year.

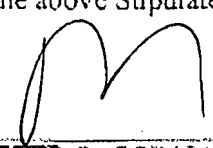
4 17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
5 a new license or certification, or petition for reinstatement of a license, by any other health care
6 licensing action agency in the State of California, all of the charges and allegations contained in
7 First Amended Accusation No. 800-2019-062386 shall be deemed to be true, correct, and
8 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
9 seeking to deny or restrict license.

10
11 ACCEPTANCE

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

17
18 DATED: 07-06-2023 
19 STEVEN JAY MARCUS, M.D.
20 Respondent

21 I have read and fully discussed with Respondent Steven Jay Marcus, M.D. the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
23 I approve its form and content.

24 DATED: 7/7/2023 
25 PETER R. OSINOFF
26 Attorney for Respondent
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ENDORSEMENT

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

DATED: July 7, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the First Amended Accusation
12 Against:

13 **STEVEN JAY MARCUS, M.D.**
14 **10647 Wilkins Avenue, Apt. 306**
Los Angeles, CA 90024-6090

15 **Physician's and Surgeon's**
16 **Certificate No. G 33630,**

17 Respondent.

OAH Case No. 20233010194

Case No. 800-2019-062386

FIRST AMENDED ACCUSATION

18 **PARTIES**

19 1. Reji Varghese (Complainant) brings this First Amended Accusation solely in his
20 official capacity as the Interim Executive Director of the Medical Board of California,
21 Department of Consumer Affairs (Board).

22 2. On or about February 28, 1977, the Board issued Physician's and Surgeon's
23 Certificate Number G 33630 to Steven Jay Marcus, M.D. (Respondent). That license was in full
24 force and effect at all times relevant to the charges brought herein and will expire on July 31,
25 2024, unless renewed.

26 **JURISDICTION**

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

1 unless otherwise indicated.

2 4. Section 2004 of the Code states:

3 The board shall have the responsibility for the following:

4 (a) The enforcement of the disciplinary and criminal provisions of the Medical
5 Practice Act.

6 (b) The administration and hearing of disciplinary actions.

7 (c) Carrying out disciplinary actions appropriate to findings made by a panel or
8 an administrative law judge.

9 (d) Suspending, revoking, or otherwise limiting certificates after the conclusion
10 of disciplinary actions.

11 (e) Reviewing the quality of medical practice carried out by physician and
12 surgeon certificate holders under the jurisdiction of the board.

13 (f) Approving undergraduate and graduate medical education programs.

14 (g) Approving clinical clerkship and special programs and hospitals for the
15 programs in subdivision (f).

16 (h) Issuing licenses and certificates under the board's jurisdiction.

17 (i) Administering the board's continuing medical education program.

18 5. Section 2220 of the Code states:

19 Except as otherwise provided by law, the board may take action against all
20 persons guilty of violating this chapter. The board shall enforce and administer this
21 article as to physician and surgeon certificate holders, including those who hold
22 certificates that do not permit them to practice medicine, such as, but not limited to,
23 retired, inactive, or disabled status certificate holders, and the board shall have all the
24 powers granted in this chapter for these purposes including, but not limited to:

25 (a) Investigating complaints from the public, from other licensees, from health
26 care facilities, or from the board that a physician and surgeon may be guilty of
27 unprofessional conduct. The board shall investigate the circumstances underlying a
28 report received pursuant to Section 805 or 805.01 within 30 days to determine if an
interim suspension order or temporary restraining order should be issued. The board
shall otherwise provide timely disposition of the reports received pursuant to Section
805 and Section 805.01.

(b) Investigating the circumstances of practice of any physician and surgeon
where there have been any judgments, settlements, or arbitration awards requiring the
physician and surgeon or his or her professional liability insurer to pay an amount in
damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with
respect to any claim that injury or damage was proximately caused by the physician's
and surgeon's error, negligence, or omission.

(c) Investigating the nature and causes of injuries from cases which shall be
reported of a high number of judgments, settlements, or arbitration awards against a

1 physician and surgeon.

2 6. Section 2227 of the Code states:

3 (a) A licensee whose matter has been heard by an administrative law judge of
4 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
5 Code, or whose default has been entered, and who is found guilty, or who has entered
6 into a stipulation for disciplinary action with the board, may, in accordance with the
7 provisions of this chapter:

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

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

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

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

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

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

24 STATUTORY PROVISIONS

25 7. Section 2234 of the Code, states:

26 The board shall take action against any licensee who is charged with
27 unprofessional conduct. In addition to other provisions of this article, unprofessional
28 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

1 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
2 licensee's conduct departs from the applicable standard of care, each departure
3 constitutes a separate and distinct breach of the standard of care.

4 (d) Incompetence.

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

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

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

12 8. Section 2266 of the Code, states:

13 The failure of a physician and surgeon to maintain adequate and accurate
14 records relating to the provision of services to their patients constitutes unprofessional
15 conduct.

16 9. Section 2285 of the Code states:

17 The use of any fictitious, false, or assumed name, or any name other than his or
18 her own by a licensee either alone, in conjunction with a partnership or group, or as
19 the name of a professional corporation, in any public communication, advertisement,
20 sign, or announcement of his or her practice without a fictitious-name permit obtained
21 pursuant to Section 2415 constitutes unprofessional conduct. This section shall not
22 apply to the following:

23 (a) Licensees who are employed by a partnership, a group, or a professional
24 corporation that holds a fictitious name permit.

25 (b) Licensees who contract with, are employed by, or are on the staff of, any
26 clinic licensed by the State Department of Health Services under Chapter 1
27 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

28 (c) An outpatient surgery setting granted a certificate of accreditation from an
accreditation agency approved by the medical board.

(d) Any medical school approved by the division or a faculty practice plan
connected with the medical school.

10. Section 2286 of the Code states:

It shall constitute unprofessional conduct for any licensee to violate, to attempt
to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to
violate any provision or term of Article 18 (commencing with Section 2400), of the
Moscone-Knox Professional Corporation Act (Part 4 commencing with Section
13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and
regulations duly adopted under those laws.

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///

1 11. Section 2400 of the Code states:

2 Corporations and other artificial legal entities shall have no professional rights,
3 privileges, or powers. However, the Division of Licensing may in its discretion, after
4 such investigation and review of such documentary evidence as it may require, and
5 under regulations adopted by it, grant approval of the employment of licensees on a
6 salary basis by licensed charitable institutions, foundations, or clinics, if no charge for
7 professional services rendered patients is made by any such institution, foundation, or
8 clinic.

9 12. Section 2407 of the Code states:

10 A medical or podiatry corporation shall be subject to the provisions of Sections
11 2285 and 2415.

12 13. Section 2408 of the Code states:

13 Except as provided in Sections 13401.5 and 13403 of the Corporations Code,
14 each shareholder, director and officer of a medical or podiatry corporation, except an
15 assistant secretary or an assistant treasurer, shall be a licensed person as defined
16 in Section 13401 of the Corporations Code.

17 Notwithstanding the provisions of this section or Sections 13401.5, 13403,
18 13406, and 13407 of the Corporations Code, a shareholder of a medical corporation
19 which renders professional services may be a medical corporation which has only one
20 shareholder who shall be a licensed person as defined in Section 13401 of the
21 Corporations Code. The shareholder of the latter corporation may be an officer or
22 director of the former corporation.

23 Nothing in this section shall be construed as prohibiting a nonlicensed person
24 from using the business titles of executive vice president, chief executive officer,
25 executive secretary, or any other title denoting an administrative function within the
26 professional corporation.

27 14. Section 2410 of the Code, states:

28 A medical or podiatry corporation shall not do or fail to do any act the doing of
which or the failure to do which would constitute unprofessional conduct under any
statute or regulation now or hereafter in effect. In the conduct of its practice, it shall
observe and be bound by such statutes and regulations to the same extent as a licensee
under this chapter.

15. Section 2415 of the Code states:

(a) Any physician and surgeon or any doctor of podiatric medicine, as the case
may be, who as a sole proprietor, or in a partnership, group, or professional
corporation, desires to practice under any name that would otherwise be a violation of
Section 2285 may practice under that name if the proprietor, partnership, group, or
corporation obtains and maintains in current status a fictitious-name permit issued by
the Division of Licensing, or, in the case of doctors of podiatric medicine, the
California Board of Podiatric Medicine, under the provisions of this section.

(b) The division or the board shall issue a fictitious-name permit authorizing the
holder thereof to use the name specified in the permit in connection with his, her, or

1 its practice if the division or the board finds to its satisfaction that:

2 (1) The applicant or applicants or shareholders of the professional corporation
3 hold valid and current licenses as physicians and surgeons or doctors of podiatric
4 medicine, as the case may be.

5 (2) The professional practice of the applicant or applicants is wholly owned and
6 entirely controlled by the applicant or applicants.

7 (3) The name under which the applicant or applicants propose to practice is not
8 deceptive, misleading, or confusing.

9 (c) Each permit shall be accompanied by a notice that shall be displayed in a
10 location readily visible to patients and staff. The notice shall be displayed at each
11 place of business identified in the permit.

12 (d) This section shall not apply to licensees who contract with, are employed
13 by, or are on the staff of, any clinic licensed by the State Department of Health
14 Services under Chapter 1 (commencing with Section 1200) of Division 2 of the
15 Health and Safety Code or any medical school approved by the division or a faculty
16 practice plan connected with that medical school.

17 (e) Fictitious-name permits issued under this section shall be subject to Article
18 19 (commencing with Section 2421) pertaining to renewal of licenses.

19 (f) The division or the board may revoke or suspend any permit issued if it finds
20 that the holder or holders of the permit are not in compliance with the provisions of
21 this section or any regulations adopted pursuant to this section. A proceeding to
22 revoke or suspend a fictitious-name permit shall be conducted in accordance with
23 Section 2230.

24 (g) A fictitious-name permit issued to any licensee in a sole practice is
25 automatically revoked in the event the licensee's certificate to practice medicine or
26 podiatric medicine is revoked.

27 (h) The division or the board may delegate to the executive director, or to
28 another official of the board, its authority to review and approve applications for
fictitious-name permits and to issue those permits.

(i) The California Board of Podiatric Medicine shall administer and enforce this
section as to doctors of podiatric medicine and shall adopt and administer regulations
specifying appropriate podiatric medical name designations.

16. Section 13400 of the Corporations Code states, in pertinent part:

This part shall be known and may be cited as the "Moscone-Knox Professional
Corporations Act."

17. Section 13401 of the Corporations Code states, in pertinent part:

(a) "Professional services" means any type of professional services that may be
lawfully rendered only pursuant to a license, certification, or registration authorized
by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) "Professional Corporation" means a corporation organized under the

1 General Corporation Law or pursuant to subdivision (b) of Section 13406 that is
2 engaged in rendering professional services in a single profession, except as otherwise
3 authorized in Section 13401.5...

4 18. Section 13409 of the California Corporations Code, states:

5 (a) A professional corporation may adopt any name permitted by a law
6 expressly applicable to the profession in which such corporation is engaged or by a
7 rule or regulation of the governmental agency regulating such profession. The
8 provisions of subdivision (b) of Section 201 shall not apply to the name of a
9 professional corporation if such name shall contain and be restricted to the name or
10 the last name of one or more of the present, prospective, or former shareholders or of
11 persons who were associated with a predecessor person, partnership or other
12 organization or whose name or names appeared in the name of such predecessor
13 organization, and the Secretary of State shall have no authority by reason of
14 subdivision (b) of Section 201 to refuse to file articles of incorporation which set
15 forth such a name; provided, however, that such name shall not be substantially the
16 same as the name of a domestic corporation, the name of a foreign corporation
17 qualified to render professional services in this state which is authorized to transact
18 business in this state, or a name which is under reservation for another corporation.
19 The Secretary of State may require proof by affidavit or otherwise establishing that
20 the name of the professional corporation complies with the requirements of this
21 section and of the law governing the profession in which such professional
22 corporation is engaged. The statements of fact in such affidavits may be accepted by
23 the Secretary of State as sufficient proof of the facts.

24 ...

25 19. Section 13410 of the California Corporations Code, states:

26 (a) A professional corporation or a foreign professional corporation qualified to
27 render professional services in this state shall be subject to the applicable rules and
28 regulations adopted by, and all the disciplinary provisions of the Business and
Professions Code expressly governing the practice of the profession in this state, and
to the powers of, the governmental agency regulating the profession in which such
corporation is engaged. Nothing in this part shall affect or impair the disciplinary
powers of any such governmental agency over licensed persons or any law, rule or
regulation pertaining to the standards for professional conduct of licensed persons or
to the professional relationship between any licensed person furnishing professional
services and the person receiving such services.

...

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

20. Code section 4021 states:

"Controlled substance" means any substance listed in Chapter 2 (commencing
with Section 11053) of Division 10 of the Health and Safety Code.

21. Code section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for

1 self-use in humans or animals, and includes the following:

2 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
3 without prescription," "Rx only," or words of similar import.

4 (b) Any device that bears the statement: "Caution: federal law restricts this
5 device to sale by or on the order of a _____," "Rx only," or words of similar
6 import, the blank to be filled in with the designation of the practitioner licensed to use
7 or order use of the device.

8 (c) Any other drug or device that by federal or state law can be lawfully
9 dispensed only on prescription or furnished pursuant to Section 4006.

10 REGULATORY PROVISIONS

11 22. California Code of Regulations, Title 16, section 1343 states as follows:

12 A professional corporation shall comply with the following provisions:

13 (a) The corporation is organized and exists pursuant to the general corporation
14 law and is a professional corporation within the meaning of the Moscone-Knox
15 Professional Corporations Act (Corporations Code Section 13400 et seq.).

16 (b) Each shareholder, director or officer (except as provided in Section 13403
17 of the Corporations Code and Section 2408 of the code) holds a valid physician's and
18 surgeon's certificate or certificate to practice podiatric medicine, as the case may be,
19 provided that, a licensed podiatrist, psychologist, optometrist, physician's assistant,
20 clinical social worker, marriage, family and child counselor, chiropractor or
21 registered nurse may be a shareholder, director or officer of a medical corporation so
22 long as such licensed persons own no more than 49% of the total shares issued by the
23 medical corporation and the number of licensed persons owning shares in the medical
24 corporation does not exceed the number of physicians owning shares in such a
25 corporation, and a licensed physician may be a shareholder, director or officer of a
26 podiatry corporation so long as such physician owns no more than 49% of the total
27 shares issued by the podiatry corporation and the number of licensed physicians
28 owning shares in the podiatry corporation does not exceed the number of podiatrists
owning shares in such a corporation. A physician, psychologist, optometrist and
registered nurse may also be a shareholder, director or officer in a podiatry
corporation subject to the same numerical restrictions.

(c) Each professional employee of the corporation who will practice medicine,
podiatry, psychology, optometry, clinical social work, marriage, family and child
counselling, chiropractic or nursing, whether or not a director, officer or shareholder,
holds a valid license.

(d) A physician and surgeon or podiatrist may be a shareholder, officer or
director in more than one professional corporation.

23. California Code of Regulations, Title 16, section 1344 states as follows:

(a) Unless a fictitious name permit is obtained pursuant to Section 2415 of the
code, the name of a professional corporation shall be restricted to the name or
surname of one or more of the present prospective or former shareholders who are

1 physicians or podiatrists, as the case may be, for a medical or podiatry corporation.

2 (b) When the applicant uses any fictitious, false or assumed name or any name
3 other than the name or surname of one or more of the present, prospective or former
4 shareholders, or any other words or names in addition to those of the shareholders, it
5 shall obtain a permit pursuant to Section 2415 of the code. The fee required in
6 Section 1352 shall accompany the fictitious name permit application.

7 (c) A professional corporation with a majority of physicians and surgeons as
8 shareholders, officers and directors shall not use the designations "Podiatry
9 Corporation" or "Podiatry Corp." A corporation with a majority of podiatrists as
10 shareholders, officers and directors shall not use the designation "Medical
11 Corporation" or "Medical Corp."

12 24. California Code of Regulations, Title 16, section 1347 states as follows:

13 (a) A professional corporation may perform any act authorized in its articles
14 of incorporation or bylaws so long as that act is not in conflict with or prohibited by
15 the Medical Practice Act, and where applicable the Psychology Licensing Law, the
16 Optometry law, Physician Assistants Practice Act, the social worker licensing law
17 and the marriage, family and child counselor licensing law or the Nursing Practice
18 Act in the case of a corporation which has a licensed psychologist, optometrist or
19 registered nurse as a shareholder, director or officer, or the regulations adopted
20 pursuant thereto.

21 (b) A professional medical or podiatry corporation may enter into partnership
22 agreements with other physicians and surgeons or podiatrists, as the case may be,
23 practicing individually or in a group or with other medical or podiatry corporations.

24 25. California Code of Regulations, Title 16, section 1350.2 states in pertinent part:

25 ...

26 (c) No licensed person shall render professional services using a fictitious,
27 false or assumed name or any name other than his or her own unless and until a
28 fictitious name permit has been issued by the division.

29 26. California Code of Regulations, Title 16, section 1360, states:

30 For the purposes of denial, suspension or revocation of a license, certificate or
31 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
32 or act shall be considered to be substantially related to the qualifications, functions or
33 duties of a person holding a license, certificate or permit under the Medical Practice
34 Act if to a substantial degree it evidences present or potential unfitness of a person
35 holding a license, certificate or permit to perform the functions authorized by the
36 license, certificate or permit in a manner consistent with the public health, safety or
37 welfare. Such crimes or acts shall include but not be limited to the following:
38 Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
violation of, or conspiring to violate any provision of the Medical Practice Act.

27 27. California Code of Regulations section 1399.541 states in pertinent part:

28 Because physician assistant practice is directed by a supervising physician, and
a physician assistant acts as an agent for that physician, the orders given and tasks
performed by a physician assistant shall be considered the same as if they had been
given and performed by the supervising physician. Unless otherwise specified in
these regulations or in the delegation or protocols, these orders may be initiated

1 without the prior patient specific order of the supervising physician.

2 ...

3 28. California Code of Regulations section 1399.542 states as follows:

4 The delegation of procedures to a physician assistant under Section 1399.541,
5 subsections (b) and (c) shall not relieve the supervising physician of primary
6 continued responsibility for the welfare of the patient.

6 **COST RECOVERY**

7 29. Section 125.3 of the Code states:

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

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

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

17 (d) The administrative law judge shall make a proposed finding of the amount
18 of reasonable costs of investigation and prosecution of the case when requested
19 pursuant to subdivision (a). The finding of the administrative law judge with regard
20 to costs shall not be reviewable by the board to increase the cost award. The board
21 may reduce or eliminate the cost award, or remand to the administrative law judge if
22 the proposed decision fails to make a finding on costs requested pursuant to
23 subdivision (a).

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

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

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

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

costs.

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

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

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

FACTUAL ALLEGATIONS

PREVENTATIVE MEDICINE CLINIC OF BEVERLY HILLS

30. Respondent, a formally trained pediatrician, began practicing preventative medicine in or around 2012. He does not have any formal training in preventative medicine but has taken coursework on his own. At all relevant times set forth in this First Amended Accusation, Respondent was the medical director of Preventive Medicine Clinic of Beverly Hills (PMC) located at 415 North Camden Drive, Suite 204, Beverly Hills, California 90210.¹ Respondent supervised Shirley Elzinga² in her capacity as a nurse at PMC.

31. On or about June 29, 2020, the Board received a copy of Respondent's curriculum vitae as part of his credentialing file from Valley Community Healthcare. Respondent's curriculum vitae reflects that Respondent has been the medical director at PMC from 2011 to the present.

32. At the time of Respondent's interview with the Board on or about January 29, 2022, Respondent stated that he has been employed by PMC since 2011 or 2012. During Respondent's second interview with the Board on or about October 3, 2022, Respondent stated that PMC is owned by Shirley Elzinga and he serves as PMC's medical director.

33. Elzinga was interviewed by the Board on or about November 1, 2022. She stated that Respondent is her employee and was hired as the medical director at PMC. Elzinga stated that she leases the space for PMC, has control of all patient medical files, owns all the equipment, and

¹ On or about December 9, 2019, the Board received an online complaint regarding Respondent's care and treatment of pediatric patients at Valley Community Healthcare in North Hollywood.

² Shirley Elzinga is a licensed registered nurse who is also a licensed chiropractor and acupuncturist. She does not possess a valid physicians and surgeon's certificate in California.

1 controls all of the financial aspects of PMC.

2 34. PMC has not been issued a fictitious name permit from the Board.

3 35. On or about June 28, 2018, a fictitious business name statement was filed with the
4 Los Angeles County Registrar-Recorder for PMC with a registered owner of Shirleyelzinga, Inc.
5 Shirleyelzinga, Inc. is a California corporation. Its business and mailing address is 415 North
6 Camden Drive, Suite 204, Beverly Hills, California 90210. Shirley Elzinga is the chief executive
7 officer, secretary, chief financial officer, president, and only director of Shirleyelzinga, Inc. The
8 corporation's type of business is noted to be healthcare. On or about January 21, 2022, the
9 Corporate Statement of Information for Shirleyelzinga, Inc. filed with the California Secretary of
10 State reflects that the type of business is chiropractic services.

11 36. On or about December 8, 2022, the Articles of Incorporation of PMC were filed with
12 the California Secretary of State setting forth that the purpose of the corporation is to engage in
13 the profession of medicine. Shirley Elzinga is listed as the corporation's agent for service of
14 process. No chief executive officer, secretary, chief financial officer, president, or directors are
15 identified.

16 37. Respondent provided the Board with an undated Administrative Services Agreement
17 between Shirley Elzinga, Inc. and Respondent which sets forth that they have had a verbal
18 contract, since January 2012, wherein Elzinga was to provide administrative services to
19 Respondent in connection with his operation of its medical business activities. The agreement
20 further sets forth that "[a]s an independent contractor, ELZINGA does not provide any medical
21 services for [Respondent] except as an RN phlebotomist pursuant to orders by [Respondent] or as
22 an RN relaying prescriptive orders by [Respondent] given by phone or in person to the
23 pharmacist. In addition, ELZINGA provides information to patients about the treatments that
24 may be provided by [Respondent]."

25 38. With respect to Fees and Payments, the agreement sets for that "[Respondent] shall
26 pay to ELZINGA, monthly, as compensation for the services rendered by ELZINGA pursuant to
27 this Agreement, a fee (the 'Service Fee')." The agreement further sets forth that "ELZINGA has
28 limited power of attorney to write checks for the practice, including payment to [Respondent.]"

1 39. At the time of his interview with the Board on or about October 3, 2022, Respondent
2 stated that Shirley Elzinga paid him for his medical director services by check from her
3 corporation.

4 40. Shirleyelzinga, Inc, issued the following payments to Respondent on or about the
5 following dates by the following check numbers:

Date of Check	Check Number	Amount
05/29/2020	4430	\$261.00
10/23/2020	4499	\$2,525.00
11/13/2020	4510	\$1,300.00
11/30/2020	4522	\$650.00
11/30/2020	4523	\$959.00
12/04/2020	4524	\$975.00
12/11/2020	4526	\$1,300.00
12/23/2020	4534	\$325.00
01/15/2021	4540	\$1,284.00
01/27/2021	4545	\$2,584.00
02/05/2021	4551	\$325.00
02/26/2021	4559	\$1,075.00
03/16/2021	4563	\$975.00
03/31/2021	4571	\$1,918.00
06/02/2021	4588	\$325.00
07/07/2021	4599	\$325.00
08/18/2021	4608	\$975.00
08/25/2021	4616	\$975.00
09/15/2021	4617	\$975.00
09/29/2021	4626	\$975.00
10/13/2021	4628	\$1,950.00
11/17/2021	4637	\$325.00
12/08/2021	4642	\$325.00
12/15/2021	4644	\$545.00
12/29/2021	4653	\$325.00
01/05/2022	4654	\$325.00
11/18/2022	4655	\$325.00
02/25/2022	4670	\$325.00
03/03/2022	4671	\$1,625.00
03/09/2022	4672	\$1,300.00
03/06/2022	4673	\$1,300.00
03/21/2022	4682	\$975.00
04/06/2022	4683	\$650.00
04/13/2022	4684	\$650.00
04/20/2022	4685	\$650.00
05/04/2022	4691	\$975.00
05/13/2022	4693	\$1,290.00
05/25/2022	4703	\$975.00
06/15/2022	4709	\$975.00
06/29/2022	4718	\$975.00
07/13/2022	4721	\$750.00
07/27/2022	4729	\$700.00

Date of Check	Check Number	Amount
08/23/2022	4734	\$375.00
09/20/2022	4746	\$1,125.00
09/08/2022	4744	\$750.00
10/07/2022	4758	\$750.00
10/21/2022	4763	\$1,875.00
11/10/2022	4773	\$375.00

PATIENT 1

41. Patient 1³ was followed and treated by Respondent at PMC for hormone replacement therapy (HRT) from approximately June 19, 2013 through July 12, 2022.⁴ He was a 73-year-old male patient at the time of his initial presentation on or about June 19, 2013. At that time, Respondent documented the patient's medical history, review of systems, and vital signs. Respondent did not perform a physical examination. Respondent did not obtain the patient's medical records from his primary care physician or any of his other health care providers. Respondent noted the patient's free testosterone laboratory results from in or around November 2012 and other laboratory results from testing on or about May 8, 2013. Respondent initiated treatment with testosterone.⁵

42. Patient 1 states that after his initial visit with Respondent, he did not return to the clinic, nor did he speak with Respondent again for the entire approximate nine years that he received HRT from Respondent.

43. At the time of Respondent's October 3, 2022 interview with the Board, he stated that the patient did not follow up in person and that Respondent kept in contact with Patient 1, almost every month, on the phone.

44. A review of Patient 1's medical records from Preventative Medicine Clinic reflects multiple pages of handwritten progress notes between approximately on or about June 19, 2013 and July 12, 2022, with approximately 26 encounters with Patient 1. Though not documented to be telephone conversations, based upon the interviews of Respondent and Patient 1, the

³ For privacy purposes, the patient in this First Amended Accusation is referred to as Patient 1.

⁴ Care rendered to Patient 1 described herein prior to 2015 is for historical purposes or to illustrate Respondent's patterns and practices.

⁵ Testosterone, is a Schedule III Controlled Substance and a dangerous drug pursuant to section 4022 of the Business and Professions Code.

1 encounters were by telephone. The notes appear to have been written by Nurse Elzinga with a
2 notation by Respondent following most of Nurse Elzinga's entries stating his agreement with the
3 plan. Nurse Elzinga would adjust medication levels and order laboratory studies.

4 45. Patient 1 had laboratory studies conducted at least once a year. The laboratory results
5 were reviewed and charted in Patient 1's medical records by Respondent. Respondent stated at
6 the time of his interview with the Board that he relies on his patients to let him know if they are
7 having any side effects from the HRT. Once a patient reports side effects, Respondent will
8 evaluate whether the particular side effect that the patient is complaining of is actually from the
9 testosterone or something else.

10 46. Respondent's CURES⁶ report reflects that on or about March 13, 2017, Patient 1
11 filled a prescription for a 90-day supply of testosterone, a 100-day supply of pregnenolone,⁷ and a
12 100-day supply of compounded thyroid medication,⁸ all prescribed by Respondent.

13 47. Per CURES, between July 5, 2017 and March 27, 2019, Patient 1 filled a prescription
14 for a 90-day supply of testosterone, a 100-day supply of pregnenolone, and a 100-day supply of
15 thyroid compounded T3 + T4,⁹ prescribed by Respondent, approximately every three months.

16 48. On or about June 20, 2019, Patient 1 filled a 100-day supply of pregnenolone,
17 prescribed by Respondent.

18
19 ⁶ "CURES" means the California Department of Justice, Bureau of Narcotics Enforcement's
20 Controlled Substance Utilization Review and Evaluation System (CURES), which monitors the
21 Schedule II, III, IV and V controlled substances dispensed to patients, pursuant to Health and Safety
22 Code section 11165. The CURES database captures data from controlled substance prescriptions
23 filled as submitted by pharmacies, hospitals, and dispensing physicians. Law enforcement and
24 regulatory agencies use the data to assist in their efforts to control the diversion and resultant abuse
25 of controlled substances. Prescribers and pharmacists may request a patient's history of controlled
26 substances dispensed in accordance with guidelines developed by the Department of Justice.

24 ⁷ Pregnenolone is a medication used in the body to make hormones. It is in a class of medications
25 called progestins. It is a dangerous drug pursuant to section 4022 of the Business and Professions Code.

25 ⁸ Compounded thyroid medicine is tailored by a patient's physician and pharmacist, adjusting the
26 strength, ingredients, and formulation to treat an underacting thyroid. It is a dangerous drug pursuant to
27 section 4022 of the Business and Professions Code.

27 ⁹ Thyroid compounded T3 + T4 is a compounded thyroid medication used to treat conditions of
28 low thyroid. It is a dangerous drug pursuant to section 4022 of the Business and Professions Code.

1 49. On or about July 8, 2019, Patient 1 filled a prescription for a 90-day supply of
2 testosterone and a 100-day supply thyroid compounded T3 + T4, prescribed by Respondent.

3 50. On or about September 24, 2019, Patient 1 filled a prescription for a 100-day supply
4 of pregnenolone, and a 100-day supply thyroid compounded T3 + T4, all prescribed by
5 Respondent.

6 51. On or about October 29, 2019, Patient 1 filled a prescription for a 90-day supply of
7 testosterone, prescribed by Respondent.

8 52. On or about January 2, 2020, Patient 1 filled a prescription for a 100-day supply of
9 pregnenolone, and a 100-day supply thyroid compounded T3 + T4, all prescribed by Respondent.

10 53. On or about February 11, 2020, Patient 1 filled a prescription for a 90-day supply of
11 testosterone, prescribed by Respondent.

12 54. On or about June 22, 2020, Patient 1 filled a prescription for a 90-day supply of
13 testosterone, prescribed by Respondent.

14 55. On or about November 5, 2020, Patient 1 filled a prescription for a 90-day supply of
15 testosterone, prescribed by Respondent.

16 56. On or about June 22, 2021, a progress note reflects that the patient was not feeling
17 good off HRT and will restart HRT. Respondent entered a note in the patient's chart on June 23,
18 2021 that he agrees with the June 22, 2021 note.

19 57. Patient 1's medical records reflect that as on or about February 16, 2022, he had not
20 contacted the office or pharmacy. On or about July 12, 2022, Respondent noted that Patient 1 is
21 now being followed at Kaiser and is now receiving HRT medications at Kaiser.

22 STANDARD OF CARE

23 58. When a physician manages a medical treatment, such as hormone replacement
24 therapy, in the context of a specialty practice outside of the patient's primary care physician's
25 practice, the standard of care requires that the patient be seen and examined, with a documented
26 physical examination and taking of vital signs, including weight, pulse, blood pressure, and
27 respiratory rate. The physician must also document the patient's concurrent medications,
28 allergies, and other ongoing medical problems as well as a history of present illness and review of

1 systems. Contraindications to starting and/or continuing therapy and monitoring parameters, such
2 as routine blood work, must be reviewed prior to the initiation of treatment, then reviewed
3 routinely while the patient is on therapy. Pertinent laboratory and imaging studies must be
4 ordered and reviewed. In addition, the physician must communicate with the patient's primary
5 care physician regarding the patient's care and treatment.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Corporate Practice of Medicine Without a Fictitious Name Permit)**

8 59. Respondent is subject to disciplinary action under California Business and
9 Professions Code sections 2334, subdivision (a); 2285, 2410, 2415, subdivision (b)(2); California
10 Corporations Code sections 13409, subdivision (a), and 13410; and California Code of
11 Regulations, Title 16, sections 1344, subdivisions (a) and (b); and 1350.2, subdivision (c);
12 1399.541; and 1399.545, subdivision (f), in that Respondent practiced medicine without a FNP by
13 treating patients at PMC and through the supervision of Nurse Shirley Elzinga who owned PMC.
14 Complainant refers to and, by this reference, incorporates herein, paragraphs 30 through 39,
15 above, as though fully set forth herein. The circumstances are as follows:

16 60. On or about May 2020 through November 2022, Respondent was the medical director
17 of PMC. There was no fictitious business permit filed with the Board for PMC. Shirley Elzinga
18 registered the fictitious business name PMC with the Los Angeles County Registrar, owned by
19 Shirleyelzinga, Inc., a corporation owned by Shirley Elzinga. Shirley Elzinga leased the space for
20 PMC, had control of all patient medical files, owned all the equipment, and controlled all of the
21 financial aspects of PMC. At PMC, Respondent supervised Shirley Elzinga in her capacity as a
22 nurse.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Participation and/or Affiliation with Medical Corporations Founded,
25 Structured, Controlled, and/or Operated in Violation of the
26 Moscone-Knox Professional Corporation Act)**

27 61. Respondent is subject to disciplinary action under California Business and
28 Professions Code section 2286; California Corporations Code section 13401; and California Code

1 of Regulations, Title 16, sections 1344, subdivision (a), and 1347, subdivision (a), in that he
2 participated and/or affiliated with medical corporations that were founded, structured, controlled,
3 and/or operated in violation of rules and regulations related to the corporate practice of medicine
4 by acting as medical director and facilitating the control and operation of PMC by a non-
5 physician. Complainant refers to and, by this reference, incorporates herein, paragraphs 30
6 through 40, 59, and 60, above, as though fully set forth herein. The circumstances are as follows:

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

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Assisting in the Violation of Corporate Practice of Medicine Laws and Regulations)**

11 63. Respondent is subject to disciplinary action under sections 2286, 2234, subdivision
12 (a), and 2410 of the Code, in that he acted as medical director and facilitated the control and
13 operation of PMC by a non-physician. Complainant refers to and, by this reference, incorporates
14 herein, paragraphs 30 through 40, and 59 through 62, above, as though fully set forth herein. The
15 circumstances are as follows:

16 64. The allegations of the First and Second Causes for Discipline are incorporated herein
17 by reference as if fully set forth.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Gross Negligence)**

20 65. Respondent is subject to disciplinary action under Code section 2234, subdivision (b),
21 in that he committed gross negligence in his care and treatment of Patient 1. Complainant refers
22 to and, by this reference, incorporates herein, paragraphs 30, and 41 through 58, above, as though
23 fully set forth herein. Respondent committed the following acts of gross negligence:

24 66. Despite only seeing Patient 1 on June 19, 2013, Respondent continued to prescribe
25 numerous courses of testosterone and other medications through 2021. Respondent's
26 management of Patient 1's hormone replacement therapy without direct interaction with Patient 1
27 over a multi-year span is an extreme departure from the standard of care.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 67. Respondent is subject to disciplinary action under Code section 2234, subdivision (c),
4 in that he committed repeated negligence acts with respect to his care and treatment of Patient 1.
5 Complainant refers to and, by this reference, incorporates herein, paragraphs 30, 41 through 58,
6 65, and 66, above, as though fully set forth herein. The circumstances are as follows:

7 68. Each of the alleged acts of gross negligence set forth above in the First Cause for
8 Discipline is also a negligent act.

9 69. Respondent committed the following additional repeated acts of negligence:

10 70. Respondent failed to document important clinical data such as vital signs, structured
11 review of systems, medication changes, or new/ongoing medical problems other than Patient 1's
12 initial visit on June 19, 2013. This is a simple departure from the standard of care.

13 71. Respondent failed to screen Patient 1 for contraindications to testosterone therapy.
14 This is a simple departure from the standard of care.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Accurate and Adequate Medical Records)**

17 72. Respondent is subject to disciplinary action under section 2266 of the Code for failing
18 to maintain adequate and accurate records relating to his care and treatment of Patient 1.
19 Complainant refers to and, by this reference, incorporates herein, paragraphs 30, 41 through 58,
20 and 65 through 71, above, as though fully set forth herein.

21 **PRAYER**

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

- 24 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 33630,
25 issued to Steven Jay Marcus, M.D.;
- 26 2. Revoking, suspending or denying approval of Steven Jay Marcus, M.D.'s authority to
27 supervise physician assistants and advanced practice nurses;
- 28 3. Ordering Steven Jay Marcus, M.D., to pay the Board the costs of the investigation

1 and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

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DATED: JUN 23 2023

JENNA JONES FOR
REJI VARGHESE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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