

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

In the Matter of the First Amended
Accusation Against:

Francis R. Palmer III, M.D.

Physician's & Surgeon's
Certificate No. G 57473

Respondent.

Case No. 800-2019-062048

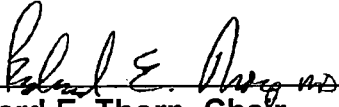
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 1, 2024.

IT IS SO ORDERED: February 1, 2024.

MEDICAL BOARD OF CALIFORNIA


Richard E. Thorp, Chair
Panel B

1 ROB BONTA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 JASON J. AHN
Deputy Attorney General
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9 *Attorneys for Complainant*

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11
12 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
13 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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

16 **FRANCIS R. PALMER, III, M.D.**
17 **624 10th St.**
Santa Monica, CA 90402-2820

18
19 **Physician's and Surgeon's**
Certificate No. G 57473

20 Respondent.
21

Case No. 800-2019-062048

OAH No. 2023020506

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

24 **PARTIES**

25 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
26 California (Board). He brought this action solely in his official capacity and is represented in this
27 matter by Rob Bonta, Attorney General of the State of California, by Jason J. Ahn and Karolyn
28 M. Westfall, Deputy Attorneys General.

1 2. Respondent Francis R. Palmer, III, M.D. (Respondent) is represented in this
2 proceeding by attorney Peter J. Zomber, Esq., whose address is: 15332 Antioch Street, #708
3 Pacific Palisades, CA 90272.

4 3. On or about June 16, 1986, the Board issued Physician's and Surgeon's Certificate
5 No. G 57473 to Respondent. The Physician's and Surgeon's Certificate was in full force and
6 effect at all times relevant to the charges brought in First Amended Accusation No. 800-2019-
7 062048, and will expire on August 31, 2025, unless renewed.

8 **JURISDICTION**

9 4. On February 13, 2023, First Amended Accusation No. 800-2019-062048, which
10 superseded the Accusation filed on December 23, 2022, was filed before the Board, and is
11 currently pending against Respondent. The First Amended Accusation and all other statutorily
12 required documents were properly served on Respondent on or about February 13, 2023.
13 Respondent timely filed his Notice of Defense contesting the Accusation.

14 5. A copy of First Amended Accusation No. 800-2019-062048 is attached hereto as
15 Exhibit A and is incorporated herein by reference.

16 **ADVISEMENT AND WAIVERS**

17 6. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in First Amended Accusation No. 800-2019-062048. Respondent has
19 also carefully read, fully discussed with his counsel, and fully understands the effects of this
20 Stipulated Settlement and Disciplinary Order.

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

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28 ///

1 8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
2 waives and gives up each and every right set forth above.

3 **CULPABILITY**

4 9. Respondent does not contest that, at an administrative hearing, Complainant could
5 establish a *prima facie* case with respect to the charges and allegations contained in First
6 Amended Accusation No. 800-2019-062048, a copy of which is attached hereto as Exhibit A, and
7 that he has thereby subjected his Physician's and Surgeon's Certificate No. G 57473 to
8 disciplinary action.

9 10. Respondent agrees that if an accusation is ever filed against him before the Medical
10 Board of California, all of the charges and allegations contained in First Amended Accusation
11 No. 800-2019-062048 shall be deemed true, correct, and fully admitted by Respondent for
12 purposes of that proceeding or any other licensing proceeding involving Respondent in the State
13 of California.

14 11. Respondent agrees that his Physician's and Surgeon's Certificate No. G 57473 is
15 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
16 in the Disciplinary Order below.

17 **CONTINGENCY**

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

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1 **ADDITIONAL PROVISIONS**

2 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
3 to be an integrated writing representing the complete, final, and exclusive embodiment of the
4 agreements of the parties in the above-entitled matter.

5 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
6 including copies of the signatures of the parties, may be used in lieu of original documents and
7 signatures and, further, that such copies shall have the same force and effect as originals.

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

11 **DISCIPLINARY ORDER**

12 IT IS HEREBY ORDERED that Respondent Francis R. Palmer, III, M.D., holder of
13 Physician's and Surgeon's Certificate No. G 57473, shall be and hereby is Publicly Reprimanded
14 pursuant to Business and Professions Code section 2227. This Public Reprimand, which is issued
15 in connection with the allegation as set forth in First Amended Accusation No. 800-2019-062048,
16 is as follows:

17 From November 2018 through May 2020, you aided and abetted the
18 unlicensed practice of medicine and violated the ban on the corporate practice of
19 medicine by engaging in a contractual relationship with a lay corporation (Orange
20 Twist, LLC) that directly or indirectly controlled your medical practice at multiple
21 Orange Twist med spa clinic locations throughout California, as more fully
22 described in First Amended Accusation No. 800-2019-062048.

23 1. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this
24 Decision, Respondent shall submit to the Board or its designee for its prior approval educational
25 program(s) or course(s) which shall not be less than 40 hours. The educational program(s) or
26 course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be
27 Category I certified. The educational program(s) or course(s) shall be at Respondent's expense
28 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of

1 licensure. Following the completion of each course, the Board or its designee may administer an
2 examination to test Respondent's knowledge of the course. Respondent shall provide proof of
3 attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

4 2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
5 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
6 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
7 Respondent shall participate in and successfully complete that program. Respondent shall
8 provide any information and documents that the program may deem pertinent. Respondent shall
9 successfully complete the classroom component of the program not later than six (6) months after
10 Respondent's initial enrollment, and the longitudinal component of the program not later than the
11 time specified by the program, but no later than one (1) year after attending the classroom
12 component. The professionalism program shall be at Respondent's expense and shall be in
13 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

22 3. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
23 ordered to reimburse the Board its costs of investigation and enforcement, in the amount of
24 \$92,365.75 (ninety-two thousand three hundred sixty-five dollars and seventy-five cents). Costs
25 shall be payable to the Medical Board of California. Failure to pay such costs shall constitute
26 unprofessional conduct and grounds for further disciplinary action.

27 Payment must be made in full within 30 calendar days of the effective date of the Order, or
28 by a payment plan approved by the Medical Board of California. Any and all requests for a

1 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with
2 the payment plan shall constitute unprofessional conduct and grounds for further disciplinary
3 action.

4 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
5 repay investigation and enforcement costs, including expert review costs.

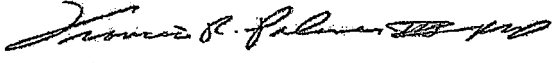
6 4. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
7 a new license or certification, or petition for reinstatement of a license, by any other health care
8 licensing action agency in the State of California, all of the charges and allegations contained in
9 First Amended Accusation No. 800-2019-062048 shall be deemed to be true, correct, and
10 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
11 seeking to deny or restrict license.

12 5. FAILURE TO COMPLY. Any failure by Respondent to comply with terms and
13 conditions of the Stipulated Settlement and Disciplinary Order set forth above shall constitute
14 unprofessional conduct and grounds for further disciplinary action.

15 ACCEPTANCE

16 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
17 discussed it with my attorney, Peter J. Zomber. I fully understand the stipulation and the effect it
18 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
19 Disciplinary Order voluntarily, knowingly, and intelligently, and fully agree to be bound by the
20 Decision and Order of the Medical Board of California.

21 DATED: 12-13-2023



22 FRANCIS R. PALMER, III, M.D.
Respondent

23 I have read and fully discussed with Respondent Francis R. Palmer, III, M.D., the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
25 I approve its form and content.

27 DATED: 12/13/2023



28 PETER J. ZOMBER, ESQ.
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: 12/13/23 _____

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



JASON J. AHN
KAROLYN M. WESTFALL
Deputy Attorneys General
Attorneys for Complainant

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8 *Attorneys for Complainant*

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

In the Matter of the First Amended Accusation Against: FRANCIS R. PALMER, III, M.D., 624 10th St. Santa Monica, CA 90402-2820 Physician's and Surgeon's Certificate No. G 57473, Respondent.	Case No. 800-2019-062048 FIRST AMENDED ACCUSATION
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PARTIES

1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as the Deputy Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).
2. On or about June 16, 1986, the Medical Board issued Physician's and Surgeon's Certificate No. G 57473 to Francis R. Palmer, III, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2023, unless renewed.

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JURISDICTION

1
2 3. This First Amended Accusation, which supersedes Accusation No. 800-2019-058100
3 filed on December 23, 2022, is brought before the Board under the authority of the following
4 laws. All section references are to the Business and Professions Code (Code) unless otherwise
5 indicated.

6 4. Section 2004 of the Code states:

7 The board shall have the responsibility for the following:

8 (a) The enforcement of the disciplinary and criminal provisions of the Medical
9 Practice Act.

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

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

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

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

17 ...

18 5. Section 2220 of the Code states, in pertinent part:

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 ...

25 6. Section 2227 of the Code states, in pertinent part:

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

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

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

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

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

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

5 ...

6 **STATUTORY PROVISIONS**

7 7. Section 2234 of the Code, states:

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

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

12 ...

13 8. Section 2052 of the Code states:

14 (a) Notwithstanding Section 146, any person who practices or attempts to
15 practice, or who advertises or holds himself or herself out as practicing, any system or
16 mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates
17 for, or prescribes for any ailment, blemish, deformity, disease, disfigurement,
18 disorder, injury, or other physical or mental condition of any person, without having
at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in
this chapter [Chapter 5, the Medical Practice Act], or without being authorized to
perform the act pursuant to a certificate obtained in accordance with some other
provision of law, is guilty of a public offense ...

19 (b) Any person who conspires with or aids or abets another to commit any act
20 described in subdivision (a) is guilty of a public offense ...

21 (c) The remedy provided in this section shall not preclude any other remedy
provided by law.

22 9. Section 2264 of the Code states:

23 The employing, directly or indirectly, the aiding, or the abetting of any
24 unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in
the practice of medicine or any other mode of treating the sick or afflicted which
25 requires a license to practice constitutes unprofessional conduct.

26 10. Section 2286 of the Code states:

27 It shall constitute unprofessional conduct for any licensee to violate, to attempt
28 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

1 Moscone-Knox Professional Corporation Act (Part 4 commencing with Section
2 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and
3 regulations duly adopted under those laws.

4 11. Section 2285 of the Code states, in pertinent part:

5 The use of any fictitious, false, or assumed name, or any name other than his or
6 her own by a licensee either alone, in conjunction with a partnership or group, or as
7 the name of a professional corporation, in any public communication, advertisement,
8 sign, or announcement of his or her practice without a fictitious-name permit obtained
9 pursuant to Section 2415 constitutes unprofessional conduct. ...

10 ...

11 12. Section 2051 of the Code states:

12 The physician's and surgeon's certificate authorizes the holder to use drugs or
13 devices in or upon human beings and to sever or penetrate the tissues of human
14 beings and to use any and all other methods in the treatment of diseases, injuries,
15 deformities, and other physical and mental conditions.

16 13. Section 2400 of the Code states, in pertinent part:

17 Corporations and other artificial legal entities shall have no professional rights,
18 privileges, or powers. ...

19 14. Section 2402 of the Code states, in pertinent part:

20 The provisions of Section 2400 do not apply to a medical ... corporation
21 practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4
22 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code)
23 and this article, when such corporation is in compliance with the requirements of
24 these statutes and all other statutes and regulations now or hereafter enacted or
25 adopted pertaining to such corporations and the conduct of their affairs.

26 15. Section 2406 of the Code states, in pertinent part:

27 A medical corporation ... is a corporation that is authorized to render
28 professional services, as defined in Section 13401 of the Corporations Code, so long
as that corporation and its shareholders, officers, directors, and employees rendering
professional services who are physicians and surgeons, psychologists, registered
nurses, optometrists, podiatrists, chiropractors, acupuncturists, naturopathic doctors,
physical therapists, occupational therapists, or, in the case of a medical corporation
only, physician assistants, marriage and family therapists, clinical counselors, or
clinical social workers, are in compliance with the Moscone-Knox Professional
Corporation Act, the provisions of this article, and all other statutes and regulations
now or hereafter enacted or adopted pertaining to the corporation and the conduct of
its affairs.

With respect to a medical corporation ..., the governmental agency referred to
in the Moscone-Knox Professional Corporation Act is the board.

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16. Section 2410 of the Code states, in pertinent part:

A medical ... 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 [Chapter 5, the Medical Practice Act].

17. Section 2415 of the Code states, in pertinent part:

(a) Any physician and surgeon ... 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 ... under the provisions of this section.

...

18. Section 650 of the Code states, in pertinent part:

(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division ... of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients that is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer. ...

19. 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 ...

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession ... pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation ... rendering professional services by persons duly licensed by the Medical Board of California ... shall not be required to obtain a certificate of registration in order to render those professional services.

...

1 (d) "Licensed person" means any natural person who is duly licensed under the
2 provisions of the Business and Professions Code ... to render the same professional
3 services as are or will be rendered by the professional corporation ... of which he or
4 she is, or intends to become, an officer, director, shareholder, or employee.

5 ...

6 20. Section 13408.5 of the Corporations Code states, in pertinent part:

7 A professional corporation shall not be formed so as to cause any violation of
8 law, or any applicable rules and regulations, relating to fee splitting, kickbacks, or
9 other similar practices by physicians and surgeons... A violation of any such
10 provisions shall be grounds for the suspension or revocation of the certificate of
11 registration of the professional corporation. ...

12 21. Section 13410 of the Corporations Code states, in pertinent part:

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

22 ...

23 **REGULATORY PROVISIONS**

24 22. California Code of Regulations, title 16, section 1343 states, in pertinent part:

25 A professional corporation shall comply with the following provisions:

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

29 ...

30 23. California Code of Regulations, title 16, section 1344 states, in pertinent part:

31 (a) Unless a fictitious name permit is obtained pursuant to Section 2415 of the
32 code, the name of a professional corporation shall be restricted to the name or
33 surname of one or more of the present prospective or former shareholders who are
34 physicians or podiatrists, as the case may be, for a medical ... corporation.

35 (b) When the applicant uses any fictitious, false or assumed name or any name
36 other than the name or surname of one or more of the present, prospective or former
37 shareholders, or any other words or names in addition to those of the shareholders, it
38 shall obtain a permit pursuant to Section 2415 of the code. ...

39 ...

1 24. California Code of Regulations, title 16, section 1347 states, in pertinent part:

2 (a) A professional corporation may perform any act authorized in its articles of
3 incorporation or bylaws so long as that act is not in conflict with or prohibited by the
4 Medical Practice Act ... or the regulations adopted pursuant thereto.

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

8 **AMA CODE OF MEDICAL ETHICS**

9 25. In 1980, the American Medical Association ("AMA") adopted a 1980 revision of the
10 AMA Principles of Medical Ethics, which embodies basic principles of conduct by the
11 profession. In June 2001, the AMA House of Delegates adopted the latest revised Principles of
12 Medical Ethics.

13 1) Section II of the AMA's Principles of Medical Ethics states as follows:

14 A physician shall uphold the standards of professionalism, be honest in all
15 professional interactions, and strive to report physicians deficient in character or
16 competence, or engaging in fraud or deception, to appropriate entities.

17 2) Section III of the AMA's Principles of Medical Ethics states as follows:

18 A physician shall respect the law and also recognize a responsibility to seek
19 changes in those requirements which are contrary to the best interests of the patient.

20 3) Section VI of the AMA's Principles of Medical Ethics states as follows:

21 A physician shall, in the provision of appropriate patient care, except in
22 emergencies, be free to choose whom to serve, with whom to associate, and the
23 environment in which to provide medical care.

24 4) Section VII of the AMA's Principles of Medical Ethics states as follows:

25 A physician shall, while caring for a patient, regard responsibility to the patient
26 as paramount.

27 26. Unprofessional conduct under California Business and Professions Code section 2234
28 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is
unbecoming to a member in good standing of the medical profession, and which demonstrates an
unfitness to practice medicine.¹

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¹ *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 **COST RECOVERY**

2 27. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FACTUAL ALLEGATIONS**

9 28. A medical spa has been defined² as a hybrid between an aesthetic medical center and
10 a day spa with four core elements: (1) the provision of non-invasive (i.e. non-surgical) aesthetic
11 medical services; (2) under the general supervision of a licensed physician; (3) performed by
12 trained, experienced and qualified practitioners; (4) with onsite supervision by a licensed
13 healthcare professional.

14 29. OrangeTwist is a national network of “med spas,” controlled by a network of
15 ‘OrangeTwist-brand’ corporations. Since its incorporation in 2015, OrangeTwist has opened
16 sixteen locations throughout California, Nevada, New Jersey, Texas and Washington.

17 30. Each OrangeTwist location has a “medical director” who is an independent contractor
18 to a professional medical corporation, “Body Concepts by Orange Twist 1.”

19 31. OrangeTwist locations in California are staffed by roughly one to three physician
20 assistants, nurse practitioners and/or registered nurses, per location, along with other employees
21 who do not have a medical license. At some locations, at times, the only medical provider is a
22 registered nurse.

23 32. Registered nurses are not permitted to perform good faith examinations, while
24 physician assistants and nurse practitioners may do so under the supervision of a physician and
25 surgeon. All three categories of physician extenders require the supervision of a licensed
26 physician and surgeon.

27 _____
28 ² <https://www.a10associates.com/defeating-industry-adverse-legislation/> (as of February 9,
2023)

1 33. Any person who diagnoses, treats, operates for, or prescribes for any ailment,
2 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
3 of any person, is practicing medicine and must do so within the bounds of their license.

4 Treatments offered at OrangeTwist constitute the practice of medicine and include, but are not
5 limited to: dermal fillers, neuromodulator treatments, Clear and Brilliant treatments, Vivace
6 (microneedling, collagen induction) treatments, intramuscular injections, intravenous treatments,
7 microneedling, Diolaze, Fractora, Lumecca, and hair restoration. These modalities alter or
8 reshape normal structures of the body and are advertised to consumers as means to improve
9 appearance, “self-care” or for some other “health” outcome.

10 34. Dermal fillers are gel-like substances injected under the skin. Dermal fillers are
11 meant to create a smoother or fuller appearance, or both. The FDA regulates dermal fillers as
12 medical devices.

13 35. Clear and Brilliant is a low-level diode 1140 nanometer laser that does very mild skin
14 resurfacing. Diolaze is a laser treatment that uses a diode laser beam to direct high-energy light
15 to hair follicles, destroying the hair. Lumecca is a very powerful intense pulsed light (IPL) that
16 treats pigmented and vascular lesions. In California, physicians may use lasers or intense pulse
17 light devices. In addition, physician assistants and registered nurses may perform these
18 treatments under a physician’s supervision.

19 36. Botox (anabotulinumtoxinA) is a neuromodulator used as an injection to reduce
20 frown lines, crow’s feet and forehead lines. Dysport (abotulinumtoxinA) is a neuromodulator
21 used as an injection to reduce frown lines. In California, only licensed physicians may inject
22 neuromodulators without supervision by another professional. Registered nurses (including nurse
23 practitioners) and physician assistants may inject Botox under the supervision or direction of a
24 licensed physician.

25 37. Microneedling is a minimally invasive procedure for your skin. Thin needles are
26 used to make tiny holes in the top layer of the skin. The damage helps stimulate the skin’s
27 healing process, so it produces more collagen and elastin. Vivace is a form of microneedling that
28 combines microneedling and radiofrequency energy to stimulate collagen production. Fractora is

1 radiofrequency microneedling. Only licensed physicians may do microneedling without
2 supervision by another professional. Registered nurses (including nurse practitioners) and
3 physician assistants perform microneedling under the supervision or direction of a licensed
4 physician.

5 38. Before receiving any medical procedure or intervention, patients must be competent
6 to make a voluntary decision about whether to undergo the procedure or intervention, otherwise
7 known as “informed consent.” Patients need to be educated – about the nature of the procedure,
8 the attendant risks and benefits of the procedure, and reasonable alternatives to the procedure – by
9 someone sufficiently knowledgeable and qualified to do so. Informed consent is both an ethical
10 and legal obligation of medical practitioners in California.

11 39. The Board provides³ the following guidance to its licensees regarding the corporate
12 practice of medicine:

13 ... [T]he following “business” or “management” decisions and activities,
14 resulting in control over the physician’s practice of medicine, should be made by a
licensed California physician and not by an unlicensed person or entity:

- 15 • Ownership is an indicator of control of a patient’s medical records, including
16 determining the contents thereof, and should be retained by a California-licensed
physician;
- 17 • Selection, hiring/firing (as it relates to clinical competency or proficiency) of
18 physicians, allied health staff and medical assistants;
- 19 • Setting the parameters under which the physician will enter into contractual
relationships with third-party payers;
- 20 • Decisions regarding coding and billing procedures for patient care services; and
- 21 • Approving of the selection of medical equipment and medical supplies for the
medical practice.

22 The types of decisions and activities described above cannot be delegated to an
23 unlicensed person, including (for example) management service organizations. While
24 a physician may consult with unlicensed persons in making the “business” or
“management” decisions described above, the physician must retain the ultimate
responsibility for, or approval of, those decisions.

25 The following types of medical practice ownership and operating structures
26 also are prohibited:

27 _____
28 ³ <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/> (as
at February 9, 2023)

- 1 • Non-physicians owning or operating a business that offers patient evaluation,
2 diagnosis, care and/or treatment;
3 ...
4 • Management service organizations arranging for, advertising, or providing medical
5 services rather than only providing administrative staff and services for a physician's
6 medical practice (non-physician exercising controls over a physician's medical
7 practice, even where physicians own and operate the business); and
8 • A physician acting as "medical director" when the physician does not own the
9 practice. For example, a business offering spa treatments that include medical
10 procedures such as Botox injections, laser hair removal, and medical
11 microdermabrasion, that contracts with or hires a physician as its "medical director."

12 In the examples above, non-physicians would be engaged in the unlicensed
13 practice of medicine, and the physician may be aiding and abetting the unlicensed
14 practice of medicine.

15 40. Regarding medical spas, the Board⁴ offers the following:

16 Medical spas are marketing vehicles for medical procedures. If they are
17 offering medical procedures, they must be owned by physicians.

18 41. In this case, Respondent and a lay corporation contrived to make it appear that
19 Respondent was "the licensed owner[] of a medical spa" and that the lay corporation was purely
20 offering "key business management services" to him. In reality, Respondent owned nothing – the
21 lay corporation owned and controlled the medical equipment, the practice premises and their
22 lease(s), the corporate trademark under which the medical practice was required to do business,
23 and all of the multiple bank accounts that were opened in the name of the practice (but operated
24 exclusively by the lay corporation). Of note, profit motivations in such arrangements subjugate
25 consumer safety.⁵

26 ⁴ <https://www.mbc.ca.gov/Resources/Medical-Resources/Medical-Spas.aspx> (as of
27 February 9, 2023)

28 ⁵ The American Med Spa Association ("AmSpa") is a for-profit LLC whose mission is to
"help its members ... operate both legally and profitably." It was founded by an attorney at a
Dallas-based law firm who "identified the need for an organization that focused on the legal and
compliance issues of the newly evolving medical spa and medical aesthetic industry." The
Dallas-based law firm reportedly "powers" the legal resources provided by AmSpa. One of the
attorneys associated with the Dallas-based firm is RF, Esq. An AmSpa blog entitled "Who Can
Own a Medical Spa," provides the following information to would be investors: "... [M]edical
spas primarily offer medical treatments. Accordingly, most states regulate medical spas in the
same way they do other medical practices. ... [I]t is the licenses of the health care providers who
work in the medical spa that allow it to offer its services. The main qualification a person needs
to own a medical spa is having the proper qualification that allows them to own a medical
practice and employ health care personnel. ... Many states prohibit non-physicians from owning

1 42. The business model Respondent adopted poses multiple threats to patients, including:
2 the lay corporation may not understand the quality of care implications of their business
3 decisions, the lay corporation does not have any professional ethical obligation to place the
4 patient's interests foremost, and the lay corporation is not subject to the full panoply of healthcare
5 regulation and enforcement powers of the Board.

6 *Incorporation of OrangeTwist and Body Concepts By OrangeTwist 1 Corp.:*⁶

7 43. OrangeTwist was co-founded by Medical Director W. Grant Stevens, M.D. ("Dr.
8 Stevens") and Clint Carnell,⁷ a person who does not have a medical license.

9 44. On or about March 3, 2015, Orange Twist, LLC incorporated in Delaware
10 ("OrangeTwist Delaware") and registered with the California Secretary of State ("CA SOS") as a
11 Foreign LLC using the name "Orange Twist, LLC." Both filings were signed by Clint Carnell.

12 45. Also on or about March 3, 2015, a Management Services Agreement ("MSA") was
13 entered into between OrangeTwist Delaware and a "practice" providing "medical services ...
14 under the OrangeTwist name..."

15 46. On or about March 9, 2015, Body Concepts by Orange Twist 1 Corp. ("BCOT1")
16 was incorporated in California. BCOT1 issued 10,000 shares (with a value of \$0.001 per share)

17
18 *medical practices or from employing physicians. In these states, only a physician may own a*
19 *medical practice or medical spa. Among lawyers, this is referred to as the "corporate practice of*
20 *medicine" doctrine, ...Let's assume that you do not fall into one of the categories discussed above*
21 *regarding who can own a medical spa; this is the case for the vast majority of people. But you*
22 *want to open a medical spa—are you completely out of luck in terms of owning? Yes and no. ...*
23 *[Y]ou cannot directly own an aesthetic medical practice. But ... you can still participate in the*
24 *business and day-to-day management of an aesthetic practice. This involves using a business*
structure referred to as a management services organization (MSO). ... [T]o briefly explain,
while you cannot own a medical business, you can own a business that provides key business
management services and offer them to the licensed owners of a medical spa ...
<https://americanmedspa.org/blog/who-can-own-a-medical-spa> (Post dated November 22, 2021, as
at February 9, 2023.)

25 ⁶ Conduct occurring more than seven (7) years from the filing date of this Accusation is
for informational purposes only and is not alleged as a basis for disciplinary action.

26 ⁷ In an interview with the Board during its investigation of this matter ("the Board
27 interview"), Respondent said that Dr. Stevens had "put this together along with the founders of
OrangeTwist," Clint Carnell and Denise Keeler. According to Respondent, Clint Carnell had
28 been "talking about starting something like this up ... back in 2009, 2010..."

1 to its sole shareholder, Grant Stevens, M.D. (“Dr. Stevens”), whose address was 485 E 17th St.,
2 Ste 500, Costa Mesa, California.

3 47. In or after April 2015, an application was filed with City of Costa Mesa for a business
4 license tax certificate for BCOT1. The license was issued effective May 1, 2015⁸ with a recorded
5 mailing address of 485 17th St., Ste 500, Costa Mesa, for the attention of Gary Fischer.⁹

6 48. On or about July 27, 2015, BCOT1 (through its then President, Grant Stevens, M.D.)
7 amended its articles of incorporation to indicate that the entity was a California professional
8 medical corporation.

9 49. On or about February 23, 2017, BCOT1 and/or Dr. Stevens applied to the Board for a
10 Fictitious Name Permit (“FNP”) to be issued in the name of “OrangeTwist.” The address of
11 record for the FNP was given as 485 E. 17th St., Costa Mesa. OrangeTwist FNP No. 547154 was
12 issued on or about April 21, 2017. The contact person for the FNP was RF., Esq. (Dallas).

13 50. FNP 54714 expired on or about April 30, 2019, and was delinquent until its renewal
14 on or about January 30, 2020. At the same time as the renewal, the address of record for FNP
15 54714 was changed to 730 S. Allied Way Ste C, El Segundo, California. An email of record was
16 provided as gary@orangetwist.com, and the phone contact number provided was the cell phone
17 of Mr. Fischer.

18 51. On or about March 7, 2017, RF, Esq., submitted a Statement of Information for
19 BCOT1, describing the business of the corporation as “aesthetic medical procedures.”

20 52. When Dr. Stevens became too busy, Clint Carnell approached Respondent and asked
21 whether Respondent would consider taking over from Dr. Stevens as the medical director for two
22 branches of OrangeTwist. Thus, effective September 1, 2018, Respondent became a Medical
23 Director of two (2) BCOT1 medical offices, at the OrangeTwist locations in Westlake Village and
24 730 S Allied Way, Suite C, El Segundo, California, respectively.

25 ////

26 _____
27 ⁸ BCOT1’s business license tax certificate in Costa Mesa expired on April 30, 2020, and
the OrangeTwist branch in Costa Mesa was closed down at some earlier time.

28 ⁹ Mr. Fischer is a former Chief Financial Officer for OrangeTwist.

1 53. Effective November 1, 2018, Respondent became the sole owner and CEO of BCOT1
2 and his purported purchase of Dr. Stevens' 10,000 shares in BCOT1 at their original total value of
3 ten dollars (\$10).

4 54. As an independent contractor to BCOT1, Respondent received compensation of
5 \$1,500 per month, per practice location. For his new role as Chief Medical Director for
6 OrangeTwist, Respondent was paid an additional \$6,250 per month.

7 55. Also effective November 1, 2018, in his new dual roles as both CEO of BCOT1 and
8 independent contractor to BCOT1, Respondent entered into an "Amended and Restated Medical
9 Director Agreement" with BCOT1 (whose principal office is reported as being in Costa Mesa).
10 The new agreement, while substantially similar to the former Medical Director Agreement, also
11 provided that Respondent had entered into a "Consulting Agreement with Orange Twist, LLC, a
12 Delaware limited liability company."¹⁰

13 56. On or about March 6, 2019, RF, Esq., submitted Statements of Information for both
14 BCOT1 and OrangeTwist Delaware, respectively, with the CA SOS. The companies shared the
15 same business address in Costa Mesa, California. While BCOT1's type of business was given as
16 "medical spa," OrangeTwist Delaware reportedly engaged in "medical spa management." Its
17 Chief Executive Officer was Clint Carnell.¹¹

18 OrangeTwist Expansion and Acquisitions/Mergers:

19 57. In late 2017 through 2018, a similar "management services" relationship existed in
20 regard to the "Illuminate Face & Body Bar" med spas, which operated out of five (5) locations in
21 California and one in Nevada. Thus, MSA's existed between the Illuminate "Manager" (an LLC,
22 in each case) and the Illuminate "PC" (a professional medical corporation, in each case). The
23 Illuminate lay corporations (one for each med spa location) were headed by co-trustees Jeffrey
24 Seery and Kenneth Kay, while the owner of the Illuminate professional medical corporations was
25 OF, M.D.

26 ¹⁰ At the Board interview, Respondent explained that BCOT1 "had a consulting agreement
27 to provide medical oversight to the admin, which is OrangeTwist..."

28 ¹¹ A similar form was submitted by RF, Esq., for OrangeTwist Delaware, on or about
September 29, 2020, with the type of business described as "aesthetic medical procedures."

1 58. In late 2018 and/or early 2019, without consultation with OF, M.D., OrangeTwist
2 merged with and/or acquired the Illuminate LLC's, and the former "Illuminate" medi spa
3 locations were turned into "OrangeTwist" medi spa locations. The MSA's between the
4 Illuminate LLC's and Illuminate PC's were terminated and the Illuminate medical practices run
5 by OF, M.D., were effectively forced to close.

6 59. On or about March 15, 2019, OrangeTwist Delaware changed its name to OT Global,
7 LLC.¹²

8 60. On or about April 18, 2019, "Orange Twist, LLC," was incorporated in Nevada. The
9 managers include both Clint Carnell and Jeffrey Seery. Clint Carnell's address is shown as 485 E
10 17th Street, Ste 500, Costa Mesa.

11 61. On or about April 30, 2019, OrangeTwist announced its 'anticipated merger' with
12 Illuminate Face & Body Bar. Press announcements included the following:

13 "When I founded Illuminate, I envisioned a wellness concept that combined
14 medical innovation and natural beauty to bring clients long-lasting results and
15 confidence," noted Jeff Seery, Co-Founder and CEO of Illuminate Face & Body Bar.
16 "With this merger, we can continue to expand this concept nationwide."¹³

17 In another report¹⁴ of the announced "anticipated merger," the following appears:

18 "I met Jeff Seery, the founder, and CEO of Illuminate, and we have a very
19 common vision," says Clint Carnell, OrangeTwist's founder "As we started
20 looking to scale the OrangeTwist business, it was a natural fit."

21 Carnell mentions each location's interiors, designed for the best possible
22 treatment environment amid the comfort of a relaxing, high-end setting. He also notes
23 the alignment in staffing—both Illuminate and OrangeTwist seek out passionate
24 practitioners who are devoted to customer health, safety, and a positive experience.
25 ...

26 "If you're an Illuminate client, don't worry—you'll still have access to your
27 favorite aestheticians, nurse practitioners, treatments and products. You'll also have

28 ¹² On or about October 5, 2020, OrangeTwist Delaware similarly changed the name it
used in California, from "Orange Twist, LLC" to "OT Global, LLC." On the same date,
OrangeTwist, LLC, (aka OrangeTwist Nevada) registered with the CA SOS as a Foreign Limited
Liability Company. The business address was indicated as 730 S. Allied Way, Suite C, El
Segundo, CA 90245, and the form was signed on behalf of OrangeTwist, LLC by RF, Esq.

¹³ <https://www.prnewswire.com/news-releases/orangetwist-announces-anticipated-merger-with-illuminate-face--body-bar-300840586.html> (Post dated April 30, 2019, as at February 9, 2023.)

¹⁴ <https://orangetwist.com/orangetwist-illuminate/> (as at February 9, 2023)

1 more locations for your convenience, and OrangeTwist will honor any existing
2 Illuminate365 monthly memberships and pre-paid services,” Seery says. ...

3 Jeff Seery will remain as an executive with OrangeTwist... OrangeTwist co-
4 founder, W. Grant Stevens, M.D., ... will remain Chief Medical Officer of the
5 organization. Joining him at the organization will be Francis R. Palmer III, M.D...
6 All Illuminate Face & Body Bar locations will be fully branded as OrangeTwist
7 locations by July 2019.

8 “OrangeTwist was already one of the fastest-growing brands in the United
9 States,” Carnell says. “The expansion of our footprint just makes us more convenient
10 for more clients, and it allows us to put more resources back into our products and
11 services. If you’re not growing, you’re dying, so I’m just really fortunate to have met
12 Jeff and to have found a partner who wants to work to make this one of the
13 preeminent brands in the country. ... We are really excited about the future and look
14 forward to putting the new company together and continuing to lead California
15 aesthetics.”

16 Neither report mentioned any participation in the merger by OF, M.D., or Illuminate
17 Medical corporation.

18 62. Also in or around late 2018, the Pure Aesthetics and Wellness med spa operated in
19 Newport Coast. A MSA existed between a lay corporation owned by Tom Forbath (DBA Pure
20 Aesthetics and Wellness), and a professional medical corporation, the Pure Aesthetics and
21 Wellness Medical Group (purportedly owned by TP, M.D.).

22 63. On or about May 17, 2019, both the DBA Pure Aesthetics and the medical
23 corporation Pure Aesthetics were sold, in a single or simultaneous transaction(s), to OrangeTwist
24 and BCOT1, respectively. As part of the sale of Pure Aesthetics to OrangeTwist, Mr. Forbath
25 received a 40 percent ownership interest in a new OrangeTwist/Pure entity. Neither TP, M.D.,
26 nor the Pure Aesthetics medical corporation¹⁵ received any compensation.

27 64. Pursuant to the sale agreement, all Pure Aesthetics’ patient records were to be
28 transferred to BCOT1. Further, the sale agreement, which was also signed by Respondent as a
purchaser, included the following:

Purchasers¹⁶ [including BCOT1] recognize ... that it may be in Purchasers’ best
interest to provide minor adjustments to patients’ prior treatments to ensure the
transfer of goodwill associated with such patients. Notwithstanding anything to the
contrary, Purchasers will have no responsibility or liability to Sellers or any patient to

¹⁵ Pure Aesthetics, the medical corporation, was dissolved on December 29, 2020, and reportedly “never incurred any known debts or liabilities.”

¹⁶ “Purchasers” are “Orange Twist Pure Management, LLC” and BCOT1.

1 provide any adjustment, repair, or replacement for any of Seller's Treatments, and
2 Purchasers, in their sole discretion, may decline the right to treat any of Seller's
3 former patients.

4 65. On or about June 2019, OrangeTwist announced the acquisition of Pure Aesthetics
5 and Wellness. One report offers the following:¹⁷

6 With this acquisition, OrangeTwist will now have a 15-center footprint across
7 California, Nevada, Texas and Washington. All centers will look and operate as an
8 OrangeTwist shop, including offering the existing curated menu of services, with the
9 addition of IV therapy and wellness vitamin shots to help clients achieve results that
10 allow them to look and feel their best from the inside out.

11 "At PURE Aesthetics + Wellness, we are committed to working closely with all
12 of our clients to determine their specific needs and adapting each service or treatment
13 accordingly for a personalized approach that guarantees these needs are safely and
14 effectively met," said Tom Forbath, President of PURE Aesthetics + Wellness. "With
15 the acquisition, this approach will be expanded to reach new clients that are
16 specifically interested in these type of offerings in the wellness space."

17 66. Effective May 29, 2019, Respondent (as CEO of BCOT1) entered into an "Amended
18 and Restated Management Services Agreement" ("2019 MSA") with OrangeTwist, LLC
19 ("OrangeTwist").

20 67. By its terms, the 2019 MSA gives OrangeTwist control over BCOT1's medical
21 practice in multiple ways, either directly or indirectly. BCOT1 has no rights to determine where
22 it practices, and it has no control or authority over the medical equipment it uses, the name it
23 practices under, or its bookkeeping and own bank accounts. OrangeTwist can terminate the 2019
24 MSA without cause, effectively causing the closure of BCOT1's medical practice, without any
25 liability to BCOT1's patients.

26 OrangeTwist / BCOT1 New Management Services Agreement:

27 68. The 2019 MSA provides the contractual relationship between "Manager"
28 (OrangeTwist, represented by Clint Carnell) and "Practice" (BCOT1, represented by
Respondent), whereby OrangeTwist provides management and administrative functions to
BCOT1,¹⁸ including billing, collections, accounting, finding real estate locations, subletting to

¹⁷ <https://www.prnewswire.com/news-releases/orangetwist-announces-acquisition-of-pure-aesthetics--wellness-300871136.html> (Post dated June 20, 2019, as of February 9, 2023)

¹⁸ The 2019 MSA states, in its Recitals, that "Practice is engaged in the practice of

1 BCOT1, the use of the OrangeTwist name and trademarks, and other non-medical services. At
2 each clinic location, OrangeTwist serves as the tenant and subleases the space to BCOT1.¹⁹

3 69. The 2019 MSA shows that OrangeTwist is a separate business entity rather than
4 merely providing an administrative service to BCOT1. For instance, OrangeTwist's protected
5 "Proprietary Information" is defined as:

6 [A]ny and all (1) operating manuals, symbols, Trademarks, trade names,
7 service marks, designs, contracts, vendor and supplier lists, procedures, protocols,
8 processes, systems, records and files respecting services provided and to be provided
9 to Practice, provider lists and fee schedules, vendor price lists, third-party payor
10 payment rates, outside provider information, provider contracting information, and
11 documentation relating to the provision of services performed under this Agreement;
12 (2) photographs, books, publications, records, correspondence, notes, letters,
13 documents, plan, proposed plans, manuals, forms; or any other material, files or data,
14 including ledger cards, bookkeeping records, computer programs, and all other
15 records or files of, affecting, or relating to the business of Manager; (3) inventions,
16 discoveries, formulae, processes, products, designs, literary works, programs or other
17 written material or documents conceived or developed by a Manager alone or in
18 conjunction with others related to the subject matter of the Manager's business; (4)
19 Manager's unique skills, concepts, sales presentations, marketing programs,
20 marketing strategy, business practices, methods of operation, licenses, technical
21 information, computer software, financial and other information concerning the
22 Manager's operations and expansion plans, and any tapes, discs, or other storage
23 medium with information concerning the Manager's operations, systems, hiring or
24 training methods; and (5) all memoranda, notes, records, drawings, documents,
25 computer software programs, tapes and discs, or other writings whatsoever made,
26 compiled, acquired, or received in connection with, or related to any activity or
27 business of Manager, including the Manager's suppliers, vendors, or others with
28 whom Manager has a business relationship, Manager's arrangements with such
parties, and Manager pricing and expansion policies and strategy. (Appendix A,
paragraph (hh))

19 70. The 2019 MSA gives OrangeTwist direct and indirect control and/or influence over
20 the medical practice, making decisions which bear directly and indirectly on the practice of
21 medicine, including by diminishing physician independence, establishing the terms of
22 employment and the physicians' rate of pay, influencing advertising, and vetting medical
23 providers. OrangeTwist negotiates the medical practice's contracts with third-party payors, it

24 _____
25 medicine ... and is owned solely by a physician..." The party who bound "Practice" to the
26 contract is BCOT1/Respondent. In the definitions section, however, "Practice" is "the medical
27 services provided under the OrangeTwist name by [BCOT1]..." In this pleading, "Practice" and
28 "BCOT1" are used interchangeably, as are "Practice" and "OrangeTwist," with their true
meanings to be determined by reference to the relevant section of the 2019 MSA.

¹⁹ At one location (within Sephora), OrangeTwist leases space within Sephora which is
then subleased to BCOT1.

1 requires physicians to assign their rights to the proceeds of their medical billings to OrangeTwist
2 who decides how accounts will be settled in the event of disputes, and determines which charges
3 to write off, among others.

4 Control Over Medical Records and Protected Health Information

5 71. "Business records" is defined as "all records relating to the operation of Practice
6 excluding all patient medical records and patient files and other records or documents which
7 relate to patient treatment by physicians." (Emphasis added; Appendix A, paragraph (b).) Since
8 "physician extenders" are separately defined and almost all the medical treatments are performed
9 by "physician extenders," this effectively means that OrangeTwist maintains control over almost
10 all patient medical records.

11 72. OrangeTwist is responsible for the maintenance, storage, retention, and custody of
12 medical records of the Practice, "subject to Practice's oversight and ultimate authority and subject
13 to strict compliance with the requirements of HIPAA and state law." (Art. 1.04.) When the
14 2019 MSA ends, Practice will retain all patient medical records and patient files maintained by
15 Practice. (Emphasis added; Appendix B, paragraph (a).)

16 73. OrangeTwist is given broad power to use and/or disclose Protected Health
17 Information ("PHI"), including "for the proper management and administration of
18 [OrangeTwist]," provided the disclosures are either required by law or OrangeTwist has obtained
19 "reasonable assurances" from the person to whom the PHI is disclosed that it will remain
20 confidential and used or further disclosed only as required by law or for the purpose for which it
21 was disclosed to the person. (Appendix C, art. 1.01.) But "a breach of this confidentiality [by
22 OrangeTwist] is not a default under this Agreement." (Appendix B, paragraph (a).)

23 Control and Authority over the Business and its Facilities

24 74. OrangeTwist is appointed as the exclusive manager of BCOT1 and is given exclusive
25 control to manage the practice at all of its locations. BCOT1 may not assign the MSA or any of
26 its obligations under the MSA without the prior written consent of OrangeTwist. (Art. 9.01.)

27 75. OrangeTwist may terminate the Agreement without cause upon at least 90 days prior
28 written notice to BCOT1. (Article 6.03(c).) BCOT1 does not have a reciprocal right.

1 76. BCOT1 is required to sublease its practice premises from OrangeTwist on prescribed
2 terms as included in the MSA. (Appendix. B, clause (d).)

3 77. OrangeTwist has “the right at all times to have access to Practice facilities for the
4 purposes of performing its responsibilities under this Agreement, or for any reasonable purpose.”
5 (Art. 1.01.) If BCOT1 prevents Manager’s access to the medical facilities; OrangeTwist may
6 immediately terminate the 2019 MSA, cease providing all services and terminate any other
7 agreements between the parties. (Article 2.06.)

8 78. If the 2019 MSA is terminated, the subleases will automatically terminate, without
9 any liability of OrangeTwist to BCOT1. (Schedule B(d), clause 4.) Similarly, if tenant
10 OrangeTwist’s own lease(s) should terminate for any reason, BCOT1’s sublease would
11 automatically terminate, without liability of OrangeTwist to BCOT1. (Schedule B(d), clause 4.)

12 79. BCOT1 may not assign or further sublet any part of the premises without the consent
13 of OrangeTwist. (Schedule B(d), clauses 8, 9.)

14 80. BCOT1 is required to grant an “exclusive special power of attorney” to OrangeTwist,
15 giving OrangeTwist wide powers that include obtaining and taking possession of all mail
16 addressed to “Practice” and signing on BCOT1’s behalf for any accountable piece of mail, and
17 “to exercise dominion over any mail piece of [BCOT1] ...” (Appendix D.)

18 81. Services provided to patients were part of OrangeTwist’s business model.

19 Control and Authority over How the Practice is Advertised and Marketed

20 82. The medical services at OrangeTwist were ostensibly provided by BCOT1, but
21 BCOT1 was not permitted to market, advertise, or otherwise operate its business under any name
22 or trademark(s) other than OrangeTwist’s trademark.

23 ... Manager grants to Practice a limited, nonexclusive, nontransferable license
24 to use Manager’s Trademark "OrangeTwist" and the OrangeTwist Materials in ... the
25 operation of Practice’s operations including the use of "OrangeTwist" in Practice’s
26 assumed name at Practice’s physical locations identified [in] this agreement. In
27 partial consideration of Manager’s grant of the foregoing rights, Practice covenants
28 with Manager that Practice will not market, advertise, or otherwise operate its
business under any name or Trademark(s) other than Manager’s Trademark during
the Term unless otherwise required by law. (Schedule B(m), art. 1.01.)

////

1 83. Patients would not know of the existence of BCOT1 when seeking care at
2 OrangeTwist locations, nor would they know that Respondent was or had been its Chief Medical
3 Director.

4 84. BCOT1 has no rights in OrangeTwist's licensed materials, which are owned by
5 OrangeTwist. Upon termination of the 2019 MSA for any reason, BCOT1 may no longer use the
6 OrangeTwist trade name and must vacate OrangeTwist premises. (Schedule B(m), para. 1.05.).

7 85. OrangeTwist had significant input authority on all advertising and marketing of the
8 Practice/BCOT1, under the name of OrangeTwist.

9 Subject to Practice's oversight and ultimate authority, Manager will, following
10 consultation with Practice, develop marketing and advertising programs for Practice;
11 provide advice and assistance to Practice on overall marketing programs, and
12 determine and analyze the effect of such programs; plan, create, write and prepare
13 advertising materials; negotiate contracts with advertising media for space and time;
14 and obtain services necessary in connection with the production and presentation of
15 advertisements. Notwithstanding anything to the contrary, Practice must make all
16 final decisions relating to marketing and advertising materials. (Appendix B,
17 paragraph (f).)

18 The Practice will have approval authority over ... content of any advertising
19 subject to [] Section 651 of the California Business and Professions Code. (Art.
20 2.01(c).)

21 86. OrangeTwist markets itself and the medical services offered at its locations on the
22 website www.orangetwist.com (at least from February 9, 2021, through February 9, 2023).

23 Control over Business Decisions:

24 87. OrangeTwist is the sole and exclusive negotiator with all vendors and other entities
25 for all service, software, and technology contracts, and the purchase and/or lease of equipment,
26 supplies, and materials that are necessary for the operation of Practice. Goods and services are
27 provided to BCOT1 by "persons affiliated with Manager." (Appendix B, paragraph (g).)

28 88. When negotiating with vendors and other entities, Manager may receive discounts
that it is not required to pass on to BCOT1. In addition, Manager "may add a reasonable markup
to the cost of goods and services obtained for Practice. (Appendix B, paragraph (g).)

89. Despite the Practice having the ultimate authority to settle all matters and direct the
prosecution of such claims, the control of the litigation remains with the Manager rather than the
providers operating under BCOT1, the professional corporation.

1 Manager will (1) manage and direct the defense of all claims, actions,
2 proceedings or investigations against the Practice or any of its officers, directors or
3 employees in their capacity as such relating to the operations of Practice, and (2)
4 manage and direct the initiation and prosecution of all claims, actions, proceedings or
5 investigations brought by Practice against any person other than Manager relating to
6 the operations of Practice. However, Practice will have the ultimate authority to
7 settle all matters and direct the prosecution of such claims. (Appendix B, paragraph
8 (k).)

9 90. The 2019 MSA gives OrangeTwist some control over the Practice regarding the
10 acquisition and retention of new medical equipment²⁰:

11 Manager is the owner and/or lessee of certain medical equipment located at
12 Practice ("Medical Equipment"). Practice has examined the Medical Equipment and
13 determined that the Medical Equipment is necessary and appropriate for the provision
14 of Practice's professional medical services. ... (Schedule B(e), art. 1.01.)

15 ... If Practice deems it necessary to acquire new medical equipment, the
16 Manager may decline to purchase the medical equipment and lease the equipment to
17 the Practice under Schedule B(e). (Appendix B, paragraph (e).)

18 During the Term, provided Practice remains in compliance with the terms of
19 this Agreement, Manager agrees to the exclusive, full-time lease of the Medical
20 Equipment to Practice. ... All rights, titles and interest in and to the Medical
21 Equipment, including any custom development or modifications, is the exclusive
22 property of Manager. (Schedule B(e), art. 1.02(a).)

23 91. OrangeTwist "makes no warranties, express or implied," with respect to the medical
24 equipment, including with respect to fitness for a particular use or purpose. (Schedule B(e), art.
25 1.02(b).)

26 Control over BCOT1's finances

27 92. The 2019 MSA gives OrangeTwist full access and control to BCOT1's finances and
28 banking.

93. BCOT1 was required by the 2019 MSA to grant to OrangeTwist "an exclusive special
power of attorney" and appoint OrangeTwist as BCOT1's "exclusive true and lawful agent and
attorney-in-fact" with wide powers, including (Appendix D) the power to:

- (a) open a bank account in BCOT1's name;
- (b) bill BCOT1 patients in BCOT1's name and receive the cash proceeds;

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²⁰ The selection of medical equipment constitutes a function of providing medical care.

1 (c) take possession of and endorse (in the name of BCOT1 or any individual physician)
2 any checks, money order and other instruments received as payment for services rendered by
3 BCOT1;

4 (d) sign checks on behalf of BCOT1, including affixing stamps of signatures of BCOT1's
5 authorized signatories and make withdrawals from the Revenue Account.²¹

6 94. The 2019 MSA authorizes OrangeTwist to manage all BCOT1 funds.

7 All receipts and monies arising from Practice operations will be received by
8 Manager on behalf of Practice and Manager will, in the name of Practice, deposit all
9 amounts in the Revenue Account. (Art. 1.02.)

10 95. The terms of the 2019 MSA require OrangeTwist's unhindered access to BCOT1's
11 bank accounts, including the Revenue Account. In the event such access is stopped or prevented,
12 OrangeTwist "may immediately terminate the [2019 MSA], cease providing all services to
13 Practice, and terminate any other agreements between the Parties upon [unspecified] notice to
14 Practice without any recourse by Practice." (Emphasis added; Appendix B, paragraph (j).)

15 96. Preventing OrangeTwist's access to BCOT1's Revenue account could result in the
16 effective termination of BCOT1's practice (including the use of the OrangeTwist
17 license/trademark agreement, its sublease of premises from OrangeTwist, its lease or use of
18 medical equipment owned by OrangeTwist, and others), and, therefore, of its providing services
19 to its patients.

20 97. In an interview with the Board, Respondent stated that he did not have a bank account
21 associated with BCOT1. In fact, multiple bank accounts were opened in BCOT1's name;
22 Respondent neither knew of their existence nor had signing rights to any of them. The only
23 signatories to the BCOT1 bank accounts were officers or agents of OrangeTwist, LLC.²²

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26 ²¹ "Revenue Account" means the bank account(s) established and maintained by Manager
27 in the name of Practice for the deposit of all Practice Revenues, payment of all Practice Expenses,
28 and payment of all amounts due to Manager under this Agreement. ... Revenue Account will
include any such investment accounts of Manager in which funds collected pursuant to this
Agreement have been deposited. (Appendix A, paragraph (ii).)

²² This was also true for Respondent's successor as CEO of BCOT1, JS, M.D.

1 Control over billing, litigation

2 98. OrangeTwist retained control over billing and collecting the charges, how accounts
3 would be settled in the event of disputes, and the determination of which charges to write off.

4 Subject to Practice's oversight and ultimate authority, Manager will be
5 responsible, for and on behalf of Practice, as its agent, for billing and collecting the
6 charges made with respect to all medical services provided by Practice at the Practice
7 unless otherwise agreed in writing. The extent to which Manager attempts to collect
8 such charges, the methods of collection and the amount of settlements with respect to
9 disputed charges, and the determination of which charges are not collectible, will be
10 determined by Manager. ... (Appendix B, paragraph (b).)

11 99. OrangeTwist's exclusive special power of attorney also gave it the right to initiate
12 legal proceedings in the name of Practice to collect monies owed to Practice, to enforce the rights
13 of Practice as creditor under any contract or in connection with the rendering of any service, and
14 to contest adjustments and denials by governmental agencies as third-party payors. (Appendix D,
15 article 1.02(h).)

16 100. OrangeTwist controls the bookkeeping and accounting of the practice and the
17 business records belong to OrangeTwist.²³

18 Manager will provide all bookkeeping and accounting services necessary or
19 appropriate to the functioning of the Practice including maintenance, custody, and
20 supervision of all Business Records. Manager will use reasonable efforts to preserve
21 the confidentiality of patient medical records and use information contained in these
22 records only for the limited purposes necessary to perform the services set forth in
23 this Agreement. A breach of this confidentiality is not a default under this
24 Agreement. All Business Records are the property of Manager. Upon expiration or
25 termination of this [2019 MSA], Practice will retain all patient medical records and
26 patient files maintained by Practice. (Appendix B, paragraph (a))

27 Control over Salaries and Personnel

28 101. OrangeTwist has a say in BCOT's hiring of professional medical employees.

Practice will have final authority for the hiring, supervision, evaluation and
termination of its Practice Professionals (in consultation with Manager). Manager
will consult with and assist Practice in identifying, prequalifying, and recruiting new
Practice Professionals. (Article 2.03.)

102. The medical providers who perform medical treatments at OrangeTwist locations (not
the medical directors) are not employed, paid, and/or supervised by BCOT1.

²³ At the Board interview, Respondent had no knowledge of any of the finances or
bookkeeping of BCOT1. He was unaware that the 2019 MSA made provision for a management
fee to be paid by BCOT1 to OrangeTwist.

1 103. OrangeTwist has input regarding and/or *de facto* complete control over professional
2 fees.

3 (a) The terms of the 2019 MSA provide that medical directors are paid \$1,500 per month,
4 per location and, further, “Upon request, Manager will provide research and analysis regarding
5 fees for Professional Services rendered by Practice’s Practice Professionals.” (Article 2.01(b).)

6 (b) When interviewed by the Board, Respondent stated that he had no control over the
7 medical directors’ salaries and that this control rested completely with OrangeTwist. Even
8 though he regarded the medical directors’ and Chief Medical Director’s salaries as too low, he
9 had no authority to increase it.

10 (c) As OrangeTwist grew and acquired more locations, Respondent intended to “sit down
11 with the company” and say that the salary was not enough for this increased level of oversight,
12 from six (6) locations to fourteen (14).

13 104. The 2019 MSA requires BCOT1 to adopt personnel policies and procedures that are
14 consistent with OrangeTwist’s policies and procedures. (Appendix B, clause (d).)

15 105. Per the terms of the 2019 MSA, BCOT1 agreed that it would “require all Practice
16 Professionals to execute and deliver to Manager powers of attorney, satisfactory in form and
17 substance to Manager, appointing Manager as attorney-in-fact for each of the purposes set forth in
18 this Agreement.” (Article 2.05.)

19 Fee Splitting

20 106. As OrangeTwist’s “management fee,” BCOT1 was required to pay (i) \$45,750 per
21 month plus (ii) 12% of the amount by which Practice Revenue for the month exceeds \$200,000.
22 (Appendix A, paragraph (m).)

23 107. For its (compelled) use of the OrangeTwist trademark, BCOT1 was required to pay
24 OrangeTwist a monthly “royalty equal to 20% of Practice Revenues.” (Schedule B(M), Article
25 1.06.)

26 Supervision of Medical Procedures Performed at OrangeTwist locations

27 108. As the supervising physician for medical directors, it was Respondent’s responsibility
28 to ensure that the medical directors were providing appropriate patient care.

1 109. At the Board interview, Respondent stated that he saw his role as Chief Medical
2 Officer as an “ambassador position.”

3 110. Respondent’s corporation signed agreements with medical directors who would
4 provide medical services under the terms of BCOT1’s medical director contracts. But the
5 medical directors provided oversight at locations using the OrangeTwist brand. No medical care
6 was provided by “Body Concepts by Orange Twist 1 Corp.”

7 111. At the Board interview, Respondent stated that the medical directors had “complete
8 autonomy in the oversight and running of their center,” and the “only thing that they had to be
9 was always available.” There was no requirement of how often (or how much time) they needed
10 to be physically at ‘their’ OrangeTwist location(s). One of the medical directors was contracted
11 to supervise two OrangeTwist locations, one in northern California and the other in Las Vegas.
12 All the medical directors supervise more than one location.

13 112. In Board interviews with the medical directors, it was clear that they typically spend
14 very little time physically at their centers. In some instances, their physical visits to the centers
15 could be as seldom as once a month or one every two months.

16 113. Some procedures performed at OrangeTwist can lead to adverse outcomes.

17 114. Patients at OrangeTwist were required to have a good faith exam performed before
18 undergoing any treatment or a procedure by a physician, nurse practitioner, or physician assistant.

19 115. On or about March 4, 2019, OrangeTwist engaged the services of a telehealth
20 company (a professional medical corporation) as an independent contractor to provide persons
21 who would perform good faith exams at OrangeTwist.

22 116. When no physician assistant or nurse practitioner is available at OrangeTwist, they
23 reportedly use providers employed by the telehealth company to perform the required good faith
24 exams. The telehealth company has no contractual obligation to BCOT1.

25 117. It is not clear that patients were aware that some care (such as good faith
26 examinations) was provided by the telehealth company (contracted by OrangeTwist), while other
27 care was provided by BCOT1 via physician extenders with BCOT1 medical director oversight.

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1 118. It is further not clear that all the BCOT1 medical directors observed whether these the
2 medical procedures were performed appropriately by the physician extenders.

3 Respondent, OrangeTwist FNP and Respondent's Exit From BCOT1:

4 119. At the Board interview, Respondent described OrangeTwist as "the parent
5 organization," of which he had functioned as a medical director "and their chief medical
6 director." Respondent continued, "OrangeTwist is a lay corporation, and they needed a medical
7 corporation to oversee the direct medical care."

8 120. In February 2020, Respondent became ill and was unable to fulfill his duties as
9 medical director or chief medical director. He informed "the OrangeTwist folks," who asked him
10 if he would "allow [them] the time to find somebody to be the new VP chief medical director [his
11 replacement]..."

12 121. OrangeTwist convened a panel of three OrangeTwist medical directors and asked
13 them to select the new Chief Medical Director and CEO of BCOT1. The panel selected JS, M.D.

14 122. Around the end of May 2020, Respondent purportedly transferred his 10,000 shares
15 in BCOT1 to JS, M.D., for the reported price of ten dollars (\$10)²⁴, thereby making JS, M.D., the
16 CEO of BCOT1. The transaction was marked by a Stock Purchase Agreement, purportedly
17 effective May 20, 2020, but signed by Respondent on May 28, 2020, and by JS, M.D., on June 3,
18 2020.

19 123. On or about May 20, 2020, JS, M.D., succeeded Respondent as CEO of BCOT1 and
20 Chief Medical Director of OrangeTwist under the 2019 MSA.

21 124. Effective March 1, 2021, ownership of BCOT1 was transferred from JS, M.D., to TP,
22 M.D. (former owner of Pure Aesthetics medical corporation), for the nominal price of ten dollars
23 (\$10), although no money changed hands.

24 125. Respondent never applied for, and never obtained, an OrangeTwist FNP.

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27 ²⁴ At the Board interview, Respondent could not recall actually receiving the ten dollars.
28 As he explained, the medical corporation (BCOT1) was "just the vehicle that they had set up that
was necessary to fulfill that role [of overseeing the direct medical care]. There was no financial
advantage to buying it or selling it."

1 126. This notwithstanding, on or about March 25, 2021, Dr. Palmer filed an application
2 with the Board for the cancellation of FNP 547154 (issued to Dr. Stevens as the owner of BCOT1
3 in April 2017).

4 127. In April 2021, on www.orangetwist.com, Respondent was still listed as the medical
5 director of the South Bay OrangeTwist location (El Segundo).

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Aiding and Abetting the Unlicensed Practice of Medicine)**

8 128. Respondent is subject to disciplinary action under sections 2227 and 2234 of the
9 Code, as defined by sections 2052, subdivision (b), 2264, 2234, subdivision (a), 2400, and 2410,
10 of the Code, in that he aided and abetted the unlicensed practice of medicine by OrangeTwist,
11 LLC, by entering into an agreement with and/or allowing a lay to exert authority and/or control
12 over his medical practice, Body Concepts of Orange Twist 1 Corp, and/or as more particularly
13 alleged in paragraphs 28 through 127, above, which are hereby realleged and incorporated by this
14 reference as if fully set forth herein.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Violation of the Corporate Practice of Medicine Ban)**

17 129. Respondent is further subject to disciplinary action under sections 2227 and 2234 of
18 the Code, as defined by sections 2234, subdivision (a), 2286, 2400, 2402, 2406, and 2410, of the
19 Code, Corporations Code sections 13401 and 13408.5, and California Code of Regulations, title
20 16, sections 1343 and 1347, in that he violated, directly or indirectly, and/or assisted in or abetted
21 the violation of, the Moscone-Knox Professional Corporation Act and/or the ban on the corporate
22 practice of medicine, by entering into an agreement with and/or allowing a lay corporation to
23 exert authority and/or control over his medical practice, Body Concepts of Orange Twist 1 Corp,
24 and/or as more particularly alleged in paragraphs 28 through 127, above, which are hereby
25 realleged and incorporated by this reference as if fully set forth herein.

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1. Revoking or suspending Physician's and Surgeon's Certificate Number G 57473, issued to Respondent Francis R. Palmer, III, M.D.;
2. Revoking, suspending or denying approval of Respondent Francis R. Palmer, III, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent Francis R. Palmer, III, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
5. Taking such other and further action as deemed necessary and proper.

DATED: February 13, 2023

Matthew M. Davis for

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