

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

In the Matter of the First Amended
Accusation Against:

Sergio Vittorio Sapetto, M.D.

Physician's and Surgeon's
Certificate No. A 97483

Respondent.

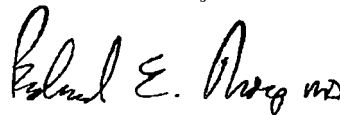
MBC File # 800-2020-069628

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "DISCIPLINARY ORDER" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a clerical error in the "Disciplinary Order" portion of the Decision in the above-titled matter and that such clerical error shall be corrected so that the "Effective" and "Ordered" dates are properly reflected.

IT IS HEREBY ORDERED that the Decision in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the Order to reflect that the effective date of the Proposed Decision is *April 4, 2024*, and the ordered date is *March 5, 2024*, respectively.

March 12, 2024



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

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Case No.: 800-2020-069628

DECISION BY OPERATION OF LAW

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

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
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STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

SERGIO VITTORIO SAPETTO, M.D.,

Physician's and Surgeon's Certificate No. A 97483

Respondent.

Agency Case No. 800-2020-069628

OAH No. 2022120556

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on July 10 through 12, 2023, by videoconference.

Deputy Attorney General Harriet Newman represented complainant Reji Varghese, Executive Director of the Medical Board of California.

Attorney Albert J. Garcia represented respondent Sergio Vittorio Sapetto, M.D., who was present.

The record remained open for the submission of written closing arguments, and to permit respondent to submit an updated course completion certificate. The certificate was timely filed and admitted into evidence as Exhibit N. The closing arguments were timely filed and marked as Exhibit 26 (complainant) and Exhibit O (respondent).

The record closed and the matter was submitted for decision on July 19, 2023.

FACTUAL FINDINGS

Introduction

1. On September 27, 2006, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 97483 (Certificate) to respondent Sergio Vittorio Sapetto, M.D. The Certificate was in full force and effect at all times relevant to the charges in the First Amended Accusation. The Certificate will expire on November 30, 2023, unless renewed. This is the first disciplinary action against respondent's Certificate.

2. On December 9, 2022, the Board's former Executive Director filed the First Amended Accusation solely in his official capacity. Complainant seeks to revoke respondent's Certificate based on allegations that respondent: 1) coerced and threatened a patient into a sexual relationship, and to have an abortion after she became pregnant; and 2) made a false note in the patient's medical record. Respondent admits that he had a sexual relationship with the patient and that he made a false note in her record, but denies that he threatened or coerced her. Respondent requests discipline short of revocation.

Relationship Between Respondent and Patient 1

3. Respondent graduated medical school in 2005. After a one-year internship at Los Angeles County/USC Medical Center, he completed a two-year residency at Kaiser Permanente in Santa Clara. Respondent has been board certified in internal medicine since 2009. Respondent worked as a primary care provider at Kaiser Permanente in Redwood City for about six years before switching to Kaiser Permanente in San Jose in July 2015.

4. In 2016, Patient 1 was a 32-year-old reporter and news anchor at a Spanish-language television station. Respondent was assigned as Patient 1's primary care provider when she moved from Pleasanton to San Jose.

5. Patient 1's initial appointment with respondent was on July 21, 2016, for routine care and for a skin lesion. At the time of this appointment, posttraumatic stress disorder, eating disorder, and panic disorder were listed in Patient 1's medical record as past or active problems. Respondent and Patient 1 discussed aspects of their personal lives, including their shared Latin American heritage. (Respondent's father is from Argentina; Patient 1 immigrated to the United States after finishing graduate school in her native Costa Rica.) Patient 1 told respondent that she was going through a divorce, and he responded that he was as well. Respondent called Patient 1 that evening and the two engaged in a non-medical social conversation. They exchanged friendly email messages for a few weeks, with some discussion of possibly meeting socially, but they never met, and the communication ended.

6. Patient 1 had a second appointment with respondent in February 2017, for a routine physical. There was some resumption of social communication after this appointment, which again died out.

7. Patient 1 had another appointment with respondent in February 2018, for a cough. Shortly after this appointment Patient 1 and respondent again began communicating socially, and started meeting in person. Their initial meeting was at a Starbucks. During the next several months, they met in person approximately once a month when they could both arrange for a day off from work. During these dates, they went on hikes, had lunch, or went on excursions such as horseback riding in Monterey and visiting the Boardwalk in Santa Cruz. Respondent and Patient 1 texted and talked on the phone frequently. Patient 1 was aware that respondent was in a committed relationship, and was living with his partner, baby, and daughter from his first marriage. Respondent understood that Patient 1 had an on-again off-again boyfriend.

8. On June 3, 2018, in the evening, Patient 1 sent respondent a message through the Kaiser patient portal, stating that she was having mood swings, changing from happy to tears within hours for no reason. She asked whether she might be bipolar and whether it would be best to see a psychiatrist or psychologist.

Respondent replied through the Kaiser portal the following day, recommending she seek an appointment with a psychiatrist and providing the phone number for scheduling. He also noted that a formal referral from him was not required.

Patient 1 began treatment with a psychiatrist and psychologist through Kaiser in June 2018. She was diagnosed with borderline personality disorder, eating disorder, generalized anxiety disorder, and posttraumatic stress disorder. She was prescribed medication and individual and group therapy. Patient 1 had received previous mental health treatment for some of the same diagnoses at a different Kaiser between 2011 and 2015.

9. On a date in Half Moon Bay in the summer or fall of 2018, respondent and Patient 1 kissed. Respondent suggested that they go to a hotel, and Patient 1 declined. They continued their text and phone communications. At their next date, respondent apologized for asking to go to a hotel, gave Patient 1 flowers and a phallic-shaped candy, and told her that he would not ask for sex until she made it clear that she was ready. They continued to meet for dates and kiss during the dates.

10. In the fall of 2018, Patient 1 made arrangements to have elective cosmetic surgery in Colombia in January 2019. She asked respondent to help arrange for pre-operative lab work, a chest x-ray, and an EKG, as requested by the clinic in Colombia. Respondent ordered the tests in October and Patient 1 had them done at Kaiser in November 2018. The results of the tests were sent to Patient 1 through Kaiser's patient portal.

11. In November 2018, respondent and Patient 1 discussed the possibility that Patient 1 would join respondent on an upcoming trip to visit respondent's friend in Hawaii. They exchanged emails and text messages about flights and hotels. When respondent texted asking whether Patient 1 preferred to stay near the city with more to do or outside the city at a nicer place, she responded, "anywhere is fine . . . as long as it is with you."

12. In early December, respondent texted Patient 1 that he would be all alone for four days at the end of the month and that it "would be cool to go out one night." Patient 1 agreed. Respondent and Patient 1 had the following text exchange the next day,

RESPONDENT: good night sweetie . . . thinking of you.

PATIENT 1: Me too . . . more than you imagine

RESPONDENT: idk . . . I can imagine a lot

PATIENT 1: IUD or implant?

13. In late December 2018, respondent and Patient 1 met at a casino/bar near Patient 1's workplace. They left together and drove to a nearby motel, where they had sexual intercourse for the first time. The next day, the following text exchange took place:

RESPONDENT: And I didn't even get to perform up to my full capabilities last night . . . just imagine the possibilities

PATIENT 1: I am really looking forward to it

14. In early January 2019, Patient 1 texted respondent that she was "really looking forward" to spending time with him in Hawaii. Patient 1 had a contraceptive IUD placed on January 7, 2019.

15. Respondent and Patient 1 travelled together to Honolulu for three or four nights. They stayed at a hotel and had sexual intercourse. After they returned, Patient 1 and respondent texted:

PATIENT 1: Hawaii was magical . . . I was a little nervous first because I didn't know if we were to get along but honestly I'm scared of how good, comfortable and natural I felt with you

RESPONDENT: . . . I knew I really liked you and Hawaii
made me love you

PATIENT 1: The night I dropped you off at your
place, that "I love you" came totally
natural and without even think it

16. Patient 1 had the planned cosmetic surgery procedure in Colombia in the second half of January 2019, and spent some time with family in Costa Rica afterwards.

17. Patient 1 asked respondent for a note taking her off work to accommodate her surgery and recovery, because she did not believe her employer would accept a note from her physician in Colombia. Respondent wrote a letter dated January 15, 2019, taking her off work from that day through February 23, 2019.

18. While Patient 1 was out of the country for the surgery, her employment was terminated. She was upset and contacted her psychiatrist and psychologist. Her mental health providers adjusted her medications, enrolled her in an intensive outpatient therapy program, and put her on state disability.

19. After Patient 1 returned to California, respondent and Patient 1 continued to talk and text daily throughout 2019, and they met more frequently. They met for lunch during respondent's workday. They took walks in local parks, sometimes joined by respondent's younger daughter. They went to hotels and had sex about once a month. They also had sex in respondent's office at Kaiser at least twice, when respondent was working an after-hours shift. In early May 2019, respondent and Patient 1 travelled to Hawaii again.

20. Patient 1 lost her health insurance in late May 2019 and could no longer receive services from her Kaiser mental health providers until she was able to resume coverage through Medi-Cal. Respondent provided monthly work status reports keeping Patient 1 off work so that she could continue to collect state disability, and he created related medical records falsely stating that he had seen her in his clinic. Patient 1's insurance coverage at Kaiser resumed in the fall of 2019. Her medical records continued to reflect respondent as her primary care provider.

21. Respondent and Patient 1 exchanged romantic and sexually explicit texts, both proclaiming their love for the other, and referring to each other as "hun" and "babe." Patient 1 told respondent that she was not having sexual relations with anyone else. They had discussions about respondent leaving his partner and marrying Patient 1. In August 2019, respondent texted Patient 1 a photograph of a small church by the ocean and asked, "Can we get married here?" In September 2019, respondent texted Patient 1 that he was leaving his partner and Patient 1 texted respondent that she was "really looking forward to a family, a life and a future with you."

In November 2019, respondent texted Patient 1, asking "do you still feel we have a future together?" Patient 1 responded "I really don't know how much longer you are expecting me to wait." In December 2019, Patient 1 texted respondent, "It really hurts to know you are spending Christmas with her. I really thought we were going to be together this year."

22. Respondent's and Patient 1's relationship continued into 2020, although they met less frequently after restrictions went into place due to the pandemic. They continued to text and talk frequently and met in person when they could. They went to hotels on a few occasions and had sexual intercourse.

23. Patient 1 discovered that she was pregnant around June 2, 2020, and notified respondent. Patient's IUD was removed, and an ultrasound determined that the pregnancy was viable. Respondent told Patient 1 that his preference was for her to terminate the pregnancy, but that he would support her in whichever choice she made. Respondent brought Patient 1 food and prenatal vitamins, and advised her about managing her pregnancy symptoms.

24. Respondent's partner learned about his relationship with Patient 1. Respondent told Patient 1 that he could not have further contact with her. Respondent stopped answering her calls or responding to her attempts to contact him.

25. On June 29, 2020, Patient 1 sent a message to respondent through the Kaiser patient portal:

Hi Dr! I have been trying to reach out to you since last week because I am having some complications with my pregnancy I would like to discuss but I am not sure the best way to get in contact with you. Should I book a phone/video appointment or just address my concerns through this email

Respondent sent a response to Patient 1 that day, through the Kaiser portal:

I am sorry you are not feeling well. I advise you follow up with your obstetrics provider to help with your symptoms. If you need to speak with me please set up a phone appointment

Patient 1 scheduled a phone appointment for the following day, June 30, at 9:30 a.m. When respondent did not call Patient 1 at 9:30, she sent a message through the portal at 10:03, saying, "what happened with my phone appointment?" Respondent responded through the portal that he was running late and would call her "ASAP." Respondent never called Patient 1 while working his shift. At 1:07 p.m., respondent documented in Patient 1's record "missed appointment" and "patient is a NO SHOW."

26. Patient 1 sent an email to respondent on July 2, 2020, in which she said:

I have not been able to get you out of my mind since last time you called me. Hearing you cry that way really broke my heart.

Since the first time I told you "I love you" I really meant it ... and to this day I still do.

You are always going to be the love of my life babe and all I really want is your happiness, even if that is away from me ... more than boyfriend and girlfriend we were always best friends and I will always be here for you if you need a friend

27. Patient 1 had an obstetrics appointment on July 10, 2020. Her records note that she told the physician that her relationship with the father of the baby was consensual, but that she was unsure about keeping the pregnancy because he had another family. In response to screening questions about domestic violence, Patient 1 denied being in a relationship where she felt threatened or ever having had a partner physically hurt or threaten her.

28. In mid-July, Patient 1 told her obstetrician and mental health providers at Kaiser that she was pregnant by her Kaiser physician, that he had threatened her, and that she was scared. Respondent was terminated on July 21, 2020, and a report was made to the Board. During the Division of Investigation's investigation, Kaiser personnel reported that there had been no other patient complaints about respondent.

29. On July 31, 2020, Patient 1 told her obstetrician that respondent's partner had called her and was upset that respondent had lost his job. Patient 1 stated that she did not feel physically threatened by respondent or his partner. Patient 1 stated that respondent had also tried to call her but she had not answered the phone. Patient 1 told her obstetrician that she was considering an abortion because she did not want to be constantly involved with respondent and his partner.

30. Patient 1 had an abortion in early August 2020.

31. Patient 1 has a civil case for damages pending against respondent.

32. During the Division of Investigation's investigative interview, respondent admitted having an affair with Patient 1, took full responsibility for this unethical relationship, and apologized for letting down his family, his profession, and Patient 1.

Patient 1's Testimony

33. Much of Patient 1's testimony regarding her relationship with respondent is inconsistent with other evidence and is not credible.

a. Patient 1 testified that she began seeing respondent in person in 2018 after he offered to provide informal psychotherapy to supplement the treatment she was receiving from her Kaiser mental health providers. She characterized their monthly

outings as similar to the therapy sessions with her psychologist, and stated that she thought respondent was being a caring physician. She added that she appreciated this free extra therapy, and thought it was being kept secret because it exceeded her insurance coverage, and she was not making copayments to Kaiser. This testimony is not credible.

b. Patient 1 testified that she felt coerced into having sex with respondent because he threatened to withhold ordering the preoperative tests and delayed writing her a note to get off work. She testified that respondent forced her to have sex in the motel room in December 2018, pushing her onto the bed face down and penetrating her after she told him to get off, saying "do you want your surgery or no?" Patient 1 stated that she believed she had "no choice." Patient 1 further testified that she went to Hawaii with respondent in January 2019 for the same reason, that she feared she would not get the cosmetic surgery she desired unless she did what respondent told her to do. Patient 1 testified that she continued to have sex with respondent and went to Hawaii with him a second time because she needed him to provide documentation to keep her on state disability. Patient 1 testified that respondent physically grabbed her at least twice. Patient 1 testified that she never felt that she was in a boyfriend-girlfriend relationship with respondent, that all sexual contact with him was against her will, and that she never wanted him to leave his partner to marry her. This testimony is not credible in light of the numerous romantic and sexually explicit messages Patient 1 sent to respondent during the course of their sexual relationship.

c. Patient 1 testified that respondent threatened her when he found out she was pregnant. She explained that he threatened to "call immigration" and have her deported, even though she is a naturalized United States citizen; threatened to put

false information in her medical record; and threatened that she would never work in television again. She stated that at one point he changed his mind and offered to support her and her baby, but only if she told people she had become pregnant by a sperm donor. Patient 1 testified that respondent told her that she "wouldn't have a better fate" than his ex-wife, who was dead, and she interpreted this as a death threat. She thought respondent would hire a "Colombian guy" to kill her, and she was afraid that respondent would then take the baby and that "that crazy lady" (respondent's partner) would raise the child. This testimony is not credible.

34. Patient 1 testified that the unplanned pregnancy and abortion caused her physical and emotional pain. This testimony is credible.

Respondent's Testimony

35. Respondent acknowledged engaging in an inappropriate and unethical social and sexual relationship with Patient 1, and apologized for his actions. Specifically, he acknowledged that it was wrong and unethical to call Patient 1 the evening after her first medical appointment, to meet with her socially, to engage in a sexual relationship with her while she was his patient, to have sex with her at his office, to provide false notes for her to continue on state disability, and to falsely document her as a "NO SHOW" when he failed to call her for a phone appointment she scheduled.

36. Respondent testified that he asked Patient 1 at their first in person social meeting in early 2018 to switch to another primary care provider, but she never did. He reported asking her again on a few more occasions during the next two years. Respondent was under the impression that the Kaiser organization would not let a

physician remove a patient, but he realizes now that he should have done more to discharge her as a patient once they began having a social relationship.

37. Respondent denied ever telling Patient 1 that he would provide "informal therapy" to her. He denied ever coercing or forcing Patient 1 to have sex with him, demanding sex in return for medical services, or grabbing her forcefully. Respondent denied making any threatening statements to Patient 1 to coerce her into terminating the pregnancy.

38. Respondent explained that he did not follow through with Patient 1's request for a phone appointment on June 30, 2020, because he believed that she was trying to contact him for personal and not medical reasons. He called her on his personal phone later that evening and they had an emotional personal conversation. Respondent acknowledged that he should not have documented that Patient 1 was a "NO SHOW" and that doing so was "a huge mistake."

39. Respondent's testimony is credible. He expressed remorse for his actions, calling his affair with Patient 1 the "worst mistake" of his life. Respondent regrets stepping outside the patient-physician relationship. He reflects on the consequences Patient 1 suffered from his misconduct every day, because he loved and cared about her. Respondent also regrets the harm he caused to his family, career, and community. Respondent believes that he failed in his mission in life, which was to help people rather than hurt people. Respondent hopes the Board will give him a second chance to prove himself as a physician. Respondent is willing to abide by any conditions the Board imposes on his Certificate.

40. Respondent testified that he would have difficulty paying the total amount of cost recovery sought, especially as a lump sum. His mortgage, student debt,

and other expenses consume most of his monthly income. Respondent is willing to borrow money to help pay cost recovery.

Expert Opinion

41. David Brody, M.D., prepared two expert reports and testified on behalf of complainant. Dr. Brody is board certified in internal medicine and works as a hospitalist at Contra Costa Regional Medical Center. In reaching his conclusions, Dr. Brody followed the Board's expert reviewer guidelines, which direct reviewers to assume that patient allegations in sexual misconduct cases are true.

42. Dr. Brody identified three extreme departures from the standard of care.

a. Dr. Brody concluded that by engaging in a sexual relationship with Patient 1 while he was her primary care provider, respondent committed an extreme departure from the standard of care, noting that the American Medical Association's Code of Medical Ethics directs that romantic or sexual relationships that occur concurrently with the patient-physician relationship are unethical.

b. Dr. Brody noted that the standard of care requires physicians to faithfully document in patient medical records. Dr. Brody believes that respondent committed an extreme departure from the standard of care by incorrectly documenting that Patient 1 was a no-show at her scheduled telephone appointment on June 29, 2020.

c. Dr. Brody concluded that respondent committed an extreme departure from the standard of care by exploiting prerogatives gained from the patient-physician relationship in order to coerce Patient 1 into a sexual relationship, because of his position to withhold preoperative testing and disability paperwork.

Additional Evidence

43. Respondent completed the UC Irvine PBI Professional Boundaries and Ethics Course—Extended Edition in August 2020, and the follow-up Maintenance and Accountability Seminars in July 2021. Respondent reported that the course helped him reflect on his mistakes, helped him accept responsibility for his actions, helped him identify red flags, and helped him to be a better professional. Respondent noted that he altered his practice after taking this course. Respondent is much more cautious about what he reveals to patients about his personal life. He previously thought that talking about his own life was a good way to connect with patients; he now realizes that he should not open himself up to patients. Respondent stated that he will never again reveal intimate information to patients or call patients on the phone socially.

44. Respondent and his partner attended 24 couples therapy sessions with psychologist Nydia Medina, Ph.D., between July 2020 and January 2022. Dr. Medina wrote a letter regarding her treatment, noting that the sessions focused on respondent's infidelity and rebuilding his relationship with his partner. Dr. Medina described respondent as expressing significant remorse and taking full accountability for his conduct. She found him to be an active participant in therapy who was compliant and gained insight. Respondent reported that the sessions with Dr. Medina gave him insight into his terrible decisions and taught him how to communicate more effectively with his partner.

45. Respondent attended three individual psychotherapy sessions with Kseniya Harkins, L.C.S.W., in the spring of 2023. In a letter dated May 16, 2023, Harkins wrote that therapy was focused on the events surrounding respondent's relationship and employment, managing respondent's anxiety and depressive symptoms, and helping respondent understand his choices and their impact on others. She believes

respondent demonstrated good insight, remorse, and solid engagement in treatment. Respondent reported that he discontinued therapy for financial reasons but hopes to continue in the future.

46. Respondent stated that in therapy, he explored the vulnerabilities that lead him to make the terrible decision he did. He stated that at the time he began his inappropriate relationship with Patient 1, he was stressed and unhappy with his job and with his relationship with his partner, lacked friends, and had not processed issues from his first marriage.

47. Two individuals testified in support of respondent; both also wrote letters on his behalf.

a. Eric Mebane, M.D., is the Chief of Adult and Family Medicine at Kaiser in Redwood City. He worked with respondent at that facility from 2009 through 2015. When respondent left to join the San Jose facility, they remained friends.

Dr. Mebane testified that respondent was tearful and remorseful when he told him about his sexual misconduct with Patient 1. Dr. Mebane recommended remedial measures including taking an ethics course and respondent was receptive.

Dr. Mebane agrees that respondent committed a significant deviation from the standard of care by engaging in a sexual relationship with Patient 1, and he was disappointed in respondent when he found out about it. Dr. Mebane nonetheless believes respondent is an excellent physician who is honest and straightforward. Dr. Mebane would hire him again if that were possible, and would trust respondent to care for his own family. Dr. Mebane does not think respondent poses a risk to the public. Dr. Mebane does not believe that respondent threatened or coerced Patient 1 in exchange for medical services, arguing that Patient 1 could have easily switched

providers to get the documentation she desired. Dr. Mebane also opined that documenting a patient as a no-show is a "billing issue" and not in his mind as serious as documenting incorrect medical information.

b. Brett Freels served in the United States Coast Guard for more than 20 years and is now an airline pilot for Hawaiian Airlines. Freels and respondent have been friends since childhood. Freels socialized with respondent and Patient 1 during their two trips to Hawaii and also on one occasion when he visited the San Jose area. Freels does not believe respondent coerced Patient 1 into a sexual relationship, and reported that Patient 1 was happy and excited to be in Hawaii. Respondent and Patient 1 appeared to be infatuated with one another, and Patient 1 was affectionate with respondent. Freels questioned Patient 1's motives when he met her, but he did not share his concerns with respondent at the time. Freels has discussed respondent's transgressions with him and believes that respondent is remorseful and accepts responsibility. Freels believes respondent's false documentation that Patient 1 was a no-show in her medical record was a poor decision made under duress. Freels continues to hold respondent in high regard as an honorable and honest person who does the right thing and whose calling is to help people.

48. Respondent has worked for Pinnacle Healthcare, at a clinic in Soledad, since September 2020. He submitted two letters written by colleagues.

a. Ernesto Alvero, P.A., interviewed respondent for the position. He wrote that respondent was forthright about the allegations in this matter and expressed remorse during the initial interview. Alvero works closely with respondent and reported that respondent is an excellent physician with a large patient following.

b. Magdalena Hernandez is the clinical supervisor and chief medical assistant at the Soledad clinic where respondent has worked since September 2020. Hernandez wrote that respondent provides essential health services to the local farming community and to migrant seasonal workers, including many patients with little access to health care and serious chronic conditions. She described respondent as a dedicated physician who is sought out by patients. Hernandez wrote that respondent has had a hugely positive impact on staff and patients.

At some point after respondent started working at the clinic, he asked to meet with Hernandez, and told her about the allegations against him. He apologized, expressed remorse, explained what he had done to understand why he committed the conduct, and assured her that it would never happen again. Hernandez continues to hold respondent in high regard as an honest, caring, and responsible physician.

49. Respondent submitted four additional letters, all from individuals who are aware of the allegations against respondent.

a. Respondent's partner wrote that respondent is not a sexual predator or abusive person, and that he is a kind and friendly person who puts his children's needs ahead of his. She wrote that respondent has "fought like hell to earn [her] forgiveness" for his relationship with Patient 1, and has assured her he will keep working to earn her forgiveness for as long as it takes.

b. Kathleen Serventi, M.D., is a retired family medicine physician who worked with respondent at Kaiser Permanente in San Jose for four years. They shared some patients and interacted regularly. Dr. Serventi regards respondent as a competent, caring, and honest physician and her knowledge of the allegations against him has not altered her opinions about respondent's character.

c. Tuan Nguyen, M.D., is a family medicine physician who worked with respondent at Kaiser Permanente for approximately five years. Dr. Nguyen described respondent as a good listener with a good sense of humor, and an honest, caring, and competent physician.

d. Respondent's cousin, Eric Siddall, wrote that respondent told him about his relationship with a patient, and told him that he was mortified by what he had done and was aware that he had violated a serious ethical boundary. Siddall believes that respondent's transgression was out of character, that he deeply regrets his actions, and that he will not engage in similar behavior again.

50. Morgan Hill Recreation Coordinator Anna Bielecki wrote that respondent volunteered for two years during the pandemic, delivering meals to homebound seniors each week. She added that respondent was reliable and could be counted on when others could not complete their deliveries.

Ultimate Findings

51. Respondent had a protracted romantic and sexual relationship with Patient 1 while he was her primary care physician. This unethical relationship constituted an extreme departure from the standard of care.

52. It was not established that respondent exploited his position as Patient 1's physician to coerce or force her into a sexual relationship in exchange for providing medical services or threatened her to convince her to have an abortion.

53. Respondent falsely documented that Patient 1 was a no-show for a telephone appointment on June 29, 2020. This false entry was an act of dishonesty and

an extreme departure from the standard of care. It was not established that Patient 1 suffered any harm from this false documentation.

Costs

54. Complainant seeks to recover \$56,732.50 for legal services provided by the Department of Justice, \$56,072.50 for services provided through July 7, 2023, and an additional \$660 for services that were anticipated to be provided between that date and the commencement of the hearing. These costs are supported by a declaration in compliance with the requirements of California Code of Regulations, title 1, section 1042. Respondent challenges the amount of costs sought as excessive. This matter was reassigned to a different deputy attorney general resulting in duplicative costs billed to complainant for legal services. A reduction by approximately 20 percent is reasonable in light of this duplication of services. The reasonable enforcement costs in this matter are \$45,000.

LEGAL CONCLUSIONS

1. It is complainant's burden to demonstrate the truth of the allegations by "clear and convincing evidence to a reasonable certainty," and that the true allegations constitute cause for discipline of respondent's Certificate. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Business and Professions Code section 2227 authorizes the Board to take disciplinary action against licensees who have been found to have committed violations of the Medical Practice Act. Business and Professions Code section 2234, included in the Medical Practice Act, provides that a licensee may be subject to discipline for unprofessional conduct, which includes gross negligence (§ 2234, subd.

(b)); dishonesty (§ 2243, subd. (e)); sexual relations with a patient (§ 726); and sexual exploitation, which includes consensual sexual intercourse with a patient (§ 729).

First Cause for Discipline – Unprofessional Conduct/Gross Negligence/Sexual Misconduct/Sexual Exploitation/

3. Cause for discipline for unprofessional conduct, gross negligence, sexual misconduct, and sexual exploitation was established based on respondent's romantic and sexual relationship with Patient 1, in light of the matters set forth in Factual Findings 5 through 7, 9, 11 through 15, 19, 21, 22, 35, 42.a, and 51.

Second Cause for Discipline – Unprofessional Conduct/Gross Negligence/Dishonesty

4. Cause for discipline for unprofessional conduct, gross negligence, and dishonesty was established based on respondent's false entry into Patient 1's medical record that she did not show for a phone appointment, in light of the matters set forth in Factual Findings 25, 35, 38, 42.b, and 53.

Discussion

5. Cause for discipline having been established, the appropriate level of discipline must be determined. Complainant seeks revocation of respondent's Certificate. Respondent seeks a five-year term of probation, with special conditions.

The Board's Guidelines recommend a minimum discipline of seven years' probation with appropriate conditions for violations of sections 726 and 2234, subdivision (e). Revocation is the minimum recommended discipline for violations of section 729 and is mandatory under certain circumstances that are not present in this

case (cases involving multiple victims or prior offenses). Five years' probation is the minimum recommended discipline for gross negligence and unprofessional conduct.

In exercising its disciplinary functions, protection of the public is the Board's highest priority. (Bus. & Prof. Code, § 2229, subd. (a).) The Board is also required to take disciplinary action that is calculated to aid the rehabilitation of the physician whenever possible, as long as the Board's action is not inconsistent with public safety. (Bus. & Prof. Code, § 2229, subds. (b), (c).)

Respondent engaged in a romantic and sexual relationship with a vulnerable patient with mental health issues for more than two years. The evidence did not establish that respondent forced or coerced the patient into this relationship. Nonetheless, respondent's egregious conduct caused harm to Patient 1, who endured an unwanted pregnancy and abortion. Respondent cut off communication with the patient when she was struggling with this unplanned pregnancy and falsely documented her as a "NO SHOW" to a phone appointment to avoid talking to her.

Respondent presented significant evidence of rehabilitation from his serious ethical violations. He takes responsibility for his misconduct, has completed a professional boundaries course, engaged in counseling, and secured new employment where he is a valued practitioner serving an underserved population. Respondent demonstrated insight into his behavior and expressed sincere remorse for the harm he caused. Revocation of respondent's Certificate is not necessary for the protection of the public. The public can be adequately protected by placing respondent on probation for a period of seven years, with special conditions including: psychiatric evaluation, psychotherapy, a prohibition on solo practice, and boundaries and professionalism courses.

6. Business and Professions Code section 125.3 authorizes the Board to recover its reasonable costs of investigation and enforcement if the licensee is found to have committed a violation of the licensing act. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Respondent succeeded in refuting the allegations of coercive and threatening behavior, and succeeded in having the penalty reduced from revocation to probation. A reduction of the reasonable costs incurred by complainant by 20 percent, to \$36,000, is appropriate.

ORDER

Physician's and Surgeon's Certificate No. A 97483, issued to respondent Sergio Vittorio Sapetto, M.D., is revoked; however, revocation is stayed, and respondent is placed on probation for seven years on the following terms and conditions.

1. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and

successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

2. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24-hour program of interactive education and training in the area of boundaries, which takes into account data

obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six (6) months after respondent's initial enrollment shall constitute cause for discipline unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with program recommendations. At the completion of the program, respondent shall submit to a final evaluation. The program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

If respondent fails to complete the program within the designated time period, respondent shall cease the practice of medicine within three calendar days after being notified by the Board or its designee that respondent failed to complete the program.

3. Psychiatric Evaluation

Within 30 calendar days of the effective date of this decision, and on whatever periodic basis thereafter may be required by the Board or its designee, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that petitioner is mentally fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation.

4. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a

California-licensed board-certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

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

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

5. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of

providing patient care, or 2) respondent is the sole physician practitioner at that location.

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

If, during the course of the probation, respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

6. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice

insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

7. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

8. Obey All Laws

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

9. Quarterly Declarations

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

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

10. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

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

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

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

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

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

11. Interview with the Board or its Designee

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

12. Non-Practice While on Probation

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

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

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

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

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

13. Completion of Probation

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

14. Violation of Probation

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

15. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his Certificate. The Board reserves the right to evaluate respondent's request and to exercise its discretion

in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. Probation Monitoring Costs

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

17. Cost Recovery

Respondent shall pay to the Board costs associated with its enforcement of this matter, pursuant to Business and Professions Code Section 125.3, in the amount of \$36,000.

DATE: 08/15/2023

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings