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

In the Matter of the Accusation Against: Gan Xon Ng, M.D. Physician's and Surgeon's Certificate No. C 53500 Respondent.	Case No. 800-2019-062389

DECISION

The attached Decision After Non-Adoption 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 April 22, 2024.

IT IS SO ORDERED March 22, 2024.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Accusation Against:

GAN XON NG, M.D., Respondent

Agency Case No. 800-2019-062389

OAH No. 2023020727

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on August 2 and 3, 2023, from Sacramento, California.

Megan R. O'Carroll, Deputy Attorney General, represented complainant Reji Varghese, Executive Director, Medical Board of California (Board), Department of Consumer Affairs (DCA).

Michael A. Firestone, Attorney at Law, Marvin Firestone, M.D., J.D. and Associates, LLP, represented Gan Xon Ng, M.D. (respondent), who was present at hearing.

Evidence was received, and the record was held open for submission of simultaneous written closing arguments. OAH received complainant's closing brief

which was marked for identification as Exhibit 27, and respondent's closing brief which was marked for identification as Exhibit R. The record closed, and the matter submitted for decision on August 25, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On November 13, 2008, the Board issued to respondent Physician's and Surgeon's Certificate No. C 53500 (certificate). The certificate expires on March 31, 2024, unless renewed or revoked.

2. On November 21, 2022, a former Board Executive Director filed an Accusation in his official capacity against respondent, alleging three causes for discipline constituting unprofessional conduct: (1) gross negligence; (2) repeated negligent acts; and (3) inadequate and inaccurate medical record keeping.

3. Specifically, complainant alleged respondent failed to maintain any medical records for a confidential patient (CP) for whom he was prescribing controlled substances, constituting gross negligence. In addition, respondent was repeatedly negligent: (1) in his care and treatment of CP by failing to maintain any medical records for CP for whom he prescribed controlled substances; (2) failing to document informed consent to treatment before prescribing controlled substances to CP; and (3) treating a family member, including prescribing controlled substances, with whom respondent was in an unstable relationship, without maintaining adequate documentation. Lastly, complainant alleged respondent failed to adequately and accurately maintain medical records for CP.

4. Respondent timely filed a Notice of Defense to the charges. The matter was set for an evidentiary hearing before an ALJ of OAH, pursuant to Government Code section 11500 et seq. This hearing followed. At the start of the hearing, respondent stipulated to the factual allegations in the instant Accusation.

Complainant's Evidence

UCSF Medical Center 805 Reports to the Board

5. On November 22, 2019, the University of California, San Francisco (UCSF) Medical Center reported to the Board, pursuant to Business and Professions Code section 805.01, that it imposed a summary suspension of respondent's staff privileges, membership, or employment after investigating respondent for:

> Repeated acts of clearly excessive prescribing, furnishing or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing controlled substances without a good faith effort prior examination of the patient and medical reason therefor.

6. The UCSF report (805 Report) summarized that on November 5, 2019, UCSF's President of the Medical Staff learned that a primary care provider at a UCSF clinic became aware of a history of controlled substances prescribed by respondent to CP. Respondent is married to CP. The concerns included suspicious prescribing of controlled substances without conducting and documenting a good faith examination, using a prescription pad with a UCSF-issued Drug Enforcement Administration (DEA) number, and inappropriately accessing CP's records in the electronic medical record system. Following an investigation, UCSF's President of the Medical Staff, in consultation with the Division Chief, summarily suspended respondent's medical staff

clinical privileges and membership. On November 8, 2019, UCSF's Executive Medical Board ratified the summary suspension pending further investigation.

7. On April 13, 2021, UCSF filed a supplemental 805 Report, informing the Board that on November 25, 2019, an ad hoc committee was appointed to investigate the allegations. Following the conclusion of the investigation, UCSF's Executive Medical Board (EMB) recommended termination of respondent's UCSF membership and clinical privileges and continued the summary suspension respondent's clinical privileges on October 21, 2020. The EMB based its decisions on findings that respondent violated the Medical Staff Bylaws, the Rules and Regulations, the terms of his UCSF DEA Registration, UCSF policies applicable to confidentiality and privacy, and applicable standards of care, ethics, and professionalism. The EMB concluded that respondent demonstrated a lack of judgment and insight into the severity of the concerns. Respondent challenged the decisions by the EMB, and on April 1, 2021, he resigned his membership and privileges. At the time of his resignation, no final conclusions had been reached by UCSF's Hearing Committee.

BOARD INVESTIGATION

8. On December 10, 2019, Daniel Schuman, an Investigator with the Division of Investigations, Health Quality Investigations Unit, San Jose Field Office, began an investigation after the Board received UCSF's 805 Report. Investigator Schuman testified at hearing consistent with his Investigation Report dated April 27, 2022, and Supplemental Investigation Reports dated June 28, 2022, and November 8, 2022.

9. In January 2020, Investigator Shuman began gathering documents from UCSF pursuant to a subpoena duces tecum. The case was briefly assigned to Investigator Cynthia Verbis on May 12, 2020, and on July 28, 2020, Investigator

Schuman was reassigned to the case. He obtained CP's medical records detailing various visits, prescriptions, and laboratory panels ordered by respondent from 2018 to 2019. He learned that CP's providing physician at UCSF, Jonathan Lee, M.D., filed a report with the San Francisco Police Department (SFPD) on November 8, 2019, suspecting respondent of committing spousal abuse against CP. CP's medical records revealed that from 2018 to 2019, respondent prescribed CP with alprazolam, also known as Xanax, a benzodiazepine used to treat anxiety and panic disorders, on 11 different occasions. CP was the only patient to have received alprazolam from respondent. On October 15, 2020, Investigator Schuman obtained respondent's Controlled Substance Utilization Review and Evaluation System (CURES) Prescriber History Report. Respondent's CURES report showed the majority of entries were for CP from 2018 to 2019.

Interview with CP

10. On March 18, 2021, Investigator Schuman called CP, who confirmed that respondent previously treated him at UCSF. In a follow-up phone call on March 17, 2022, CP told Investigator Schuman he moved from Australia to California, and respondent handled his care and treatment because he was uncomfortable finding a new physician. CP suffered from bipolar disorder, suicidal ideation, and depression. Respondent prescribed Xanax and other antidepressants. On April 5, 2022, CP provided Investigator Schuman with his medical/psychiatric records from Australia.

Respondent and CP later moved from Los Angeles to San Francisco, and they eventually married. Respondent finally convinced CP to find a new primary care physician and psychiatrist. However, respondent still treated CP at their home in San Francisco. CP gave respondent verbal consent to access his medical records at UCSF. Respondent accessed CP's medical records to verify CP's blood and laboratory work.

Respondent and CP got into verbal fights at home and engaged in physical altercations after they both consumed too much alcohol. In one incident in 2017, they pushed each other, and the police were called. They were both transported to the police station but not criminally charged. CP described respondent as a good doctor who had CP's best interests in mind. Respondent no longer treats CP.

Interview with Respondent

11. On June 8, 2021, Investigator Schuman interviewed respondent over the phone. Respondent explained that in 2013, CP moved from Australia to California, and they began dating. Respondent learned about CP's bipolar disorder and his medications and began treating CP because he did not have health insurance or a primary care provider when he moved to California. Respondent intended to treat CP temporarily until CP found a provider to take over his treatment.

Over the next five years, respondent prescribed CP with a variety of medications to treat various conditions. The medications included Xanax, Adderall, Lamictal, lidocaine, and "Adderex." In 2017, respondent and CP moved from Los Angeles to San Francisco. Despite his reluctance, CP eventually found a primary care provider and psychiatrist at UCSF. Despite this, respondent continued to renew CP's prescriptions for Xanax to treat his anxiety, and citrulline to treat his blood pressure.

Respondent examined CP at home, performed pill counts on CP's medications, and ensured CP took the medications as prescribed. During CP's initial treatment, respondent took notes. However, those notes were lost after they moved to San Francisco. After moving to San Francisco, respondent no longer documented his treatment or the prescriptions he wrote for CP.

Respondent denied committing spousal abuse against CP. CP experienced periodic manic and psychotic episodes due to his bipolar disorder and drank alcohol to "numb his psychological pain." Because of this, violent altercations occurred where respondent was forced to defend himself. No charges were filed after the incident involving the SFPD.

DOMESTIC VIOLENCE INCIDENT ON SEPTEMBER 16, 2017

12. On September 16, 2017, at approximately 3:25 a.m., officers with the SFPD responded to a domestic violence call at respondent and CP's residence. CP reported to SFPD Officer Williams that respondent attacked him and bit him in the arm and right nipple. CP was visibly upset, tearful, and shaking. Four other SFPD officers then arrived to assist. Officer Williams and three of the SFPD officers spoke with respondent, who was visibly upset and hysterically crying. Respondent stated that CP is a diagnosed schizophrenic and has an anger problem. He arrived home tired from work at approximately 10:00 p.m. Wanting to "decompress," he consumed a vodka drink and glass of wine. CP was having an episode and punched respondent in the left eye. Respondent bit CP in self-defense. They both pushed each other. CP held respondent by the lower portion of the neck but did not strangle respondent. CP left the apartment and respondent called 911. Officer Williams observed scratches to respondent's lower neck, his throat, and redness at the back of his ears.

13. Respondent also informed the officers that he and CP had been married for three years. Respondent and CP had two prior undocumented incidents of domestic violence. Approximately one year prior to the present incident, respondent and CP got into a physical altercation where CP punched respondent in the right eye. Respondent pushed CP, breaking CP's arm. Respondent had to have eye surgery as a result.

14. Officer Williams also spoke with CP who stated he was talking to his father in Australia via Skype. After the call, CP and respondent argued over paying attention to each other, and respondent wanted to talk about it. CP did not, and respondent became angry, pushing CP against the kitchen wall. CP tried to hold respondent to calm him down, and respondent bit his right nipple. CP pushed respondent away and a physical altercation ensued. CP attempted to "bear hug" respondent, and respondent bit CP on his right forearm. They both continued to push each other until CP separated himself and locked himself in their room. Respondent turned off all the Wi-Fi in the apartment and CP told respondent he was going to call the police. Respondent pleaded with CP not to call the police for fear that he might lose his job. CP went outside and called 911. CP admitted to drinking earlier in the evening. Both CP and respondent declined medical attention.

15. CP confirmed with Officer Williams that he and respondent had been married for three years. CP stated there were approximately 25 to 30 undocumented incidents of domestic violence between him and respondent. Approximately one year prior to the present incident, respondent broke CP's forearm by repeatedly hitting him as he tried to defend himself. CP had to get metal rods surgically implanted in his forearm as a result of the incident.

16. Officer Williams could not determine who was the primary aggressor based on the inconsistent statements between CP and respondent, and the absence of any witnesses. He determined that both respondent and CP committed domestic battery. CP and respondent were both transported to SFPD's Northern Station and booked for spousal battery causing serious bodily injury. Neither respondent nor CP were criminally charged with a crime.

TESTIMONY OF BOARD'S EXPERT, BRIAN CHAN, M.D.

17. Dr. Chan is board certified in Internal Medicine. He has worked as a physician at Kaiser Richmond's Outpatient Medicine Clinic since October 1999. From 2008 to 2020, he served as the Assistant Chief of the Department of Medicine at Kaiser Richmond. Dr. Chan has been an expert reviewer for the Board since 2002. Dr. Chan received his medical degree from the State University of New York at Brooklyn in 1996 and completed his residency in the Internal Medicine Department at Los Angeles County Harbor University of California Los Angeles (UCLA) Medical Center.

18. The Board retained Dr. Chan on or about May 4, 2022, to review and evaluate the medical treatment respondent provided to CP. The Board provided Dr. Chan with numerous materials to review, including UCSF's 805 Report and supplemental 805 Reports, CP's CURES report, CP's statement to the Board, CP's prescription profiles and prescriptions from CVS pharmacy, and Investigator Schuman's Investigation Reports.

19. Dr. Chan testified at hearing consistent with the contents of his initial and supplemental expert reports. He also testified that the standard of care means "what a reasonably prudent physician with similar circumstances would do for a patient at that point in time." He added that there are simple and extreme departures from the standard of care. A simple departure is "something where you tried to do the right thing but miscalculated in some type of way and did not do what the average doctor would do in the same or similar situation." An extreme departure means "lack of scant care."

May 4, 2022 Initial Expert Report

20. In this report, Dr. Chan summarized UCSF's 805 Report and CP's UCSF medical records. On October 21, 2018, respondent prescribed CP with a Lidoderm patch. The note for this visit was redacted by UCSF. On October 26, 2018, respondent ordered a metabolic panel for CP that was normal. From August 12, 2018, to October 29, 2018, Dr. Chan found multiple prescriptions in CP's chart prescribed by respondent with no notes. The prescriptions were for non-controlled substances Lamictal (a mood stabilizer for bipolar disorder), Atarax (an antihistamine), Voltaren gel (topical pain reliever), and Zoloft (an antidepressant), and the Schedule 4 controlled substances Lomotil (anti-diarrhea medication) and Zofran (anti-nausea medication).

21. On October 29, 2018, CP saw a new primary care provider (PCP) at UCSF who was not respondent. The PCP's notes described CP as a 50-year-old male with a history of hypertension, depression, alcohol use, and seizures after trauma. CP moved to the United States four years prior. He was depressed since he was 19 years old. He had suicidal thoughts and had seen a psychiatrist in the past, but not for many years. CP had chronically been taking Zoloft. He sometimes heard voices he knew were not real. He sometimes had episodes of euphoria. CP drank 12 to 18 shots of vodka per week. His examination was normal and the provider recommended CP reduce alcohol intake and lose weight.

22. On August 12, 2019, after CP was already seeing a new PCP, respondent noted in CP's chart that he wrote prescriptions for Lamictal and Zofran, but did not document what they were for. On August 29, 2019, respondent prescribed Voltaren gel without noting an examination. On October 17, 2019, respondent noted in a visit summary that he prescribed CP Zoloft for depression. On October 19, 2019,

respondent noted in a visit summary that he refilled Voltaren gel, Atarax, Zofran, and Lomotil, without any other documentation.

23. On November 1, 2019, the PCP noted that CP was bipolar, and recommended CP get a magnetic resonance image (MRI) for a painful mass on his back. An MRI was ordered and hydrocodone was prescribed. The PCP noted after checking CURES that respondent wrote multiple prescriptions for the controlled substance alprazolam. On November 21, 2019, CP had a pending referral to a psychiatrist.

24. Dr. Chan's review of CP's CURES records for the period April 2014, to October 2019, showed that respondent typically prescribed CP alprazolam 2 milligram (mg) tablets four times a day. From April 2014 to July 2017, respondent wrote prescriptions for amphetamine salt combo 20 mg, 1 tablet up to three times a day, and lorazepam 2 mg up to three times a day. By July 2017, CP was only taking alprazolam. Dr. Chan testified that alprazolam is Xanax. The risks of taking Xanax are oversedation, and can pose more of a risk when mixed with other substances like alcohol or mind-altering medications. A patient may have a higher tolerance for Xanax, requiring higher doses. Here, respondent reduced CP's doses during the course of care, and the doses were maintained at a certain level. Dr. Chan opined that CP's dose of 2 mg four times a day, from 2014 to 2019, was a consistent dose that stayed the same the entire time. He added that "it's on the higher side," but "it was not uncommon to see doses like that." It was "not an outlandish amount."

25. Dr. Chan summarized a letter CP sent to the Board. CP described a difficult life, both medically and socially, growing up in Australia. CP moved from Australia to the United States in 2013 to be with respondent, his partner. They married in 2014, and CP's psychiatric condition caused him to relapse and become nearly

incapacitated. CP showed his Australian medical records to respondent who prescribed CP with the psychiatric medications he had previously been taking. Respondent insisted CP see a different doctor at that time, but CP refused until 2018. CP considered respondent a part of his medical team with permission to view his medical records and to treat him. Respondent extensively interviewed CP and took part in CP's medical care which CP highly valued.

26. Dr. Chan also summarized respondent's interview with the Board. Respondent practiced hospital medicine for the past 10 years while also performing urgent care and pre-operative evaluation work. Respondent informed the Board that he completed a two and a half day course in controlled substance prescribing in March 2020.

Respondent and CP began dating in 2004 and had a long-distance relationship for nine years. CP moved from Australia to the United States in 2013, and respondent assumed CP's medical care because CP had no insurance. They were married in 2014. From 2014 to 2018, respondent prescribed medications for CP, including alprazolam, lorazepam, amphetamine salts, and Lamictal. CP extensively detailed his earlier medical history and showed respondent his medical records from Australia. Respondent based his prescribing on the medications CP already had. Respondent wrote some initial notes in Los Angeles, but these were later lost. Respondent did not take any notes after he and CP moved to San Francisco, and acknowledged this was wrong, and later completed a two-day remedial record keeping course.

Respondent tried to get CP to see a separate PCP, but CP was very distrustful of doctors. Thus, respondent continued to treat CP. Respondent regularly spoke with and examined CP while prescribing him medications even though he did not document this. In 2018, respondent finally helped CP find a new PCP and psychiatrist at UCSF.

Respondent continued to prescribe alprazolam to CP for one year even after CP began seeing a new PCP. Respondent did so because the PCP wanted to initially defer discussing the controlled substances because CP was being worked up for a mass on his back.

CP periodically had manic episodes and would binge drink alcohol. CP had been taking the same quantity of sedatives for many years, and respondent felt comfortable prescribing the alprazolam dosage even though it was a large quantity. CP was not comfortable talking to his new doctors about the alprazolam because he felt judged by them. When UCSF began its investigation into respondent's prescriptions for CP, respondent stopped prescribing all medications of any type.

Respondent had verbal but not written approval to access CP's chart at UCSF. He regularly accessed non-psychiatric medical records and accessed psychiatric records one time after CP's first visit with his new psychiatrist. The peer review process at UCSF was never completed because respondent resigned, and the investigation ended before it could finish.

27. Dr. Chan provided conclusions regarding respondent's evaluation and prescribing of controlled substances to CP, obtaining CP's consent for treatment, monitoring of CP, medical record documentation for CP's treatment, proper dosages, access to CP's medical records, and use of his DEA license to prescribe to CP. He concluded that respondent committed an "extreme departure from the standard of care about documentation and a simple departure from the standard of care around consent for controlled substance prescribing." Dr. Chan opined on the standards of care, including respondent's the evaluation, treatment, prescribing, and documentation of his treatment of CP in his addendum report described below.

May 4, 2022 Addendum Expert Report

28. This expert report contained the same information as the Initial Expert Report. However, Dr. Chan also opined on the standards of care related to respondent's medical treatment of CP, and whether respondent departed from those standards of care as set forth below.

(a) On the question of whether respondent properly evaluated CP for use of long-term controlled substances including risk stratification, or risk levels, for abuse, the standard of care is to conduct a thorough history and physical examination before prescribing controlled substances.

Dr. Chan opined that respondent did not prescribe CP opiates, only other controlled substances primarily benzodiazepines and stimulants. Thus, the Board's guidelines on opiate prescribing did not "apply as strictly although these medications can cause similar problems." Respondent lost his records extensively reviewing CP's history and prescriptions before he prescribed CP with controlled substances. Respondent asserted that he noted CP's alcohol binge drinking which troubled him because of increased risk of side effects when taking controlled substances. However, CP was stable on his prescribed dose for many years, and respondent felt maintaining the prescribed dose was necessary for CP's psychiatric well-being. Dr. Chan concluded that respondent did not depart from the standard of care for properly evaluating CP, including risk stratification for controlled substances.

(b) On the issue of whether respondent sought consultation as needed for the patient, the standard of care is when treating a patient with controlled substances, consultation with appropriate specialists is required. Dr. Chan opined that CP, a bipolar patient with post-traumatic stress disorder (PTSD) taking high dose sedatives and

stimulants, should have consulted with a psychiatrist. Here, respondent sent CP to obtain care from a PCP and psychiatrist. Dr. Chan concluded that respondent did not depart from the standard of care for seeking consultation as needed.

(c) On the issue of whether respondent had a proper treatment plan and goals for controlled substances use, the standard of care is to conduct a periodic review for continued appropriateness of treatment with a goal of minimizing risk for side effects and stopping controlled substances when possible. Respondent did not chart any notes on his treatment plan for CP. Respondent's plan was to maintain and not increase CP's controlled substance use to control his psychiatric condition until he could get CP to see a psychiatrist. Respondent tried to taper CP's controlled substance use as he stopped CP's lorazepam and amphetamine salt prescriptions in 2017. Dr. Chan concluded that respondent did not depart from the standard of care for having a proper treatment plan and goals for controlled substance use.

(d) On the issue of whether respondent obtained patient consent for treatment, the standard of care is to discuss and document the risks and benefits of prescribing controlled substances with the patient. Respondent did not document his discussion with CP regarding the risks of treatment with controlled substances. There is no signed contract about prescriptions of controlled substances. However, Dr. Chan reiterated that the Board's Guidelines apply most specifically to opiate prescribing. Although respondent did not document discussing the risks with CP, he did talk to CP about the risks of the medications respondent prescribed, and thoroughly monitored CP's controlled substance use. Dr. Chan concluded that respondent's failure to obtain CP's written consent for his treatment with controlled substances and only having a verbal agreement is a simple departure from the standard of care.

(e) On the issue of whether respondent appropriately checked CP, a patient taking controlled substances, the standard of care is to conduct periodic monitoring for complications and proper use of the controlled substances. Respondent lived with CP and said he regularly checked CP's use of controlled substances. Dr. Chan opined that a urine toxicology screen and CURES report should be done at least annually for a patient taking narcotics, and this was not done with CP. However, CP was not taking opiates, and the Board's Guidelines do not strictly apply. Dr. Chan concluded that respondent did not depart from the standard of care for the monitoring of controlled substance prescriptions.

(f) On the issue of whether respondent kept proper medical records, the standard of care is to keep thorough written medical records on any patient the physician is treating. Dr. Chan testified that proper documentation "helps the doctor to follow along what's going on with the patient and know if treatment is working or not." Documentation is also "important for other providers," in that other physicians involved with the patient's treatment need to know what medications a patient is taking. The risks of not documenting a patient's lorazepam and amphetamine salt medications could be "more sedation, compromised respiratory system, overdose, and death." Respondent lost his written medical records for CP and thereafter did not maintain any written medical records. Dr. Chan had no medical records to review. Dr. Chan concluded that respondent's failure to keep legible and detailed records on a patient for whom he was prescribing controlled substances is an extreme departure from the standard of care for keeping proper medical records.

(g) On the issue of whether respondent prescribed a proper dosage of narcotics to CP, the standard of care is to refrain from prescribing excessive controlled substances to patients, and only use controlled substances with a sound rationale for

treatment. Dr. Chan again opined that the Board's prescribing guidelines for benzodiazepines are not as strict as for opiates. He further opined that a similar dosage of benzodiazepines was continued by CP's psychiatrist for CP's mental health, and that respondent decreased CP's dosage of benzodiazepines when he treated CP. Dr. Chan concluded that respondent did not depart from the standard of care for prescribing a proper dosage of narcotics to CP.

(h) On the issue of whether respondent inappropriately accessed CP's medical records, the standard of care is that a patient's chart should only be accessed by a treating provider for patient care reasons. Dr. Chan opined that respondent was the treating provider for CP with CP's consent for many years. Thus, respondent needed to access CP's medical records. Dr. Chan concluded respondent did not depart from the standard of care for accessing CP's records.

(i) On the issue of whether respondent inappropriately used a DEA license when prescribing controlled substances, the standard of care is to use a valid DEA license when prescribing controlled substances. Dr. Chan opined that UCSF complained that respondent used a separate DEA license to prescribe controlled substances. However, Dr. Chan found that both DEA licenses were valid, and concluded that respondent did not depart from the standard of care when using his DEA license.

29. Overall, Dr. Chan concluded that respondent committed an extreme departure from the standard of care for failing to document his treatment of and prescribing of controlled substances for CP. In addition, respondent committed a simple departure from the standard of care for failing to obtain CP's written consent for treatment with controlled substances. Dr. Chan added that no harm came to CP regarding inadequate documentation of consent.

October 30, 2022 Addendum Expert Report

30. Dr. Chan opined on whether respondent violated ethical standards by prescribing to a family member, and whether this was a separate departure from the standard of care. The standard of care is that a provider must exert caution when treating a family member, and the provider would need to treat the family member as he would any other patient with appropriate documentation and evaluation. Caution is necessary when treating with controlled substances, and extra care is necessary if the relationship is unstable.

31. Dr. Chan found that respondent did not document any of his treatment of CP and that respondent was in an unstable relationship with CP. In mitigation, Dr. Chan testified that CP was "fairly sick from a psychological standpoint and needed these medicines to function, and not getting them would cause the patient to deteriorate." Thus, respondent prescribed medications to CP to keep CP from harm. Respondent regularly evaluated CP and continued CP's prior treatment as CP mistrusted and refused to see other doctors. Domestic violence between respondent and CP took place and was documented by SFPD, but it was unclear who instigated the violence. Respondent and CP remain married and are supportive of one another. Respondent was not convicted of any crime, and Dr. Chan presumed his innocence. Dr. Chan concluded respondent committed a simple departure from the standard of care regarding treating a family member because of the lack of clear documentation. Regular examination and evaluation occurred, and treatment appeared to be appropriate and was continued with a new PCP who assumed care. CP was supportive of respondent's treatment of him.

32. Dr. Chan testified that he had "a lot of sympathy [for] respondent." His patient, CP, came from another country. CP had a very difficult past and a psychiatric

condition that needed treatment, and CP did not want to see any doctors. Respondent was continuing what other doctors prescribed to CP.

Respondent's Evidence

RESPONDENT'S TESTIMONY

33. Respondent is board certified in Internal Medicine. He received his medical degree and completed his residency in Internal Medicine at Boston University School of Medicine in 1999 and 2002, respectively. He has worked as a staff physician at On Lok Health (On Lok) since 2021. Prior to working at On Lok, from 2019 through 2021, respondent worked as a Health Sciences (HS) Clinical Professor at the UCSF's Division of Hospital Medicine. From 2017 through 2019, he worked an HS Associate Clinical Professor of Medicine at UCSF. From 2016 through 2017, he worked as an HS Associate Clinical Professor of Medicine at the Division of General Internal Medicine at the University of California, Los Angeles (UCLA). From 2006 through 2017, respondent worked as a physician at various hospitals, including Memorial Sloan-Kettering Cancer Center, UCSF, UCLA and LA Veterans Administration Hospital.

34. Respondent was born and raised in Kuala Lumpur, Malaysia. He came to the United States for his college education, majoring in Electrical Engineering at Boston University. He was an exceptionally good student with high grades. He continued at Boston University to attend medical school, receiving his medical degree and completing his residency there. After residency, he moved to New York City and began working at Memorial Sloan-Kettering Cancer Center. Respondent then moved to California and began working at UCSF as an Assistant Clinical Professor. He transferred to UCLA in 2012 to work at the Division of Hospital Medicine. He rose to the rank of Associate Clinical Professor, responsible for training residents. While at

UCLA, respondent won three teaching awards. After five years in southern California, respondent moved to San Francisco and began working again at UCSF, where he rose to the rank of Associate Clinical Professor.

35. Respondent currently works as a staff physician at On Lok, where he treats geriatric patients with cognitive and functional impairment. On Lok is a non-profit organization that serves the San Francisco Bay Area region. It offers healthcare programs and socially active programs for seniors and the LGBTQ community. Respondent treats On Lok patients at various locations, including at their homes. Respondent has a large case load, having recently covered for a colleague for six months, treating 56 patients. Most, if not all of respondent's patients have some form of severe dementia, kidney disease, heart problems, or cancer.

36. In 2004, respondent met his spouse, CP, in New York City. CP is from Australia. CP stayed in New York City for three months, then left for Australia after his visa expired. Respondent and CP maintained a long-distance relationship, seeing each other once or twice a year. Respondent decided to move to California because it was closer to Australia. Respondent asked CP if he would consider moving to the United States. CP did so in 2013. Respondent and CP were married in 2014. CP "got his green card," or permanent resident status, and moved to Los Angeles to live with respondent.

37. CP told respondent that he was diagnosed with bipolar disorder when he was 19. CP also suffered from PTSD, chronic anxiety, and panic disorder. While living in Perth, CP was assaulted by a group of men. The police classified the assault as a hate crime. CP sustained a spinal fracture and was hospitalized for a couple of weeks. In another incident, CP was violently raped and was hospitalized. CP was traumatized by

the rape. CP was also hospitalized in Australia because of his mental condition. These unfortunate events led to CP's PTSD, chronic anxiety, and bipolar disorder.

38. CP had a deep distrust of the medical community based on his poor treatment by medical providers in Australia. The doctors made him feel responsible for his sexual trauma because he was gay. When CP arrived in the United States, he brought his distrust of the medical profession with him. CP had no money or health insurance. He desperately needed medical treatment. Respondent felt comfortable treating CP as a "stop-gap measure." Respondent's plan was to continue CP's medical treatment based on his review of CP's Australian medical records. Respondent needed to continue CP's medications to prevent him from destabilizing. Respondent obtained health insurance for CP, but CP refused to see a doctor for treatment. Respondent had no choice but to continue treating CP over the course of approximately five years.

39. Respondent prescribed CP with alprazolam (Xanax) and amphetamine salts (Adderall), based on CP's inability to maintain attention or perform tasks requiring sustained mental effort. Respondent explained to CP the side effects of these drugs. CP wanted to try Adderall and respondent prescribed it to CP for a couple of years. The Adderall stopped working and respondent decided to discontinue prescribing it. Respondent felt comfortable treating CP because he treated patients with bipolar disorder, schizophrenia, and attention deficit disorder at UCSF. Respondent conceded he is not a psychiatrist, is not board certified in psychiatry, and did not complete a residency in psychiatry.

40. Respondent kept medical records when he first started treating CP. After "numerous moves," he stopped recordkeeping. Respondent thought that because he lived with CP, he could monitor him without keeping records. He saw the pills CP was taking, and respondent thought his observations were adequate and did not require

taking notes. Respondent knows what he did was wrong. He has since completed a two-day recordkeeping course approved by the Board.

41. CP continued his mistrust of and discomfort with seeing other doctors. However, in 2018, he agreed to see a PCP and psychiatrist at UCSF. His PCP did not want to take over prescribing Xanax for CP, and his psychiatrist said she would "deal with Xanax at a later date." CP did not tell his PCP about the Xanax he was taking. He did, however, tell his psychiatrist that he took Xanax prescribed by respondent. Respondent "faulted" CP for not telling his PCP about taking Xanax, and faulted CP's psychiatrist for failing to take an active role in continuing to prescribe Xanax to CP. Respondent asserted that ceasing Xanax would have had a destabilizing effect on CP. Despite CP being under the care of a PCP and psychiatrist, respondent continued to prescribe CP with Xanax until UCSF reported respondent's activities to the Board.

42. Respondent has not treated CP for over four years. CP is now being treated by a team of psychiatrists at UCSF, and most of the residents there are LGBTQ. CP is happy with his current psychiatric treatment. His psychiatrist addressed CP's Xanax prescription, changing CP's Xanax to clonazepam because is it longer acting and provides active relief. CP "has been doing really well." CP has also completed a month-long outpatient intensive psychiatric program. Respondent is pleased with the medical care CP is currently receiving. Their marriage has been stable for the past four years.

43. Respondent explained the past domestic violence between him and CP. After CP moved to the United States in 2013, CP turned to alcohol consumption to "numb" his psychological needs. When CP drank, he would violently "lash out" at respondent. On one occasion, CP punched respondent in the right eye causing a retinal detachment. Respondent has had three surgeries in his right eye, and his vision

is still affected. On another occasion, respondent fought with CP and tried to protect himself by pushing CP against the bed. CP fractured his wrist and had to have surgery.

44. On September 16, 2017, respondent called 911 during another heated domestic dispute with CP, who had been drinking "a lot of alcohol at the time." They had a physical confrontation, and respondent bit CP's right nipple and arm to defend himself. Respondent called the police because he wanted the police to mediate their argument. However, "nothing came out of it," respondent and CP were arrested, but neither were charged or convicted of a crime. Respondent conceded he had been drinking during that incident, but he and CP no longer have alcohol in their apartment. They consume alcohol only when they go out. Respondent asserted that he was never the aggressor or instigator during their fights.

45. Respondent did not share the domestic violence issues with CP's PCP or psychiatrist due to shame. He did, however, share the violence he suffered with a few of his friends who were doctors. Currently, respondent and CP still "bicker" but no domestic violence has occurred between them. Through therapy, respondent has learned to de-escalate and walk away from conflicts with CP. Respondent hikes and engages in holistic activities to relax. In retrospect, respondent wishes he would have done things differently with CP. He would not have assumed CP's medical care and should have reached out to UCSF doctors to treat CP despites CP's refusals for treatment by doctors other than respondent. Respondent repeatedly insisted that if he did not treat and prescribe medications to CP, CP would have destabilized leading to a "disastrous outcome," "tipping [CP] into mania."

46. After UCSF reported respondent to the Board, respondent had no choice but to resign from UCSF. Respondent felt unsupported by the credentialing committee and felt he was not heard. The peer review process takes a year and a half, and

respondent could not wait that long without a job and income. He left UCSF in August 2021, and became employed at On Lok. On Lok was aware of UCSF's discipline of respondent.

47. Respondent recognizes the challenges in treating family members. He vows to never treat family members again. From an ethical standpoint, treating a family member can affect a medical provider's objectivity and the patient's autonomy. In addition, respondent knows he should have documented his medical treatment of CP. He also now knows that failing to keep proper medical records is unethical and potentially dangerous. He realizes the importance of good medical records, which are necessary for patient safety and continuity of care. Medical records can also allow the patient to make informed decisions of their treatment and care.

48. If respondent is placed on Board probation, he will lose his job at On Lok, as he will no longer be able to prescribe pain medications to On Lok's cancer and hospice patients. Furthermore, he will no longer be able to supervise nurse practitioners, who he loves to teach. Petitioner is the breadwinner for his family. If he loses his health benefits, CP will not be able to see his team of UCSF doctors.

49. Respondent stipulated to the factual allegations in the Accusation. They are deemed true and correct. Respondent wishes the Board to know that his actions do not reflect who he is. He has worked for over 20 years at the finest medical institutions in the country, has been recognized with numerous awards, and he has much more to give the medical profession.

COURSES COMPLETED

50. On January 24, 2020, respondent completed a 23-hour continuing medical education (CME) course titled "Prescribing Practices and Management of

Chronic Pain and Substance Use Disorder." The American College of Legal Medicine and the Western Institute of Legal Medicine conducted the course.

51. On March 13, 2020, respondent completed a 19-hour CME course titled "Medical Record Keeping." The American College of Legal Medicine and the Western Institute of Legal Medicine conducted the course.

52. On January 17, 2021, respondent completed a 23-hour CME course titled "Physician Assessment and Clinical Quality Improvement Program Practical Medical Ethics and Professionalism; and Medical-Legal Implications of Ethics for Practicing Physicians." The University of California, Irvine School of Medicine conducted the course.

ON LOK PERFORMANCE REVIEWS

53. Respondent's On Lok supervisor Teresa Pham, M.D., completed respondent's April 14, 2022 performance review for the period May 2021 through May 2022. Dr. Pham chose from four different rating designations in assessing respondent's key job responsibilities: Leading (consistently exceeds all expectations); Meeting (consistently meets all expectations); Developing (consistently meets some of the expectations and has room for improvement); and Underperforming (does not consistently meet expectations and significant improvement is needed).

54. Dr. Pham gave respondent and overall rating of Leading. The job areas where she assessed respondent with a Leading rating included: assessment and management of chronic and acute illnesses in various settings and overseeing care; communication of medical information to staff and patients; and respondent's adaptability, attendance, collaboration, communication and reception of feedback, judgment and critical thinking, quality of work, reliability, and resilience. She noted

respondent's major strengths as possessing strong clinical skills, teaching nurse practitioners and M.D.s, and being a strong team collaborator who is widely respected. Dr. Pham especially recognized respondent's accomplishments in being flexible to meet the needs of On Lok and his contribution to maintaining continuity of care for patients, stating "[Respondent] assumed covering PCP role for a panel of 30th street [participants] since February and ensured a smooth transition for 30th [participants] and team."

55. Dr. Pham also completed respondent's May 5, 2023, On Lok performance review for the period April 1, 2022, through April 1, 2023. She assessed the same Leading rating for respondent in the same job areas and noted respondent's major strengths as an "excellent clinician and educator," "acknowledged for his adaptability and teamwork," and "seamlessly manage[s] complex PCP panels." Dr. Pham also noted respondent's accomplishment of introducing and piloting the use of Point of Care Ultrasound (POCUS) which has led to expansion of POCUS at all On Lok locations.

AWARDS

56. The UCLA Department of Medicine awarded respondent with a Full-Time Medicine Faculty Teaching Award for the years 2013 to 2014. UCLA awarded respondent with the same award in 2015 and 2017. On April 15, 2017, Jonathan R. Hiatt, M.D., Professor of Surgery and Vice Dean of UCLA's David Geffen School of Medicine, congratulated respondent for his nomination as a 2017 UCLA Exceptional Physician. On January 21, 2019, Mark R. Laret, President and Chief Executive Officer of UCSF Health, and Josh Adler, M.D., Executive Vice President of Physician Services, notified respondent that he was nominated by his peers as a candidate for the 2019 UCSF Health Exceptional Physician Award. There were over 60 nominees, including

respondent, deserving of recognition for their professionalism, respect, integrity, diversity and excellence.

57. On July 21, 2023, Angelita Reyes, On Lok's Director of People Operations, notified respondent that he was nominated for the 2023 Above and Beyond Award. Respondent's colleagues wrote that respondent is:

> A caring, exceptionally knowledgeable and generous physician who arrives to Clinic at 7:30am to review participants' labs and charts, uses ultrasound to diagnose difficult conditions, shows nurses how to insert IV catheters, calls participants' families to explain complex treatments, and gives most helpful tips to his colleagues who call on his expertise when encountering unusual conditions.

BOARD CERTIFICATION RESULTS

58. On November 22, 2022, the American Board of Internal Medicine (ABIM) congratulated respondent on passing his "Fall 2022 Internal Medicine Maintenance of Certification (MOC) Examination." The ABIM provided respondent with details about his examination performance. Respondent received a passing score of 675. The standardized passing score was 372.

CHARACTER WITNESSES

Allison Reilly, MS, RN, NP, CDE

59. Allison Reilly is a Nurse Practitioner (NP) and Registered Nurse (RN). She holds a Master of Science (MS) degree in NP and is a Certified Diabetes Educator (CDE). Ms. Reilly worked at On Lok as an RN from 2008 to 2011, and as an NP from

2018 to 2022. In July 2022, she moved to Alberta, Canada to continue her nursing career at Alberta Health Services in the Hepatology Program.

60. While at On Lok, Ms. Reilly evaluated patients for the appropriateness of On Lok's linguistic and culturally diverse healthcare program. Many of On Lok's patients are frail and elderly. Ms. Reilly has known respondent for two years. Respondent provides physician coverage at On Lok clinic sites on a weekly basis. Ms. Reilly and respondent regularly reviewed patient cases. She holds respondent in high regard as an expert hospitalist and clinician.

61. Respondent is supportive of NPs. He taught Ms. Reilly how to make referrals and obtain the best consult input, which Ms. Reilly described as an "art" and is something that is not taught in a master's degree program. Respondent is bilingual in Cantonese, and Ms. Reilly found respondent to be an "incredible resource" particularly during the Covid-19 pandemic. Respondent has an excellent bedside manner, is compassionate, has a holistic approach to patient care, and is very good at helping all providers to delineate treatments without compromising a patient's quality of life. The families are appreciative of respondent's attentive care and Ms. Reilly has no concerns about patient safety with respondent as their physician. Respondent is very professional and patient focused.

62. Ms. Reilly is aware of the seriousness of Board's allegations. She is aware that respondent took courses in medical ethics and medical recordkeeping to rehabilitate himself. She could not recall if he took a prescribing practices course, but would not be surprised if he did. She "100 percent unequivocally" supports respondent's physician practice. She has reviewed his medical records, describing his documentation as excellent and thorough. Respondent explains the rationale of his treatment as a teacher would. All of respondent's charting was timely and complete.

Ms. Reilly also has no concerns about respondent's prescribing. Respondent follows the Beers Criteria at On Lok because of its geriatric patient population. The Beers Criteria are tailored for adults 65 years and older, provide a list of potentially harmful medications or medications with side effects that outweigh the benefits of taking the medication. (www.americangeriatrics.org.)

63. Regarding respondent's medical treatment of his spouse, Ms. Reilly has empathy for people like CP affected by mental illness. Respondent was genuine and emotional when speaking about CP. Respondent's decision to treat CP caused him a lot of pain and suffering. Ms. Reilly did not consider respondent's lack of medical recordkeeping and treatment of a family member as a violation of medical ethics, but rather "an unfortunate situation with two people in a relationship that at one point was unstable." CP's lack of mental health and psychiatric treatment "created a situation of significant stress." People like CP "are left to their own devices." Respondent's "care and concern for his spouse led him to a place that he would not ordinarily find himself." Ms. Reilly acknowledged that respondent treated CP "at his own risk." Respondent should have kept records. However, he was forthcoming about his mistakes, and understands judgements and insight. Ms. Reilly hopes that respondent can continue to provide medical care and to supervise NPs.

64. Ms. Reilly wrote a letter to the Board dated January 3, 2023 on respondent's behalf. Her testimony was consistent with the contents of her letter.

Michelle Ong, M.D.

65. Dr. Ong has worked at On Lok since September 2019 as a Center Lead Physician. Prior to her current position, she worked at On Lok as a Staff Physician for

over seven years. Dr. Ong has practiced medicine since August 2000. She is board certified in Internal Medicine.

66. Dr. Ong is a lead physician that works closely with On Lok's Medical Director. She has known respondent since May 2021 when he began working there. Respondent is a staff physician "floating around the different centers." He oversees Dr. Ong's entire patient panel currently consisting of 30 patients and supervises NPs. Because respondent is a "float" physician, Dr. Ong was not sure if he had his own assigned panel. He covered at least 50 patients in his last assignment.

67. Dr. Ong's impression of respondent as a provider is "he is as genuine as you can get." He is knowledgeable, compassionate, caring, concise, and thorough. Dr. Ong has no concerns with respondent's patient safety or medical documentation. She learned from respondent's documentation to be concise and to the point. She also has no ethical concerns with respondent's medical judgment.

68. Dr. Ong is aware of the Board's allegations. She is also aware that respondent completed continuing education courses to address any medical documentation deficiencies and medical ethics concerns. Respondent disclosed to her his treatment of CP and lack of documentation. He told her that he was treating his spouse, his spouse refused other medical treatment, he prescribed controlled substances to his spouse, and he did not document his spouse's case. Respondent was very open to Dr. Ong about what happened. Respondent has had time to self-reflect on his actions, and "is probably harder on himself than the Board could be." He treated his spouse because he did not want to see him suffer. Knowing respondent's values, character, and ethics, Dr. Ong knows that respondent did not act with malicious intent. She also knows the shame he felt because she too has a history of severe depressive disorder and could not imagine what her family went through. She knows respondent

well enough that he treated CP with "the best of intentions." Respondent is extremely remorseful and "will be until the end of his days. That is his nature." Dr. Ong has no concerns that respondent will repeat his mistakes.

69. Dr. Ong wrote a letter to the Board dated January 8, 2023 on respondent's behalf. Her testimony was consistent with the contents of her letter.

Madison Paddock, M.D.

70. Dr. Paddock is an Assistant Clinical Professor and Associate Medical Director for Hematology and Bone Marrow Transplant (BMT) Hospitalist Service at UCSF's Division of Hospital Medicine. She has practiced medicine since 2014 and is board certified in Internal Medicine.

71. Dr. Paddock met respondent in August 2017. He showed an interest in working as an academic hospitalist on UCSF's BMT service and volunteered. It is rare that a physician volunteers for the BMT service because it is a difficult service. Respondent came into the BMT service with experience. He wanted to see all of the various patients the BMT service allowed. He worked 30 to 40 shifts a year on the BMT service.

72. Dr. Paddock observed respondent as having a "wonderful bedside manner," and as a "wonderful proceduralist." Dr. Paddock does not do procedures, and respondent would help her with those. He was always willing to stay late and come in on the weekend to help her. Dr. Paddock described respondent as wonderful, kind, respectful, and "very good at making people feel at ease." Patients were going through a scary time in their lives and would tell Dr. Paddock they had a wonderful experience with respondent.

73. Hospital medicine has only been around a short time compared to other specialties. Respondent had much more experience than Dr. Paddock and her colleagues. She and her colleagues valued respondent's clinical judgment and expertise and often asked respondent for advice. Nurses on the oncology floor loved working with respondent. They were visibly sad when respondent left UCSF. "He was a beloved member of the staff at UCSF."

74. Dr. Paddock knows of the Board's allegations, UCSF's summary suspension, and respondent's domestic abuse issues at home. She did not know that respondent prescribed medications to CP over a period of time. Despite this knowledge, she supports respondent as a very ethical physician with good judgment. She does not minimize respondent's actions of prescribing controlled substances without proper documentation to CP. She considers this a "serious lapse in judgment" by respondent, but believes this lapse occurred because of his tumultuous relationship with CP and stress at home. His actions do not reflect a pattern of putting patients at risk. Dr. Paddock believes respondent is a "moral, highly conscientious physician."

75. Regarding the abuse at home, respondent confided in Dr. Paddock, telling her that CP struggled with bipolar disorder and that CP abused him at home, physically and mentally. CP hit respondent in the eye resulting in a retinal detachment. Respondent has a hard time reading.

76. In May 2019, respondent called Dr. Paddock at approximately 2:00 a.m. crying and upset after CP physically abused respondent. Respondent went to Dr. Paddock's apartment and he cried on her shoulder. They discussed the abuse caused by CP. Respondent told Dr. Paddock that if he died, it would be at the hands of CP. On another occasion, respondent introduced CP to Dr. Paddock at a friend's wedding, stating "that solidified it for me; anyone in the room knew who was abusing who." She

described respondent as timid around CP, and that CP's behavior was "erratic and scary." CP was also "physically more aggressive and bigger" than respondent.

77. In May 2020, respondent called Dr. Paddock in the middle of the night. Respondent told her CP was abusing him again. Respondent did not go to Dr. Paddock's apartment. A few days later, respondent and Dr. Paddock were supposed to meet but respondent cancelled because he had to go to the emergency room for a gash on his forehead caused by CP.

78. Respondent has taken responsibility and learned from his mistakes. He is remorseful and understands where he went wrong. He has learned invaluable lessons from this experience and will never put himself through a situation like this again. Dr. Paddock knows that respondent completed an ethics remediation course and recordkeeping course. She did not know that he also completed a prescribing course.

79. Respondent and Dr. Paddock have kept in contact with each other after he resigned from UCSF. Respondent is doing much better, working and picking up extra shifts on the weekend. He has been thriving at his job at On Lok. At home, CP is stable after getting treatment for his bipolar disorder at UCSF's psychiatry clinic by a team of psychiatrists. Dr. Paddock has not received any more late-night phone calls from respondent, who is "in a better place." Respondent has had a lot of time to reflect on his relationship, his actions, and the impact on his job at UCSF and his medical license. Being a doctor is his life's work and he faces the possibility of his profession being taken away from him. Dr. Paddock described respondent as a "unique person in the sense he is extremely intelligent." He is "very ethical." He had a lapse in judgement. She strongly believes respondent is an asset to the medical profession with a spotless record outside of his record with his husband.

80. Dr. Paddock wrote a letter to the Board dated January 30, 2023 on respondent's behalf. Her testimony was consistent with the contents of her letter.

Alexandra Teng, M.D.

81. Dr. Teng has worked as an Interventional Cardiologist at Kaiser Permanente East Bay since 2021. She is board certified in Internal Medicine, Cardiovascular Disease, and Interventional Cardiology. Dr. Teng met respondent during her residency at UCSF in 2014. Respondent was her attending physician, whom she described as the best attending physician among all the residents and interns. He was also the best physician among all the other providers. He is "incredibly brilliant" and placed at the top of his class throughout all of his medical training. Respondent has positively impacted Dr. Teng's career as a mentor, advisor, and peer. She believes she is a better doctor by knowing respondent. They discuss complex cases and patient management to this day.

82. Dr. Teng described respondent as an "incredibly caring, generous, humble, and thoughtful person." He has an "indescribable" bedside manner in that he immediately "connects" with patients. Respondent also goes "beyond what most providers are able to achieve." He came to work early, stayed late, and answered his inbox after hours. Dr. Teng described respondent's work ethic as "something we should all strive for."

83. Dr. Teng is aware of respondent's summary suspension at UCSF. Respondent confided in Dr. Teng and was forthcoming in telling her that he had problems in his relationship with CP and there were issues with medication renewals. Dr. Teng related that she and respondent have a "shared experience" with loved ones suffering from bipolar disorder. Dr. Teng's father is bipolar. She opined that bipolar

persons are unstable, manic, and dependent on medications. Manic persons are "notoriously incapable of staying on their medications." It is uncommon for people with bipolar disorder to acknowledge they have a problem. They may stop taking their medications and get into trouble when they do. Dr. Teng conceded she is not a trained psychiatrist and has limited training and experience in dealing with her father's bipolar disorder. She described bipolar disorder generally as a "spectrum with peaks and valleys of manic and depressive episodes, grandeur to a depressive state, characterized by suicidal ideation." Both states are very difficult and patients are unwilling to take their medications during those times.

84. Respondent mentioned to Dr. Teng on a couple of occasions that he was the victim of abuse, and he acted in self-defense. Respondent "did the best he could to keep the situation under control" by continuing CP on his medications. Respondent "knew what the fallout would be if [CP] came off his meds." Respondent acknowledged to Dr. Teng that he should have documented better and should have put CP's care into the hands of someone else.

85. Respondent regrets his conduct. He immigrated away from his family and "went against the grain of what was expected of him," in that as a doctor he must "do no harm." He took on a family member's care and acted "from a place of love and desperation" and "absolutely not" for "nefarious reasons." Respondent has since taken extra steps to remediate his mistakes, such as formal training to address his recordkeeping and prescribing behavior. Respondent "won't ever, ever consider doing it again."

86. If placed on probation, Dr. Teng opined that respondent will not have the ability to supervise NPs and to treat Medi-Cal and Medicaid patients. He will have

difficulty obtaining malpractice insurance. He will not be able to continue to work with the elderly community, a neglected patient population.

87. Dr. Teng had limited knowledge of respondent's prescribing to CP. She did not know any specific medications or doses, but knew respondent prescribed controlled substances. Dr. Teng knows that respondent continued to prescribe CP a controlled substance (Xanax) after CP began receiving psychiatric care at UCSF. Dr. Teng opined that "in an ideal situation you are not caring for your own family member." However, respondent did what he could under the circumstances. Respondent is remorseful and will not treat a family member ever again. At the time, he thought treating CP was the only possible course. Respondent did not have a lot of options but should have put CP's medical care in the hands of someone else.

88. Dr. Teng wrote a letter to the Board dated January 30, 2023 on respondent's behalf. Her testimony was consistent with the contents of her letter.

Matthew Oertli, M.D.

89. Dr. Oertli is an Associate Professor of Medicine at UCSF's Division of Hospital Medicine. He is on the Bone Marrow Transplant, General Medicine, and Teaching Services. He has worked at UCSF for 10 years and is board certified in Internal Medicine.

90. Dr. Oertli met respondent in 2010 during his UCSF internship. Respondent mentored Dr. Oertli in the primary care clinic. Dr. Oertli later became respondent's colleague as an attending physician at UCSF in 2017. Like Dr. Teng, Dr. Oertli stayed in touch with respondent since that time. Dr. Oertli described respondent as kind, warm, knowledgeable, gentle, calm, engaging, humane, and having the "utmost serenity."

91. Dr. Oertli reviewed respondent's medical charting and respondent cosigned Dr. Oertli's notes during his residency. He recalled respondent's notes as "detailed and timely, and some of the best notes in the hospital." Respondent shared with Dr. Oertli the Board's allegations involving prescriptions he wrote for CP to address his mental illness. CP's mental illness was a huge strain on his relationship with respondent and was challenging for both of them, but Dr. Oertli had no doubts that respondent acted out of the utmost concern for CP. Dr. Oertli has never had any concerns about respondent's professional conduct, prescribing, or medical documentation since he has known respondent. Respondent regrets treating a family member and undertook coursework on safe prescribing practices. Respondent worked hard to rectify the Board's concerns.

92. Dr. Oertli considers respondent an inspirational figure and LGBTQ role model. When Dr. Oertli began his UCSF internship, he had just "come out of the closet." Respondent helped him with his struggles as a young trainee and member of the LGBTQ community. Dr. Oertli experienced respondent as an "incredibly supportive and loving person." He credits respondent for the position he is in today.

93. Respondent is "the kind of clinician we should all strive to be." At On Lok, he treats disenfranchised patients, teaches procedures to medical staff, has a skillful presence, and is an excellent educator. Dr. Oertli believes that if the Board disciplines respondent's license, he will be prevented from supervising NPs and providing care to Medi-Cal and Medicare patients. This will be a "tragedy" for the community. Dr. Oertli added that respondent has had four years to reflect on the Board's allegations. He believes that respondent has "gone through sufficient punishment for what happened."

94. Dr. Oertli recalled respondent coming to the hospital with injuries. He presumed that respondent's injuries were due to incidents of physical abuse by CP. He was unaware whether CP sustained any injuries because he and respondent had no conversations about physical abuse at home.

95. Dr. Oertli wrote a letter to the Board dated February 9, 2023 on respondent's behalf. His testimony was consistent with the contents of his letter. He considers working with respondent as his mentee during residency and as a colleague within UCSF's Department of Hospital Medicine an honor.

ADDITIONAL CHARACTER LETTER FROM THUY TRANG NGUYEN, M.D.

96. Dr. Nguyen is a Chief Medicine Resident at Zuckerberg San Francisco General Hospital and a recent graduate of the UCSF Internal Medicine Residency Program. Dr. Nguyen wrote a letter to UCSF's Executive Medical Board for respondent dated March 5, 2021, requesting that it re-investigate the accusations against respondent and re-evaluate its recommendation to terminate his UCSF medical staff membership. His letter mirrors that of the other character witnesses in this case and serves to supplement other direct testimony about respondent's character, integrity, medical acumen, and professionalism. Dr. Nguyen has known respondent since July 2016, when respondent served as Dr. Nguyen's attending physician as a fourth-year medical student at Ronald Reagan UCLA Medical Center. In April 2018, respondent was Dr. Nguyen's clinical supervisor on the Procedures Service at the UCSF Helen Diller Medical Center. Respondent has mentored Dr. Nguyen in his personal and professional growth.

97. Dr. Nguyen worked with respondent during his residency and observed respondent as a "caring and competent physician, clinical supervisor, and colleague."

He described respondent demonstrating "merit in clinical knowledge, compassionate patient care, teaching, and creating a safe, inclusive learning environment for trainees." Although Dr. Nguyen did not know respondent prior to 2016, he knows that based on respondent's medical excellence, respondent received a nomination for the UCSF Robert Crede Excellence in Clinical Care in 2010 and multiple teaching awards from UCLA in 2014 and 2015. Respondent has had an "exemplary reputation" in professional settings.

98. Dr. Nguyen has known respondent to be "honest, kind-hearted, well-intentioned, non-confrontational, and never violent in character." Dr. Nguyen has never had any concerns about respondent's professional conduct or moral integrity.

Analysis

99. Respondent did not dispute the Board's factual allegations and stipulated to their existence and that they are true. Thus, the evidence established that respondent failed to maintain any medical records for CP, a patient for whom he was prescribing controlled substances. Furthermore, the evidence established that respondent failed to document informed consent to treatment before prescribing controlled substances to CP, and treated CP, a family member, including prescribing controlled substances to CP, with whom respondent was in an unstable relationship, and without maintaining adequate documentation.

100. Respondent's unstable relationship with CP arose from CP's declining mental and physical health. CP refused to see a PCP or a psychiatrist when he arrived from Australia in 2013 because he had no health insurance and a severe mistrust of doctors. Even after they married in 2014, CP did not see other doctors. CP turned to alcohol to self-medicate. Respondent also drank alcohol to relax at home. He and CP

engaged in multiple arguments and physical fights, but the evidence is unclear whether their fights consistently involved the consumption of alcohol. On September 16, 2017, after they both consumed alcohol, they fought and both of them sustained injuries. Based on their differing accounts, the evidence was unclear who called 911 and who was the primary aggressor. Respondent did not seek help from others in the medical field because of shame and fear that CP would be institutionalized. Respondent and CP no longer keep alcohol in their home, although they may drink socially outside their home. There have been no further incidents of domestic violence since CP began psychiatric treatment at UCSF. CP's mental health has significantly improved, and their marriage has been stable for the past four years.

PRESCRIBING CONTROLLED SUBSTANCES TO CP

101. Respondent prescribed controlled substances to CP because he was concerned and worried that CP's mental condition might destabilize throughout their marriage, and CP would have to be institutionalized. Early on, respondent felt he had no other choice but to treat CP himself. Respondent extensively interviewed CP and took part in CP's medical care. He reviewed CP's medical records from Australia with CP's consent and continued the care and prescriptions CP received there. Respondent prescribed the controlled substances alprazolam and amphetamine salts, as well as other prescription medications. He did so for approximately five years, until UCSF investigated his treatment and prescribing to CP.

DOCUMENTATION

102. Respondent initially wrote notes regarding CP's treatment. These notes were lost when they moved to from Los Angeles to San Francisco in 2017. After their move, respondent no longer documented his treatment or the prescriptions he wrote

for CP, explaining that he monitored CP's medications and felt his observations were adequate in lieu of taking notes. For this, respondent exercised extremely poor judgment. Dr. Chan persuasively opined that respondent's failure to document his treatment of and prescribing controlled substances to CP was an extreme departure from the standard of care.

WRITTEN CONSENT

103. Dr. Chan also persuasively opined that respondent's failure to obtain CP's written consent for treatment with controlled substances was a simple departure from the standard of care. Dr. Chan also added that no harm came to CP despite the lack of written consent from CP.

TREATMENT OF FAMILY MEMBER

104. Despite his best intentions, respondent was naïve in thinking he could treat CP in an objective manner, given his unstable relationship with CP. He did not treat CP as he would his many other patients, as demonstrated by his lack of documentation of treatment and prescribing controlled substances. Dr. Chan persuasively opined on whether respondent violated ethical standards by prescribing to a family member. The standard of care is that a provider must exert caution when treating a family member, and must treat the family member as he would any other patient – with appropriate evaluation and documentation. Here, Dr. Chan determined that respondent engaged in a simple departure from the standard of care in treating a family member without clear documentation. Dr. Chan explained that he did not deem respondent's conduct an extreme departure because respondent regularly examined and evaluated CP, the treatment was appropriate, and the treatment was continued

with a new PCP in 2018 who assumed care. Dr. Chan sympathized with respondent's choice to treat CP.

REHABILITATION CRITERIA

105. The Board has established rehabilitation criteria for a licensee that has been convicted of a crime or has been disciplined in another state. (Cal. Code Regs., tit. 16, § 1360.1.) Respondent has not been convicted of a crime nor disciplined in another state. However, the rehabilitation criteria are helpful in evaluating respondent's rehabilitation. The applicable criteria are: (1) the nature and gravity of the professional misconduct; (2) total record of misconduct; (3) time that has elapsed since the professional misconduct; and (4) evidence of rehabilitation submitted by the licensee.

106. The nature and gravity of respondent's conduct are serious. He treated an unstable family member for approximately five years, prescribing controlled and uncontrolled substances. During this time, respondent and CP engaged in domestic violence. While respondent had CP's consent to treat him, respondent failed in his duties as a physician by engaging in one extreme and two simple departures from the standard of care. Respondent's misconduct involved a single patient. He has no previous discipline by the Board in his 15 years of medical practice. Respondent's misconduct occurred over four years ago.

107. Respondent presented very strong evidence of rehabilitation. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The mere expression of remorse does not demonstrate rehabilitation. Rather, a truer indication of rehabilitation is the demonstration of sustained conduct over an extended period of time that the licensee

is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

108. Respondent expressed sincere remorse for his conduct and demonstrated at hearing the emotional toll his unstable marriage and his decision to treat CP have had on his own mental health and medical profession. While the mere expression of remorse does not demonstrate rehabilitation, sustained good conduct over a period of time does.

109. Respondent took proactive measures in 2020 and 2021 to address the Board's concerns by taking a total of 66 hours of Board-approved courses in medical recordkeeping, prescribing practices, and ethics and professionalism. Such actions demonstrate ownership of his unprofessional conduct. He learned from the courses that his medical objectivity and the patient's autonomy can be affected by his choice to treat a family member. He knows that failing to document a patient's treatment is unethical, potentially dangerous, and is necessary for patient safety and continuity of care. He knew to obtain CP's written consent for treatment with controlled substances but did not do so. Thankfully, CP was not harmed by this failure. Respondent has not treated CP in over four years, and vows to never treat a family member again. Their marriage is stable and there have been no further incidents of domestic violence. CP has a LGBTQ-focused psychiatric team that manages his mental health, and a PCP that is similarly focused.

110. Respondent has learned through his own therapy that in the event of a conflict with CP, he will de-escalate the situation and walk away. Respondent engages

in physical and holistic activities to relax. He now knows he should not have assumed CP's medical care and should have reached out to UCSF doctors sooner to treat CP.

111. Respondent's colleagues, who are accomplished in their own right, credibly testified about respondent's professionalism, competency, compassion, medical knowledge, and his exceptional abilities as a clinician, teacher, and mentor. Dr. Oertli described respondent as an inspirational figure and LGBTQ role model and "the kind of clinician we should all strive to be." Dr. Teng testified that respondent goes "beyond what most providers are able to achieve." Dr. Paddock described respondent as "very ethical" with a "spotless record outside of his record with his husband." Dr. Ong testified that respondent is extremely remorseful and "will be until the end of his days." Respondent's witnesses reviewed his medical documentation, describing it as excellent, thorough, concise, detailed, and timely. All of respondent's witnesses agreed that respondent should have documented CP's care and put CP's care into the hands of other practitioners. Despite respondent's lapse in judgment, none of them have any concerns about respondent's professional conduct or moral integrity.

112. Respondent's supervisor at On Lok, Dr. Pham, consistently gave respondent the highest overall rating of "Leading." She noted respondent's major strengths as being an excellent clinician, educator, and strong team collaborator. She did not note any concerns with respondent's documentation or prescribing practices.

113. Respondent has demonstrated that he is a safe practitioner who has learned hard lessons from his mistakes. He will no longer treat CP. CP's mental health is stable. They have not had any further domestic violence incidents. They remain married. He continues to be gainfully employed at On Lok, a nonprofit community-based organization that provides healthcare to seniors and the LBGTQ community. Respondent has provided adequate assurances to the Board that he is a safe medical

practitioner. Probation is not necessary to protect the public safety, and is therefore not warranted. Based on the evidence as a whole, probation would be punitive.

Costs

114. Pursuant to Business and Professions Code section 125.3, complainant requested that respondent be ordered to reimburse the Board for the reasonable costs of the investigation and adjudication of the case. Complainant submitted a Declaration of the Deputy Attorney General with an attached computer printout that lists the amounts charged by the Attorney General's Office by time, date, and task. The Declaration and computer printout show that the Attorney General's Office billed the Board $17,301.25 for prosecuting the case. Similarly, complainant submitted a Declaration of Investigative Activity by the Department of Consumer Affairs (DCA) with an attached Investigator Log that lists the amounts charged by time, date, and task. The declaration shows that DCA billed the Board $2,014.50 for investigating the case. These costs are reasonable in light of the allegations and issues this matter.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The Medical Practice Act is set forth in Business and Professions Code section 2000 et seq. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

Burden and Standard of Proof

2. Complainant bears the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.) The higher standard of proof is justified where vested rights are at stake – the revocation or suspension of a physician's and surgeon's certificate in this case.

License Discipline

3. Business and Professions Code section 2227, subdivision (a) provides, in pertinent part, that a licensee who has been found "guilty" of violations of the Medical Practice Act (Bus. & Prof. Code, § 2000 et seq.), shall:

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

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

Unprofessional Conduct

4. Business and Professions Code section 2234 provides that the Board shall take action against any licensee found to have engaged in unprofessional conduct, which includes but is not limited to the following:

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

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constituted the negligent act described in paragraph (1) including, but not limited to, a reevaluation of the diagnosis or a change in treatment,

and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

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

5. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.) Incompetence generally refers to an absence of qualification, ability, or fitness to perform a specific professional function or duty.

Negligence

6. The standard of care requires the exercise of a reasonable degree of skill, knowledge, and care that is ordinarily possessed and exercised by members of the medical profession under similar circumstances. The standard of care applicable to a medical professional must be established by expert testimony. (*Elcome v. Chin* (2003) 110 Cal.App.4th 310, 317.) It is often a function of custom and practice. (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 280.) The courts have defined gross negligence as "the want of even scant care or an extreme departure from the ordinary standard of care." (*Kearl v. Board of Medical Quality Assurance* (1986) 189

Cal.App.3rd 1040, 1052.) Simple negligence is merely a departure from the standard of care. A single instance of negligent treatment is not grounds for discipline of a physician. (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 600). Repeated negligent acts consist of two or more negligent acts. (*Zabetian v. Medical Bd. of Cal.* (2000) 80 Cal.App.4th 462, 468.)

Medical Recordkeeping

7. Under Business and Professions Code section 2266, a licensee's failure to maintain adequate and accurate patient records also constitutes unprofessional conduct.

Causes for Discipline

8. Complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct by engaging in gross negligence pursuant to Business and Professions Code section 2234, subdivision (b), as set forth in the Factual Findings as a whole.

9. Complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct by committing repeated negligent acts pursuant to Business and Professions Code section 2234, subdivision (c), as set forth in the Factual Findings as a whole.

10. Complainant established by clear and convincing evidence that respondent failed to adequately and accurately maintain medical records for CP pursuant to Business and Professions Code section 2266, as set forth in the Factual Findings as a whole.

Disciplinary Guidelines

11. The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (Guidelines) provides recommended ranges of penalties for specified violations of the Medical Practice Act. For violation of Business and Professions Code sections 2234, subdivision (b), 2234, subdivision (c), and 2266, the minimum penalty is stayed revocation and five years' probation with standard probation conditions 13 (education course), 14 (prescribing practices course), 15 (medical record keeping course), 18 (clinical competence assessment program), 23 (monitoring-practice/billing), 24 (solo practice prohibition), and 26 (prohibited practice). The maximum penalty is revocation. However, the Guidelines also provide that in cases charging repeated negligent acts with one patient, a public reprimand may, in appropriate circumstances, be ordered. The guidelines do not address a public reprimand in cases involving gross negligence with one patient.

12. Respondent's early acceptance of responsibility, demonstrated willingness to undertake courses to address the charges, age of the case, absence of violations since the misconduct took place, and ample evidence of rehabilitation warrant a departure from the disciplinary guidelines. This is a singular episode of misjudgment by respondent involving one patient, he has learned from his misconduct, he has engaged in substantial rehabilitation, and supportive witnesses have testified regarding his competence, compassion, and diligence. There is no likelihood that the conduct at issue in this case will ever occur again. Respondent has established that he is a safe medical practitioner. The Board has adequate assurances that respondent can practice without the imposition of probation. Based on the evidence as a whole, probation will not advance the public safety. Based on

respondent's rehabilitation, and proven character as a physician, the public safety will be protected with a public letter of reprimand.

Conclusion

13. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) When all of the evidence is considered, respondent is not a danger to the public. A public letter of reprimand is the appropriate discipline.

Cost Recovery

14. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective 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 in light of the alleged misconduct.

15. Here, the scope of the investigation was appropriate to the alleged misconduct. Respondent did not get the charges dismissed or reduced. He presented a colorable challenge to license revocation. Respondent did not establish a basis to

reduce or eliminate the costs in this matter. Costs shall be imposed. Respondent may make payments in installments as directed by the Board.

ORDER

1. Physician's and Surgeon's Certificate No. C 53500, issued to respondent Gan Xon Ng, M.D., is PUBLICLY REPRIMANDED.

2. Respondent Gan Xon Ng, M.D., shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the total amount of $19,315.75.

DATE: September 20, 2023

Danette C. Brown

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings