

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

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

Todd Tienwei Yao, M.D.

**Physician's and Surgeon's
Certificate No. A 95558**

Respondent.

Case No.: 800-2021-079623

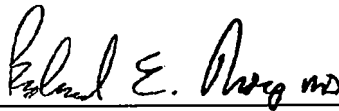
DECISION

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.

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

IT IS SO ORDERED: October 3, 2024.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, Chair
Panel B**

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DEPARTMENT OF CONSUMER AFFAIRS
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TODD TIENWEI YAO, M.D.,

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Respondent.

Agency Case No. 800-2021-079623

OAH No. 2023110058

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on January 29 through February 1, February 12, and May 7 through May 9, 2024, in Oakland, California, with the proceedings on February 12, 2024, being conducted by videoconference.

Deputy Attorney General Tessa L. Heunis represented complainant Reji Varghese, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Attorneys Rebecca S. Young and Shannon V. Baker represented respondent Todd Tienwei Yao, M.D., who was present throughout the hearing.

The record was held open for submission of written closing arguments, which were received and marked for identification as follows: complainant's closing brief is Exhibit 29; respondent's closing brief is Exhibit KK; respondent's corrected closing brief is Exhibit LL; and complainant's reply brief is Exhibit 30. The parties also lodged partial reporters' transcripts of the hearing, which were marked for identification as Exhibits 31 through 34, and Exhibits MM through PP.

The record closed and the matter was submitted for decision on August 6, 2024.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 95558 to respondent Todd Tienwei Yao, M.D., on May 17, 2006. The certificate was in full force and effect at all times relevant to the allegations in this matter, and is renewed through November 30, 2025. There is no prior discipline of respondent's certificate.

2. Acting in his former official capacity as Interim Executive Director of the Board (he is now Executive Director), complainant Reji Varghese issued an accusation against respondent on March 10, 2023. Complainant filed a first amended accusation on January 19, 2024, containing five alleged causes for discipline. Complainant alleges that respondent committed unprofessional conduct in 2020 and 2021, in connection with two women identified as "Patient 1" and "Patient 2,"¹ including sexual

¹ A protective order was issued to protect their privacy, providing that these women shall be referred to as Patient 1 and Patient 2 in any hearing transcript.

misconduct, gross negligence, repeated negligent acts, failure to maintain adequate medical records, and general unprofessional conduct. Respondent denies the allegations. Among the disputed issues in this matter is whether a doctor-patient relationship existed between respondent and either woman at various points in time. For that reason, and for ease of reference, the two women will be referred to in this decision as P1 and P2. Respondent met P2 prior to meeting P1, and those events are discussed first in the chronology below; some later events overlap.

3. Respondent filed a notice of defense, and this proceeding followed.

Respondent's Background, Education, and Medical Practice

4. In the summer of 2020, respondent was 49 years old, and lived with his wife and younger daughter. Respondent is fluent in both Mandarin and English. He was trained and worked as an electrical engineer prior to attending medical school.

5. Respondent attended medical school in Kansas, graduating in 2003. He completed a family medicine residency in Kansas from 2003 to 2006. After completing his residency, he moved to California. Respondent is board certified in family medicine.

6. Respondent worked at the Palo Alto Medical Foundation (PAMF) in Mountain View, California, as an urgent care physician from 2006 to 2021. He was the chair of the urgent care department from 2011 to 2012.

Respondent's Interactions with P2

VOLLEYBALL GROUP

7. Respondent was an organizer of a recreational volleyball group that played outdoors in locations such as public parks during the COVID-19 pandemic. The

volleyball players knew that respondent was a physician. Most of the volleyball players were Chinese, and logistics such as game locations and player sign-ups were organized using WeChat, a Chinese instant messaging, social media, and mobile payment application. (All references to texts or text messages in this decision mean text messages sent via WeChat.)

8. In the spring of 2020, P2 began playing outdoor volleyball with respondent's group, having been introduced to the group by her friend. P2 was a 54-year-old divorced woman.

9. Soon after P2 began playing volleyball with the group, a player named Hank loudly berated P2 at a game, contending that she did not set the ball to him as frequently as she did to others. This conflict was very upsetting to P2, who felt that Hank was unfair and disrespectful. She did not want to continue playing with Hank. Respondent and several other male volleyball players discussed this conflict in a small group chat. Respondent contacted Hank and P2, attempting to broker a resolution. Eventually, the matter was resolved after Hank was persuaded to make a public apology to P2 via the larger volleyball group chat. The volleyball group also began playing on different days, with respondent organizing games two days each week, and Hank organizing games on two different days. P2 played in the games respondent organized.

CONVERSATION OVER COFFEE

10. After the conflict with Hank arose, but before it had been resolved, respondent contacted P2, saying he had purchased a coffee for her from Philz Coffee²

² It appears this was May 17, 2020, based on respondent's credit card statement.

and brought it to her workplace. However, P2 informed respondent she was working from home. Respondent offered to bring the coffee to P2's home, but she suggested meeting in a nearby park instead. Respondent and P2 discussed various things during this conversation. According to respondent, they talked about how to resolve the Hank conflict, although P2 did not recall that topic at hearing. Both agree that they talked generally about their lives. P2 also told respondent she preferred fruit tea to coffee.

DINNER AT JAPANESE RESTAURANT

11. Respondent and P2 continued to see each other socially at volleyball games in the summer of 2020, and also met outside the group. On July 16, 2020, respondent bought P2 fruit tea, and they agreed to have dinner together after the volleyball game that day. Respondent and P2 went to dinner at a Japanese restaurant; he paid for both of them.

Over dinner, they discussed their family backgrounds, hobbies, and social lives. P2 and respondent had a number of things in common. They are Chinese immigrants from Taiwan, speak Mandarin, are of a similar age, are professionals (P2 is a certified public accountant), are parents of young adult women, and enjoy playing volleyball. Respondent shared details about his marriage, including that he and his wife slept in separate bedrooms, and that his wife was very religious and wanted to leave the marriage and join a Buddhist monastery when their younger daughter left for college. P2 disclosed that she was divorced and had an adult daughter. P2 and respondent each testified that the other person had conveyed romantic interest.

During the conversation over coffee and this dinner, P2 told respondent about her chronic neck and shoulder pain and asked for advice. Respondent suggested she try electrotherapy or bioelectric massage (described further in Factual Finding 12).

Respondent stated he had good experiences obtaining and providing pain relief using a device that provided electrical stimulation. P2's and respondent's testimony differed as to how much detail respondent provided during this conversation, but P2 agreed to try the electrotherapy. During this conversation or in subsequent text messages, they agreed that respondent would bring the device and come to P2's home. Respondent testified credibly that he offered to have P2 come to his home, as he had done for other friends, but that she preferred to have the electrotherapy at her own home.

ELECTROTHERAPY OR BIOELECTRIC MASSAGE

12. Respondent purchased an "Acid-Base Bioelectricity DDS Massager"³ device from China in 2018 or 2019. He stated he was introduced to this device by his masseuse, and then bought his own device. The device consists of a box with an electrical cord that plugs into the wall, and wired electrodes. One electrode is a pad that the person administering the massage stands on barefoot. Two electrode pads are attached to the person receiving the massage, completing the circuit and conducting electricity into the person receiving the massage, who reportedly feels a sensation of electrical vibration or tingling, and muscle contractions. The level of electrical stimulation can be increased or decreased. The pads are not sticky, and are held in place on the person receiving the massage by placing them under the waistband of their clothing or underwear. The person administering the massage applies a gel or paste-like substance with their hands, which reportedly helps conduct electricity as well as helping the hands glide over the skin during the massage.

³ These are the English words printed on the front of respondent's device; there are also Chinese characters.

Respondent provided an Amazon.com product description for a version of the device similar to his own, which advertises that the device promotes blood circulation, clears blockages of the "meridians," "activates" nerve and muscle tissue, and has analgesic and anti-inflammatory effects. The electrotherapy device may be purchased over the counter and does not require a license or certification to use, although it appears to be marketed to people such as massage therapists, physical therapists, acupuncturists, and chiropractors. The product advertising states that introductory training is strongly recommended to learn to use the device safely and provide therapeutic techniques, and that advanced training is also available.

13. Respondent testified that he does not consider using this bioelectrical massage device to be providing medical services. He regularly used it on friends and family (and his wife used it on him) for alleviation of aches and pains.

14. Respondent's and P2's testimony differed as to the details, but they agreed that respondent provided bioelectric massage to P2 four times, at her home. Respondent did not believe that giving P2 these massages was medical treatment. Respondent did not create any medical record documentation of providing bioelectric massages to P2.

First Massage

15. Respondent came to P2's home to provide electrotherapy. It appears this first massage occurred on July 20, 2020, the date respondent made a purchase at Bed, Bath & Beyond. Respondent bought P2 a foam contour pillow because he thought it would help with her neck pain, and he stated that for cultural reasons, he did not want to arrive at her house the first time empty-handed.

16. The first massage took place in P2's living room, either on a portable massage table (according to P2), or on P2's couch (according to respondent). Respondent asked P2 to disrobe the upper portion of her body. According to P2, he asked her to undress entirely except for her underpants; according to respondent, P2 wore shorts and only took off her shirt. P2 reported she was shocked and surprised by being asked to disrobe for treatment of her shoulder and neck pain, while respondent contends he explained the procedure in advance. They agree respondent told P2 the procedure required undressing at least partially, in order to conduct the electricity. P2 described herself as questioning respondent about the need to disrobe and him saying: "Yes. Trust me. I'm a doctor. I know what I'm doing." P2 disrobed in the bathroom and emerged wearing a towel, and laid face down for the massage.

17. According to respondent, he applied the pads and paste, and massaged P2's neck, back, and shoulders while she was face down, without her turning over. According to P2, after respondent massaged her back, he asked her to turn over to lay on her back; she did so despite being embarrassed; she covered her torso with a towel; respondent pulled down the towel; and instead of massaging her neck or shoulder, he touched and massaged her breasts, which made P2 uncomfortable although she did not say anything to respondent. Also according to P2, respondent kissed her—she was surprised and asked what he was doing, and he said "I like you, I'm sorry." She pushed him away and went to get dressed. Respondent denies touching P2's breasts during the first massage and denies kissing her on that occasion.

18. P2 reports that this bioelectric massage provided relief for her pain, and she did not need to take ibuprofen for several days. The pain relief was temporary, however, and P2 and respondent agreed on another session.

Second Massage

19. Respondent returned to P2's home for a second bioelectric massage, a few days after the first massage. Respondent stated the second massage was July 26 or July 27, 2020, which is consistent with the timeline provided by P2. According to respondent, he brought a massage table and performed the massage in P2's living room. According to P2, this massage occurred in her bedroom because her daughter was home. (P2 and respondent agree that the massages occurring in P2's bedroom took place on the bed, because the room was too small to accommodate the table.)

20. According to P2, the second massage proceeded in a similar fashion as the first, but when she turned to face up, she held onto her towel so it covered her breasts. According to respondent, P2 was face down throughout the second massage.

21. P2 testified at hearing that respondent touched her breasts during the first massage only, and that he attempted to do so in subsequent massages but she held onto her towel and prevented him. (In her statement to the Board's investigator and at the preliminary hearing in criminal court, P2 said respondent did actually touch her breasts during subsequent massages.)

22. P2's testimony at hearing was that during the second, third, and fourth massages, respondent became more aggressive each time, trying to kiss her multiple times, and laying on top of her and pressing his body against her on the third and fourth occasions. (P2 made similar statements to the Board's investigator, but not in her police interview or at the preliminary hearing.) At hearing, P2 stated she was afraid that respondent would "violate" her. However, she conceded that she agreed to have respondent return for each successive electrotherapy session. When questioned regarding inconsistencies in her statements over time, P2 stated she was providing her

best memory but for a long time she had wanted to forget it. She acknowledged that the details had become vague but that the "horrible feeling" remained the same.

23. Respondent denied holding P2 down or forcibly kissing her during any of the massage sessions.

24. In his testimony, respondent described a further interaction after completing the second massage. P2 said she was making "black sugar cake" to thank him. The two of them talked on the couch in P2's living room while the cake cooked. Respondent reports that P2 told him her "sad life story," including describing her divorce from her first husband, marrying her second husband not out of love but to provide a father figure for her daughter, divorcing a second time, and seeking love now that her daughter was an adult. Respondent reports that P2 also quizzed him about whether his wife was really planning to join a monastery in two years. Respondent testified that he and P2 kissed consensually while sitting on the couch; she said she really liked respondent and respondent said he liked her too. They ate the cake when it was ready and respondent asked P2 for the recipe, which she sent later.

P2 was not asked about this conversation, and she did not describe such kissing in her testimony. P2 agreed that she made black sugar cake at some point, but stated it was for respondent and other volleyball friends. She did not think respondent was there when she made it, but agreed she had sent him the recipe.

25. While at P2's home, respondent noticed a skin lesion on P2's face and told her she should have it checked by a dermatologist. P2 had a primary care doctor (Dr. Shin) but she was concerned with how long it would take to get an appointment for a referral due to COVID restrictions. Respondent offered to see P2 at the urgent care clinic to make a referral to a dermatologist, and she agreed to this plan.

RESPONDENT'S TREATMENT OF P2 AT URGENT CARE ON JULY 29, 2020

26. On July 29, 2020, P2 was treated by respondent at the urgent care clinic in Mountain View. Respondent examined the lesion on P2's face and another lesion on her leg, documented his findings, and referred her to a dermatologist for evaluation. P2's medical records reflect that she saw the dermatologist on August 3, 2020.

27. P2 testified that at the end of the urgent care visit on July 29, respondent kissed her on the lips, which shocked her. P2 said to respondent: "We're in the patient room. Why did you do this?" and he replied that he knew there was no camera. P2 was upset and felt that respondent was abusing his profession. P2 said she was wearing a mask at the beginning of the visit but removed it for the examination of her face. She did not remember whether respondent pulled down his mask or was not wearing one.

28. Respondent denied kissing P2 during the urgent care visit. He also noted it was mandatory for him to wear an N95 mask while seeing patients at that time.

THIRD AND FOURTH MESSAGES

29. After the urgent care visit, respondent came to P2's house to provide bioelectric massage on two other occasions. P2 did not provide a timeframe for the third and fourth massages. Respondent estimated that the third massage was in August 2020 and that the fourth massage was in October 2020.

30. Both the third and fourth massages took place on P2's bed in her bedroom, because her daughter was home and P2 did not want to have the massage in the living room. Respondent reported that he met P2's daughter and the daughter's partner at P2's home on the day of the third massage, and that he and P2 had

previously discussed how she should introduce him (respondent suggested "special friend" but P2 called him her "volleyball friend").

31. As described in Factual Finding 22, according to P2, respondent became more aggressive during each massage and during the third and fourth massages respondent tried to kiss her and laid on top of her. Respondent denied doing so.

32. According to respondent, at the third massage, P2 asked him to also massage her abdomen because prior sessions had been helpful for her back, neck, and shoulder. Respondent stated P2 turned over to lay face up with a towel covering her breasts, and that he applied the paste and massaged her abdomen only. Respondent also reports that after this massage, P2 asked him to look at her home work station to evaluate its ergonomics, and he recommended she get an adjustable standing desk.

33. P2 testified that during the fourth massage, respondent laid on top of her and she could not push him away. She was afraid to have him return again, was afraid he would rape her, and "nicely" declined offers of further massages. P2 was questioned as to why she did not cry out to summon her daughter if she was pinned down by respondent in her bedroom, and P2 stated that she was embarrassed and did not want her daughter to come into her bedroom while she was undressed.

34. Respondent's version of the fourth massage was very different. Respondent testified that P2 was wearing sweatpants because it was a colder day. After respondent massaged her back and shoulders, P2 asked him to massage her legs, having previously complained of knee pain. P2 removed her sweatpants and laid on her back with a towel covering her torso while he massaged her legs only. According to respondent, after he completed the massage and wiped off the paste, P2 removed her underwear and got under the covers, and they then had consensual

sexual intercourse in her bed. Respondent described himself as feeling guilty after this encounter because he had broken his marriage vows, but he did not say so to P2. According to respondent, he and P2 saw each other less frequently after that day, mostly at volleyball games, and they never talked about their sexual encounter. He stated that he loaned P2 his bioelectrical massage device for four or five weeks so that her daughter could use the device on her.

35. P2 denied ever having sex with respondent.

OTHER ACTIVITIES

36. In addition to playing volleyball together regularly throughout the second half of 2020, respondent and P2 engaged in other social activities.

37. On one to three occasions before or after a massage at P2's home, the two of them walked P2's dogs together in her neighborhood.

38. According to respondent, as his romantic relationship with P2 progressed prior to the fourth massage, she began pressuring him to do "normal couple things" such as going out at night and going on trips. P2 described respondent as courting her, but she denied being in a romantic or dating relationship with him.

39. According to P2, about a month after the last massage, she and respondent had a "long talk" at her home, during which she told him to stop courting her and that they should just be volleyball friends. P2 reported that respondent's reaction was they should "be happy and live in the moment," by which she understood him to mean "fool around" and have a relationship outside of his marriage. Respondent was not asked about such a conversation at P2's home, and did not describe it in his testimony.

40. Prior to one of the later massages, P2 asked respondent if she could drive his Tesla, because she was considering her next car purchase. He agreed and P2 took the two of them for a test drive. According to respondent, P2 drove them to Happy Lemon and he paid for tea; P2 did not recall a trip to Happy Lemon. According to respondent, after driving his Tesla, P2 commented that he should buy her an electric vehicle as her next car because he made more money than she did. Respondent thought this was a joke, but then a week or two after they had sex, P2 asked when he was taking her to buy her a car, which made him feel like the relationship had become "transactional."

41. Respondent described one night on which P2 invited him to her home to cook dinner together and share a meal, and he stated that P2's daughter was again present. P2 denied cooking dinner with respondent at her home.

42. According to respondent, P2 showed him how to make black sugar cake at her home on one occasion; he described this as an "instructional" activity.

43. Respondent also testified that he and P2 went to the farmer's market together one day, and he bought them lunch. P2 denied going to the farmer's market.

CONVERSATION IN RESPONDENT'S CAR IN A PARKING LOT

44. In late November or early December 2020, respondent and P2 played volleyball together and drove away in their separate cars. Respondent signaled to P2 that she should pull over, and they stopped in a parking lot. Respondent motioned P2 over to his car, saying he wanted to talk, and she got into the passenger seat of his car.

45. According to P2, respondent leaned over and tried to kiss her during this conversation in his car, and she was "cornered" against the car door as she leaned

away and tried to avoid a kiss. At hearing, P2 testified that respondent did not actually kiss her, although in prior statements to the police and Board investigator, she said he did. P2 told respondent they should simply remain "volleyball friends" and she left.

46. According to respondent, he flagged P2 down for this conversation because he wanted to talk about ending their romantic relationship. Respondent testified that he felt guilty about the affair and cheating on his wife; that his relationship with P2 had become "transactional"; and that he could not fulfill P2's expectations for their relationship. Respondent denied kissing P2 against her will, or trying to do so, stating that they shared a quick, consensual kiss with closed lips as a goodbye. Respondent agrees that when he and P2 parted that evening they had agreed to be volleyball friends.

TEXT MESSAGES WITH P2 FROM DECEMBER 2020 TO JULY 2021

47. Respondent and P2 had exchanged text messages on WeChat since she joined the volleyball group. However, neither of them provided any of their text messages prior to December 2020. P2 offered two explanations. At hearing, she stated that she switched to a new phone at the end of 2020. In her police interview, P2 said that after the conversation in respondent's car, she deleted his previous messages because she was upset with him and wanted him to stop contacting her. She did not explain why they subsequently resumed texting. Respondent testified he no longer has any of the WeChat messages from the volleyball group or P2 on his phone. He stated he had gotten into the habit of deleting old messages to save memory.

48. P2 provided her text messages with respondent from December 18, 2020, to August 20, 2021. Some of the messages are in English and some are in Mandarin.

The Board's investigator obtained a certified translation of the Mandarin messages. Neither respondent nor P2 disputed the accuracy of the translations.

49. On December 18, 2020, respondent texted P2 to encourage her to sign up for volleyball the next day. On December 24, 2020, P2 thanked respondent for sesame soup, and said she was in a bad mood and had stressful things to deal with.

50. In January 2021, respondent and P2 exchanged messages about her buying a new house. Respondent asked for the address, and offered to help P2 move. P2 said it was nice of respondent to offer, and asked if he had a van. She also asked, "How come all the guys offering help are all married?" and respondent replied, "All the single guys are busy dating." P2 said she would let respondent know if she needed help and "I'd rather not owe a married man a favor." After discussing whether P2 was hiring movers or not, P2 sent a "praying hands/thank you" emoji, and respondent said, "It's no trouble, just look for the most handsome of those helping you to move." P2 wrote, "So all the married guys trying to fool around."

51. In February 2021, respondent sent P2 some suggestions about buying an electric car, wished her Happy Valentine's Day, and encouraged her to play volleyball. She said her neck hurt after moving. Respondent asked if she needed electrotherapy; P2 declined. He later asked to see her new home; she did not respond.

52. In March 2021, respondent wished P2 happy birthday and said "First to say Happy Birthday!!!" P2 told him "It's not a competition" and respondent said, "There's no competition, I'm just letting you know I put a lot of effort into it." P2 replied, "But I don't have faith in you. I think you pursue a lot of women." Respondent said, "I'm kind to everyone."

53. Respondent asked to see P2's new home; she did not respond.

54. On March 23, 2021, respondent asked P2 if she was mad, and she said: "Well, no. I think it's best if we keep our distance." She then said: "Our styles are too different. I don't like the way you treat relationships. And we are on different level. So, I think we should just remain volleyball teammates." The next morning, respondent asked, "Can a volleyball teammate visit you at your new apartment and bring some jiuniang [a Chinese dish]?" P2 replied with a rhetorical question, "How about we turn it around? Can I come visit you at your home? Just think of it that way. I could come over and bring some jiuniang." Respondent said she could come over. P2 said, "And I don't prefer someone too pushy. We can find some time to talk and clear things up if needed. I just think you're lonely and looking for some fun, I'm not the one." Respondent replied, "I like you as a volleyball teammate."

55. In April and May 2021, respondent and P2 texted about membership in the Bay Area Professional Information WeChat group. On May 29, 2021, respondent asked, "Can you save 2 pieces of black sugar cake for me?" and P2 replied, "Okay."

56. On July 11, 2021, P2 asked, "Can you make another big bottle of lemonade for me to take home?" and respondent replied, "No problem."

57. There were no text messages between respondent and P2 from July 12 to August 18, 2021. As described below (see Factual Findings 102-103), after learning of respondent's early July 2021 arrest in connection with P1's allegations, P2 confronted him to demand an explanation. They exchanged a few final texts in August 2021 (see Factual Findings 105-106).

Respondent's Interactions with P1

58. P1 did not testify at hearing. Respondent testified about his interactions with P1. A complete or nearly complete set of text messages between respondent and

P1 was in evidence. P1's statements to the police were admitted as administrative hearsay.

TREATMENT OF P1 AT URGENT CARE ON NOVEMBER 27, 2020

59. Respondent met P1 when he treated her as a patient at the urgent care clinic in Mountain View on the afternoon of November 27, 2020. P1 was a 27-year-old woman who visited the clinic with a complaint of right shoulder pain, after falling on her shoulder while skiing. Respondent examined P1, diagnosed a likely contusion, and ordered an X-ray, which revealed no fracture. Respondent discussed the RICE protocol (rest, ice, compression, elevation) with P1 and told her to follow up with her primary care physician. Respondent documented the visit in P1's medical records.

60. While respondent talked with P1 at the urgent care visit, he learned that P1 spoke Mandarin and she was 6'2" tall. At the end of the visit, respondent and P1 exchanged WeChat contact information. Respondent explained at hearing that P1 said she felt cooped up due to pandemic restrictions and wanted to engage in outdoor exercise. Respondent asked P1 if she played basketball or volleyball due to her height, and told her about his outdoor volleyball group; she expressed possible interest in playing after her shoulder stopped hurting. Respondent did not think it was inappropriate to ask his patient to join his volleyball group.

TEXT MESSAGES WITH P1 FROM NOVEMBER 2020 TO APRIL 2021

61. The evidence included text messages between respondent and P1 from November 2020 to April 2021, obtained from P1's phone. Some of the messages are in English and some are in Mandarin. The Board's investigator obtained a certified translation of the Mandarin messages. Respondent did not dispute the accuracy of the

translations, or the completeness of the texts (other than stating he thought there was a missing message from P1 in April 2021 about her planning a trip to Florida).

62. Respondent began exchanging text messages with P1 on the evening of November 27, 2020 (the day of the urgent care visit). Respondent inquired as to P1's "English name" and complimented her diving photos. Respondent also sent P1 links to videos about volleyball and asked, "Are you interested in joining the volleyball team and making new friends?" P1 said, "Haha, I don't know how to play volleyball. It is okay for me if other people don't mind." Respondent said, "Get your shoulder healed first."

63. Respondent also added P1 to two WeChat groups: the Columbia Club of Northern California, and Bay Area Professional Information. At hearing, respondent stated both P1 and his older daughter attended or had attended Columbia University. Respondent explained the Bay Area Professional Information group as being a collection of people sharing information about their respective areas of interest and expertise. Respondent's alias in the group identified him as "Todd – Medicine." Other members' group aliases similarly identified their area of interest or expertise.

64. On November 28, 2020, respondent texted P1 to say he was playing basketball that evening and she could come to watch, and play if she had no pain in her shoulder. P1 declined, saying it was not comfortable to drive with one hand. Respondent stated, "It's not healed yet until Tuesday. Let's try electrotherapy. Okay?" On November 30, 2020, respondent followed up again, asking P1 if her shoulder was getting better. P1 said it was better and she could work but still not drive. Respondent again suggested: "Do you want to try electrotherapy? I do it for relatives and friends and it usually works the first time. You are not healed as you can't drive. I have time tomorrow. Do you want to try electrotherapy?" P1 declined, stating she was too busy that week. Respondent told her, "I can go to your home if it isn't inconvenient for you."

When P1 asked, "Hmm, I don't need to go to the hospital?" respondent said, "I do it for you for free. If you want the hospital to make money, it's fine as well." P1 again said she was busy. Over the next two days, they also exchanged a few messages about the merits of skiing versus snowboarding.

65. On December 4, 2020, P1 reached out to respondent by text, asking him how to find a primary care doctor, and he directed her to the appropriate place on the PAMF website. P1 also noted the long wait times for appointments. Respondent stated, "If you have problem, I can help you solve it. Is your shoulder recovered?" He also noted the prevalence of video visits during the pandemic. P1 told him her shoulder was not yet recovered and she still had a dull pain. Respondent again suggested trying electrotherapy. Also in this exchange, they discussed the electronic medical record keeping system at Sutter. P1 asked about getting a COVID antibody test and if going through a primary care doctor would be cheaper. Respondent offered, "I can help you do it." P1 replied, "?? Do you mean your hospital?" Respondent explained that when the pandemic began, he bought antibody test kits and distributed them to his relatives and friends. Respondent and P1 then discussed the relative accuracy of antibody testing versus PCR testing, and test availability. P1 again mentioned having pain in her arm, and respondent again offered electrotherapy.

66. On December 7, 2020, respondent sent P1 a message saying, "If your arm still hurts, it means there is still a problem. Please follow up." P1 responded, "okay." Respondent again offered electrotherapy, saying "Will you come to the clinic or will I go to your home tomorrow?" P1 asked, "Will you come to my home to do massage?" Respondent stated, "Electrotherapy. You're welcome to come to the clinic as well." He also offered to refer her to an orthopedic surgeon. P1 did not respond.

67. Respondent continued to message P1, checking on her shoulder and encouraging her to play volleyball. On December 19, 2020, they had a lengthy text conversation in which P1 asked respondent, "Now that the pandemic is so serious, do you still dare to go out?" and she discussed her skiing trips being canceled. Respondent explained that he continued to play volleyball outdoors with precautions, and encouraged her to do so. He sent P1 information from the county's website saying outdoor activities were permitted, and engaged in a detailed discussion of risk minimization versus total lack of contact with the outside world. They also discussed when vaccines might be available for the general public. On December 20, 2020, respondent reminded P1 to go outdoors to get Vitamin D, and suggested she come watch him play volleyball at the park. P1 said she would take a walk instead.

68. Respondent continued to send messages to P1 in January 2021, asking if she wanted to play volleyball, or come to watch the group play. Respondent also added P1 to his volleyball WeChat group. P1 told respondent about getting vision correction surgery and that she needed to avoid sun exposure for a few days. On January 15, 2021, P1 told respondent that her right arm still hurt. Respondent said, "let me take a look at your arm again," and told her it should have healed by then. P1 declined, and respondent said to let him know when she was ready. Later in January, respondent removed P1 from the volleyball group chat, explaining there were a limited number of spots, but stating P1 could rejoin later.

69. Respondent sent P1 messages on February 14, 2021, saying that if her eyes had recovered she could come play volleyball, and "every girl who comes to play ball today will receive a fresh flower." He again suggested she play volleyball on February 28, 2021. P1 did not reply to either message. There was a gap in their text message conversation until April 2021.

70. On April 9, 2021, respondent messaged P1 about the Bay Area Professional Information WeChat group. At hearing, respondent explained that he had asked members to update their aliases and he had removed those who did not do so, and that he reinvited P1 and asked her to update her alias. That same day, respondent wrote, "Have not heard from you in a while. Hope all's well with you. Have [you] received your vaccination?"

RESPONDENT'S APRIL 2021 INTERACTIONS WITH P1

71. Starting on April 10, 2021, P1 and respondent engaged in a very active exchange of text messages regarding the COVID vaccine. P1 replied to respondent's inquiry by asking which vaccine brand to choose. Respondent provided information and discussed the merits of the different vaccine brands in terms of efficacy, side effects, and number of required doses. Respondent encouraged P1 to get vaccinated with any brand, while also suggesting that the Johnson & Johnson (J&J) vaccine would be preferable because it only required one dose.

72. On April 11, 2021, P1 messaged respondent conveying her fears of blood clots as a side effect of the J&J vaccine. Respondent told P1 not to be afraid, saying three to four cases out of five million administered was a very rare event. Respondent asked if P1 had made a vaccination appointment. She said she had one the next day. Respondent asked if P1 needed someone to go with her. After she again expressed fears of vaccine side effects, P1 asked if respondent wanted to go with her; he agreed. They arranged that respondent would come to her home and pick her up the next day. P1 continued to express fears of blood clots. Respondent told her, "I will make sure you'll be ok," and stated: "If you have any signs or symptoms, I can prescribe blood thinner." P1 asked more questions about blood clots, and respondent reassured her that the chances were very small, "like hitting the lottery jackpot," and discussed the

difference between deep vein thrombosis and pulmonary embolism. Respondent also told P1 what signs would indicate she should see a doctor for concerns of a blood clot (pain or swelling in the leg, chest pressure/pain, shortness of breath). Respondent told P1 to make sure she had Tylenol at home, and offered to bring her some the next day.

73. On April 12, 2021, respondent drove P1 to and from her 11:30 a.m. vaccination appointment, picking her up at her apartment and driving them in his car. Respondent was off work that day. Respondent testified that they discussed various things during the drives, including that P1 wanted a vaccination soon so she could fly to Florida to visit an ex-boyfriend and the J&J vaccine only required one shot. P1 told respondent about her family background and coming to the United States from China to study and work, and they discussed their respective careers, and the stock market. P1 asked respondent what his astrological sign was, mentioning the astrological compatibility of her past boyfriends. P1 told respondent that her shoulder pain from the skiing injury had resolved, but that both arms hurt when she slept on them.

74. When they returned after the vaccination appointment, respondent went inside P1's apartment and gave her a bioelectric massage. According to respondent, this was not pre-arranged, and he offered it because she mentioned arm pain, and he happened to have the device in the trunk of his car. That account is consistent with the pre-appointment text messages, which did not mention electrotherapy. Respondent did not create any medical record documentation of providing this massage to P1. Respondent testified that he did not consider providing this bioelectric massage to be medical treatment. He administered the massage to P1's neck, back, and shoulders while she was on her living room couch. There is no allegation that respondent inappropriately touched P1 during this massage. He left P1's apartment afterwards.

75. P1 had a podiatrist appointment scheduled for the afternoon of April 12, 2021, for symptoms of toenail fungus. At 1:59 p.m., after he had left P1's home, respondent texted her to suggest that she ask about laser treatment for toenail fungus when she saw the podiatrist. P1 replied, "KK thanks for today!" Respondent said he would stop by the next day to check on her, and told her to let him know if she developed any side effects.

76. Respondent and P1 resumed their texting that evening (April 12). Respondent asked how the podiatrist appointment was, learned P1 was prescribed topical medication, and he expressed that topical medication was not effective. He also told her to drink fluids and take Tylenol if she felt uncomfortable that night. Later in the evening, they discussed food, a local entrepreneur forum, and respondent's consulting with a medical device start-up company. P1 told respondent she was starting to feel muscle pains. Respondent told P1 to take Tylenol; she sent him a photo of a pill bottle. He confirmed with her what medication it was and told her not to take ibuprofen, and to take the Tylenol he gave her.

At 9:41 p.m., P1 texted, "My whole body aches now." Respondent asked questions about whether she had a fever, headache, or fatigue, and P1 said she had a headache and "everywhere aches" and that her arms hurt. Respondent reassured her that these were all expected side effects of the vaccination. Respondent also inquired of P1 why she had asked him "what is your zodiac sign?" P1 said, "Can't I ask?" Respondent replied: "You guess. Compatible with [emoji for an astrological sign]." There is a pause in their messages from 10:19 p.m. onward. Respondent texted P1 at 2:42 a.m. to ask, "How r u now?" She did not respond.

77. Shortly after 7:00 a.m. the next morning (April 13), respondent texted P1 to tell her that the United States had just called for a pause on the J&J vaccine, which

she had received the previous day. He stated: "6 cases in 7 million doses within the 2 week period we talked about. I would not worry, but I would not go to FL either." P1 expressed anxiety. Respondent offered: "Don't worry, you will be ok. I have a potential fix, talk to you this afternoon." He sent her a photograph of a blood thinner medication (Eliquis). Over the course of the morning and afternoon, respondent exchanged a great many text messages with P1 about her increasing anxiety regarding possible side effects, and her internet research on risks and symptoms of blood clots. Respondent inquired about symptoms; P1 said she had a mild fever, and he told her to drink fluids. After P1 said, "So hopeless," respondent replied: "you're going to be just fine! You're young, healthy, beautiful. Relax." P1 asked if there were blood tests to monitor for blood clotting problems and respondent said yes (D-dimer test), but he again stressed the low risk of blood clots as a side effect.

78. Respondent went to P1's apartment after 4:30 that afternoon (April 13) as he had discussed, to check on her after her vaccination. According to respondent, when he arrived, P1 was typing on her laptop and said she was making a will in case she died from vaccine side effects. Respondent thought this was "over the top." He tried to manage her fears and anxiety by discussing the low odds of such a reaction. Respondent testified that P1 also asked him questions such as whether he was married, how many children he had, and how his marriage was. Respondent asked P1 whether she had romantic feelings for him. At hearing, respondent said he asked her that because of the questions she posed to him. He felt awkward and left P1's home.

79. That night (April 13), P1 continued texting with respondent about how long it would take her fever to go away, and her increasing worries of dire side effects based on her internet research and review of online forums. Respondent sent P1 information about the odds of dying in a plane crash for perspective. P1 thought the

side effect numbers were underreported and said, "I'm so hopeless, just need to talk to you. Devastated." Respondent told her she would be fine. Respondent also asked P1: "Have u ever heard about hypochondriac?" Respondent told P1: "Just be aware of symptoms and avoid perseveration." P1 asked how, and respondent replied: "I'm glad you asked. I would recommend directing your attention to me [winking emoji]. You should perseverate all you want on me. Is it working?" P1 expressed confusion and respondent said "Humor."

80. The next morning (April 14), respondent asked P1 if she was better and she reported no fever, just a sore arm. They continued to text throughout the day. P1 expressed skepticism about the media and reported rates of side effects, and respondent again tried to argue the statistical analysis with her, with little success. Respondent also asked if he could take P1 out for lunch; she declined, saying she was busy working. Respondent told P1 not to worry about the odds of side effects, and then said: "AND u have me watching over you 24/7. How lucky are you?!?" P1 noted he was not watching her 24/7 and that he had told her the J&J vaccine was fine. Respondent amended to say: "Ok, I'm on call 24/7 for you. I'd like to watch more, but it seems that someone is too busy."

81. In the afternoon, P1 stated her leg hurt and respondent quizzed her for details (which leg, is it swollen or red). P1 said her left leg was not significantly swollen or red. Respondent told her if the pain persisted or worsened the next day, "we do the test ok?" She clarified whether he meant at urgent care, and he said "Find me and I will do the test." They discussed that P1 should get something to eat. Respondent offered to bring food; she declined. They also discussed P1's work schedule and exercise.

82. At 6:10 p.m. on April 14, 2021, P1 texted respondent: "Omg I have some allergic reaction." Respondent asked what happened and she told him it was a "rash"

and, "It's just itchy." Respondent told her, "U scared me" and asked if she needed help. P1 did not immediately reply. Respondent tried calling P1 via WeChat but did not succeed in reaching her. Respondent then left his home, grabbing Benadryl to take with him, and went to P1's apartment. He did not bring the (possibly expired) epi-pen from his car's first aid kit.

83. Respondent arrived at P1's apartment sometime around 7:00 p.m. According to respondent, P1 opened the door in her pajamas and chuckled, saying "I didn't expect you to come." She asked him to check on her rash and closed the door on him so she could change clothing. When P1 let him into the apartment, he looked at her forearms and did not see anything, but the entryway was poorly lit. Respondent testified that he held onto P1's forearms and moved the two of them toward the kitchen where there was more light. Respondent told P1 he still saw no rash or signs of scratching, and she said "it was just there." According to respondent, he moved his hands to above P1's elbows, wanting to look at her upper arms, and she jerked back and told him not to touch her arms. Respondent understood this to mean P1 was concerned he would touch the sore vaccination site and he said, "sorry I forgot." Respondent also asked P1 again whether she had romantic feelings for him. He asked her to sit and talk, but P1 said she needed to run errands and went to her bedroom to change clothing a second time, while respondent remained in the living room. When she emerged, P1 asked respondent to carry a bag of her kitchen trash to the garbage cans, they walked to the parking area, and respondent left.

84. At 9:27 p.m. that evening (April 14), P1 reinitiated text communications by saying: "Stomachache." Respondent suggested she have some soup. P1 did not reply, and at 9:40 p.m., respondent said, "Faster response please, otherwise I become

worried." P1 replied and respondent asked her a series of questions about the location and severity of her stomach pain, and her last bowel movement. P1 replied.

85. At 10:14 p.m., P1 stated: "It's ok. Not life threatening. Just weird. The rash and the tummy pain." Respondent wrote: "I thought it was just itching, no rash. My professional diagnosis is that you have butterflies in your stomach." P1 expressed confusion, and respondent told her to "Google" it. P1 said: "Not so red rash. Not sure. Maybe you scared me." Respondent replied: "U scared ME!"

Respondent went on to express indignation: "Who writes OMG I have a[n] allergic reaction and then no response for 30 minutes?!?! Who does that? I'm thinking perhaps u passed out or you've already gone to the hospital." He concluded: "Think I should take what you say less seriously." P1 retorted: "But I think you should stop forcing yourself on me when I told you to stop" and "You should respect me." Respondent stated: "I do respect you and stopped when you asked. I was simply asking you whether you had feelings for me." Respondent went on to write: "I'm getting mixed signals. I hope you have feelings for me, but if you don't we should end this now." When P1 did not reply, respondent asked, "yes or no?" P1 stated: "End what. We never had any relationship." Respondent said: "End whatever we have now." He pressed her for an answer: "Do you have feelings for me?" P1 replied: "I've told you millions of times idk [I don't know]. But I don't want anyone force himself on me including you."

Respondent's last message to P1 was: "I was simply asking you for an answer. If you are still unsure, I think we should stop. I don't want you to feel that I'm forcing a relationship that you are unsure about. I'm grateful to have met you, and hope you find someone that you are sure about." P1's last message was: "Idk what you're talking

about but whatever you want.” Respondent then deleted P1’s WeChat connection from his phone, which removed all the texts between P1 and himself from his phone.

86. Respondent was questioned at hearing about why he repeatedly asked P1 (in person and via text) whether she had feelings for him. Respondent’s testimony was that he increasingly began to suspect P1 was hyperbolizing or exaggerating, and he did not know if she was actually experiencing symptoms after her vaccination. He wondered whether P1 was making up symptoms in an attempt to gain his attention because she had a romantic crush on him, or whether she had Munchausen syndrome or some type of personality disorder. Respondent’s explanation was that he hoped P1 had romantic feelings for him, because that would be easier for him to clear up than if her histrionic and dramatic behavior had psychological origins. Respondent denied actually wanting a romance with P1.

87. When questioned about P1’s text messages saying respondent forced himself on her, respondent’s testimony was that he did not seek clarification, because he had thought they were talking about the same thing—him grabbing her arms when inspecting her for a rash. Respondent denied any other type of touching.

88. When asked about his text messaging with P1 regarding the COVID vaccine, respondent testified that he provided information about COVID vaccinations to many people. He did not intend to establish (or re-establish) a doctor-patient relationship with P1 by texting with her about the vaccine.

P1’S REPORT TO POLICE AND SUBSEQUENT INVESTIGATION

89. Shortly before 11:00 a.m. on April 15, 2021, P1 called the police and made a report against respondent. Officer James Pine came to P1’s home and interviewed her, and P1 provided Pine with screenshots of a few of her text messages.

P1 alleged that on April 14, 2021, respondent came to her home uninvited, and that while he was there he grabbed her biceps, pushed her onto the couch, held her down, and forcibly kissed her. P1 also alleged that when she went to her bedroom to change clothing, respondent followed her, again pinning her down and trying to kiss her. Lastly, she alleged that he tried to hug and kiss her as she left her bedroom.

90. After interviewing P1, Pine went to respondent's home. Respondent was not home, but he spoke to Pine briefly through his video doorbell, and arranged to speak with Pine after work. Pine interviewed respondent by telephone later that day. Respondent told Pine he had gone to check on P1 after she texted him about an allergic reactions and post-vaccination symptoms and then stopped responding. Respondent stated that when he arrived at P1's home, he was relieved to see she was fine, but that he asked her multiple times whether she had feelings for him. Respondent denied pushing P1 down or attempting to kiss her. Respondent stated that he grabbed P1's arms in an attempt to get her to turn and face him, and that he let go when she told him not to touch her.

91. Respondent's testimony at hearing was largely consistent with his statement to Pine. He denied kissing P1 or touching her other than grabbing her arms.

92. The police issued P1 an emergency protective order, which an officer gave to respondent while he was at his workplace. P1 also initiated civil harassment proceedings to seek a restraining order against respondent (Factual Findings 95-96).

P1'S VISIT TO URGENT CARE ON APRIL 18, 2021

93. P1 visited the urgent care clinic in Mountain View on Sunday, April 18, 2021. (At that time, she had filed a request for a temporary restraining order against respondent, but it had not yet been issued by the court.) Respondent was working at

the urgent care clinic that day, and the front desk called to say a female patient was asking to see respondent. Respondent looked into the waiting area, and saw P1. Respondent was shocked to see P1 there, instructed nursing staff not to put P1 into his exam room, and left the facility for a break.

94. P1's medical records reflect that she was seen by another provider that day, for complaints of pain and numbness of the left lower leg, loose stools and cramps, and nausea and fatigue. That provider ordered blood work, and concluded most of P1's symptoms could be related to her recent vaccination but found it was not likely to be vaccine-induced prothrombotic immune thrombocytopenia because the blood results were normal. The paresthesia was possibly due to positional nerve compression. P1 was given Tylenol and told to follow up with her primary care doctor.

P1'S CIVIL HARASSMENT PROCEEDINGS

95. The court issued P1 a temporary restraining order against respondent on April 19, 2021, and set a hearing on P1's request for a civil harassment restraining order for June 15, 2021. Respondent was served with the temporary restraining order and notice of the hearing.

96. P1 did not appear at the civil harassment court hearing on June 15, 2021. She never appeared in that matter, and the court dismissed the civil harassment proceedings on March 27, 2023.

PAFMG RISK MANAGEMENT

97. It appears that P1 also complained to her medical insurer. On June 16, 2021, staff from Palo Alto Foundation Medical Group (PAFMG) risk management reached out to P1 by email, seeking to set up an interview with an outside investigator

regarding her complaint against respondent. P1 responded by asking, "Do you mind helping me recall when and how I filed a complaint?" The risk management person explained that they were notified of P1's complaint by Aetna and learned of the restraining order through court records. P1 arranged for a Zoom interview, but no evidence was presented that it ever took place.

Respondent's Arrest in Connection with P1's Allegations

98. On July 7, 2021, respondent was arrested in connection with P1's allegations. An arrest warrant had previously been issued, but it was recalled by the court after a proceeding initiated by respondent's attorney, with the court requiring respondent to present himself to the police station for booking. Criminal charges were filed against respondent for battery.

99. The police department issued a press release on July 12, 2021, and distributed it online via social media. The police press release asked any other women with complaints against respondent to come forward, providing a phone number for Detective Mary Cayori.

P1's Complaint to the Board

100. This matter came to the attention of the Board when P1 submitted an online complaint on July 12, 2021, making allegations similar to those in her statement to the police. An investigation followed, including interviews conducted on behalf of the Board by Michelle Metcalf, an investigator from the Division of Investigation, Health Quality Investigation Unit. No evidence was presented at hearing as to whether P1 was interviewed.

101. Metcalf interviewed respondent by telephone on December 16, 2021, with his attorney present. Metcalf asked respondent about P1, but respondent did not answer any substantive questions on the advice of counsel.

July and August 2021: P2 Confronts Respondent at Volleyball Game and Their Final Text Messages

102. After the police press release about respondent's arrest, someone brought an online news article to P2's attention, and she reviewed it.

103. P2 confronted respondent at a volleyball game and demanded an explanation about his arrest and the allegations against him. The date of this conversation was not established by the record, but it was after July 12, 2021. Prior to the game, P2 commented to respondent briefly about his arrest, and they spoke at more length after the game, away from other players.

P2 asked respondent what had happened. Respondent said that P1's allegations against him were false. Respondent said P1 had been asking him for medical advice and issues with her COVID vaccination, he accompanied P1 to get her vaccination, and he went to her home to check on her, after her many text messages about side effects. Respondent said that P1 was interested in him and kept asking about his marriage.

Respondent told P2 that the only time he touched P1 was to look at her arm. He also claimed it would be impossible for him to force himself on P1 or pin her down, because she was 6'2" tall. P2 told respondent that she did not believe all he did was touch P1's arm, saying he had forced himself on her (P2). P2 also said, essentially, that the police would not have arrested him if nothing had happened. According to P2 (in her statement to police), she told respondent that police do not arrest people without

a reason, and asked, "if I called the police to have you arrested right now, they would just come and arrest you?"

According to respondent, P2 was very angry and asked him whether he was involved with P1 while he and P2 were together. P2 did not believe respondent's version of events and said that respondent must have done it or the police would not have arrested him. According to respondent, P2 said that his reputation was ruined and he was of no use to her anymore, and it would be easy for her to "fuck you up" by making something up and going to the police. Respondent testified that P2 did not accuse him during this conversation of having forced himself on her.

104. At some point after her confrontation with respondent, P2 and the friend who introduced her to respondent's volleyball group left the group, and formed their own volleyball group.

105. On August 19, 2021, after a month-long gap in their text messages, respondent texted P2 with a screenshot from the original volleyball group chat about who is playing in a scheduled game. Respondent then stated, "I'm honestly just inviting you to play a game." P2 replied, "You really don't know why I left the group? Stop playing dumb." Respondent sent P2 screenshots from the volleyball group chat where someone asked about P2 and others dropping out of the group. P2 told respondent: "I can't control others. But I don't want to see your face again."

106. On August 20, 2021, respondent replied: "Wish you well in your new group then." P2 stated: "Your reputation is already ruined. If you're smart, you'll control yourself and stop flirting with other girls." Respondent replied: "I am innocent of the allegations. The truth will come out eventually." A few minutes later, respondent

sent a final message: "My lawyer advised me not to talk to anyone during this time. Please do not text or communicate with me."

P2's Report to Police

107. On August 24, 2021, P2 called the police department to file a complaint against respondent. She referred to seeing the press release that asked other women to come forward, and stated she wanted to report incidents occurring in the urgent care clinic and in the parking lot. P2 made an appointment for a police interview.

108. P2 was interviewed by Detective Cayori on August 26, 2021. She described seeing the press release and said she realized respondent was doing similar things to other women as he had done to her. In her interview, P2 described her connection to respondent through the volleyball group, the conversation over coffee, the Japanese restaurant dinner, the electrotherapy sessions (she said there were three, rather than four massages), the urgent care visit, the parking lot conversation, and her confrontation of respondent at the volleyball game.

When describing the first massage, P2 said she was shocked to be asked to undress and was embarrassed to remove her towel but respondent reassured her by saying to trust him and he is a doctor. P2 said that respondent kissed her at the end of the massage, and described a conversation with him after she got dressed, in which he said he liked her. P2 did not mention that respondent had touched her breasts until later in the interview, when Cayori asked if respondent touched her breasts and P2 said that he had. P2 said he did not touch her breasts in subsequent massages.

P2 described respondent kissing her at the urgent care visit and said she was angered by his response that there was no camera in the patient room. She classified that as the most important incident in her discussion with Cayori.

In describing the parking lot conversation in respondent's car, P2 said that respondent kissed her and she could not get away. P2 stated she deleted respondent's earlier text messages because she was disgusted with him after that incident.

In discussing her reasons for making a police report, P2 told Cayori that she was mad at respondent after seeing the news article, and said respondent had tried to make her believe he liked her but was "fooling around" with other females. P2 stated that after confronting respondent at the volleyball game, she talked to her friends about whether she should file a police report. A male Chinese friend discouraged her from reporting as making trouble for herself in the community, and some raised concern for respondent's family. P2 also told Cayori of her recent text messages about why she left the volleyball group. P2 said she was mad at respondent for ending the text conversation by telling her not to communicate with him, because he had initiated the texts. She said this "made me hate more his guts" and "he seriously has no shame."

109. At hearing, P2 was questioned about her delay in filing a police report, between learning of respondent's arrest and confronting him in mid-July, and calling the police on August 24. P2's explanation was that she was considering whether to file a report, and that in Chinese culture women are taught not to cause trouble. She stated however that her daughter encouraged her to come forward and she wanted to do the right thing. P2 was also questioned at hearing about why she stated in her initial contact with police that she specifically wanted to report the urgent care clinic and the parking lot interactions (and not the interactions at her home). P2 stated she was focused on the clinic visit because respondent said there was no camera, and that she was embarrassed to discuss the massages at her home in which she was disrobed.

110. P2's criminal allegations against respondent were eventually consolidated with P1's criminal allegations (see Factual Finding 113).

111. P2 has not filed a civil lawsuit against respondent. At hearing, P2 described participation in the criminal and Board proceedings as enormously stressful.

P2's Interview with the Board's Investigator

112. On February 11, 2022, P2 participated in a telephonic interview with investigator Metcalf. (Metcalf did not interview respondent regarding P2, for reasons that were not established by the record.) During P2's interview, she described the conversation over coffee, the electrotherapy sessions (she said there were three), the Japanese restaurant dinner, the urgent care visit, and the parking lot conversation. P2 told the investigator that respondent touched her breasts in the second and third massages, and that he became more aggressive in pinning her down on the bed and kissing her. P2 described the clinic visit consistently with her police interview (Factual Finding 27), but stated that after the clinic visit she started to keep her distance from respondent because she felt he was abusing his profession. (However, the evidence at hearing established the later massages occurred after the clinic visit.) Regarding the parking lot incident, P2 said respondent wanted to kiss her and she thought he did; she had nowhere to go and had to push him away.

Criminal Court Proceedings

113. A felony complaint was issued against respondent on September 16, 2021, with charges arising from P2's allegations. A consolidated felony complaint was issued on November 18, 2021, charging respondent with committing battery against P1 and committing battery and sexual battery against P2.

114. The criminal court held a preliminary hearing on November 3, 2022, at which P2 testified. Based on a handwritten note in the court file, it seems that P1 also

appeared, but no transcript of any testimony from P1 was provided at hearing in this matter. Respondent was held to answer on the charges.

115. The criminal trial was scheduled for June 2023, but it was continued because P1 was in China renewing her visa. P1 again failed to appear at the second trial date in August 2023.

116. On August 15, 2023, an offer in resolution of the consolidated criminal charges was stated in the record, with respondent to perform 300 hours of volunteer work and participate in counseling.

117. Respondent submitted documents to the criminal court showing the following:

(a) On September 13 through 15, 2023, respondent completed a 39.5-credit program offered by the University of California, San Diego School of Medicine's Physician Assessment and Clinical Education Program, entitled "Professional Boundaries Program."

(b) On November 11 and 12, 2023, respondent completed a 23-credit course offered by the University of California, Irvine School of Medicine, entitled "Physician Assessment & Clinical Quality Improvement Program – Medical Ethics and Professionalism."

(c) Respondent completed six sessions of psychotherapy with Christina Bennett, L.M.F.T., ending in December 2023.

(d) Respondent performed 312 hours of volunteer work for the Land of Medicine Buddha nonprofit organization from August to October 2023, including

working on a prayer wheel roof project, assisting in a free medical clinic, creating and maintaining the temple website, and cleaning and maintenance of the temple grounds.

118. The criminal case against respondent was dismissed by the court on December 21, 2023, after he provided the documents described in Factual Finding 117.

Expert Opinions

119. Kevin Herrick, M.D., was retained as an expert for complainant. He wrote a report dated July 12, 2022, and a supplemental report dated December 29, 2023, and testified at hearing. Dr. Herrick graduated from medical school in 1998 and then completed a family medicine residency (1998-2001). He has been licensed to practice medicine in California since 1999 and is board certified in family medicine. Dr. Herrick has practiced family medicine since residency, including in private practice, as medical director of rural health clinics, at Kaiser Permanente, and at a community health center. Dr. Herrick has worked in urgent care and emergency rooms. Since 2018, Dr. Herrick has been a guest medical consultant for a Spanish-language news program, providing medical information on topics including COVID, vaccinations, and masking. Dr. Herrick has served as an expert reviewer for the Board since 2020.

120. Douglas A. Tucker, M.D., was retained as an expert for respondent. He wrote a report dated December 27, 2023, and testified at hearing. Dr. Tucker graduated from medical school in 1993. He completed an internal medicine internship (1993-1994), and an internal medicine residency (1994-1996). He is licensed to practice medicine in California, and is board certified in internal medicine. Dr. Tucker has worked as an urgent care physician throughout his career, including as co-director of an urgent care clinic (1996-1999). Dr. Tucker has worked as an urgent care physician at PAMF in Mountain View since 1999. He previously held positions on the PAMF

institutional review board and the member pain forum. Dr. Tucker has also served as an expert reviewer for the Board for about 15 years.

Dr. Tucker worked with respondent for 15 years at PAMF; he testified that he has no concerns about respondent's professionalism. While Dr. Tucker is well-qualified, his close connection with respondent diminishes the persuasiveness of his opinions as an expert in this matter.

DR. HERRICK

121. Dr. Herrick reviewed documents in this matter including documents from the Board's investigation, respondent's text messages with P1 and with P2, police reports, P2's interview with Metcalf, respondent's interview with Metcalf, medical records, and Dr. Tucker's expert report. Dr. Herrick also conducted research in the literature about medical ethics and referenced those publications.

122. The Board's expert reviewer guidelines instruct reviewers to assume the allegations are true, and render opinions based on those scenarios. Thus, Dr. Herrick's opinions as to whether respondent departed from the standard of care assume the truth of the allegations made by P1 and P2.

Doctor-Patient Relationship

123. Dr. Herrick discussed the defining characteristics of a doctor-patient relationship, with reference to the American Medical Association (AMA) Code of Medical Ethics; an article from the AMA Journal of Ethics; and the Board's policy

statement on medical practitioners and sexual misconduct.⁴ The relationship between a patient and physician is based on trust, which gives rise to physicians' ethical duties to place the patient's welfare above the physician's own self-interest.

A doctor-patient relationship exists when a physician serves a patient's medical needs. The relationship is generally entered into by mutual consent of the physician and the patient, apart from certain limited exceptions not relevant in this case. The relationship is formed when a physician evaluates the patient and provides (or offers to provide) individualized treatment. The location of this interaction does not matter. The formation of a doctor-patient relationship also does not depend on the complexity of the medical problem or the recommended treatment. A wide range of therapies recommended by a physician can constitute medical treatment and create a doctor-patient relationship, even if a medical license or prescription is not required for the provision of the item or therapy. For example, a physician's recommendations for diet and exercise, or provision of aspirin or bandages, can be medical treatment.

Dr. Herrick emphasized that the existence of a doctor-patient relationship largely depends on the reasonably assumed state of mind of the patient. He also emphasized that the onus is on the physician to clarify the nature of the relationship if there is any ambiguity.

A physician practicing in an urgent care setting typically does not have an ongoing doctor-patient relationship with a caseload of patients in the way that a

⁴ In forming his opinions about sexual misconduct, Dr. Herrick also relied on articles about physician sexual misconduct published by JAMA (Journal of the American Medical Association) and the Federation of State Medical Boards (FSMB).

primary care provider does. A physician seeing a patient at an urgent care clinic creates a doctor-patient relationship for that visit, but the urgent care physician expects the patient to follow up with their primary care provider for ongoing care. Generally, the physician's obligation to treat ends when the patient leaves the urgent care clinic. However, in Dr. Herrick's opinion, the encounter in the urgent care clinic may create an impression in the patient's mind that is not easily erased, and if there is further contact in the ensuing weeks and months, the patient may still perceive the physician as their doctor, imposing ethical duties on the physician.

Sexual Misconduct with a Patient

124. There is a longstanding consensus in the medical profession that it is unethical and a departure from the standard of care for a physician to have sexual contact or sexual relations with a patient. Dr. Herrick opined that there is no ethical situation in which a physician is justified in having a romantic or sexual relationship with a current patient, unless the physician is treating their pre-existing spouse or romantic partner. Dr. Herrick referred to the Board's policy statement on medical practitioners and sexual misconduct, which lists factors to consider as to whether a doctor-patient relationship exists, including: the degree of dependence in the doctor-patient relationship, evidence of exploitation, the duration of the professional relationship, and the nature of the medical services provided. Termination of the doctor-patient relationship may be raised as a defense to an accusation of sexual misconduct with a patient, but its strength will be dictated by consideration of the above factors, as well as the time lapse since the end of the professional relationship.

Grooming

125. Dr. Herrick also discussed the concept of grooming, with reference to the FSMB's policy on physician sexual misconduct. Grooming can happen in many types of disparate power relationships, and consists of giving attention, favors, and promises to the less powerful person, in the hopes of promoting the relationship to something romantic or sexual. Dr. Herrick opined that a physician's offering of special favors, such as ease of access to medical care, with the intent or motivation to change a relationship to include romance, constitutes grooming. Dr. Herrick emphasized that the distinction between grooming and non-grooming behavior is subtle, and depends on the intent of the physician.

P1

126. Dr. Herrick's reports offered an opinion that if P1's allegations were true and respondent had forcibly held her down and kissed her, this would constitute an extreme departure from the standard of care. At hearing, Dr. Herrick was told to ignore P1's hearsay statements about what happened in her apartment, and he did not discuss those in his testimony.

127. Dr. Herrick opined that respondent's texting with P1 to ask follow-up questions about her shoulder and offer electrotherapy kept the doctor-patient relationship alive after the conclusion of P1's urgent care visit. Dr. Herrick concluded that respondent was evaluating P1's condition and offering to provide electrotherapy to help solve it (along with offering to refer her to an orthopedic surgeon), and that respondent was thus acting as P1's physician. Dr. Herrick also noted that P1 had no primary care physician (as evidenced by respondent's text exchange in which he answered P1's questions about how to select a primary care doctor).

128. Dr. Herrick opined that respondent's text messaging with P1 about the COVID vaccine also created or continued a doctor-patient relationship. Dr. Herrick distinguished providing general information about COVID (which does not create a doctor-patient relationship) from making recommendations directly to P1 about her vaccination, offering treatment to her, and checking on her possible vaccine reactions.

129. Dr. Herrick opined that respondent's pursuit of a romantic relationship with P1, without clearly dissolving their doctor-patient relationship, would be an extreme departure from the standard of care. He opined that texts with P1 to follow up shortly after the urgent care visit or to help her navigate the medical system could be acceptable if respondent's intentions were professional, or could be grooming if his intent was to encourage a romantic relationship. Dr. Herrick noted a number of "red flags" in respondent's texts with P1, such as offering to meet in her home to provide electrotherapy (which he classified as medical care), and repeated offers to help her access medical care. In his opinion the overall context of respondent's texts with P1 suggested a desire for a romantic relationship.

130. Dr. Herrick was questioned about whether he regards respondent's statements, asking P1 if she has feelings for him and saying he hopes she does, as romantic behavior. Dr. Herrick noted that respondent's intent is important. While it is good communication behavior to ask for clarification about feelings, in Dr. Herrick's opinion, respondent's statement that he hoped P1 had feelings for him crossed the line into a simple departure from the standard of care.

P2

131. Dr. Herrick opined that respondent's provision of bioelectric massages to P2 created a doctor-patient relationship, because respondent was providing medical

treatment for her complaints of neck and shoulder pain. He conceded, however, that there was no documentation that respondent made a clinical assessment or diagnosis of what was causing P2's pain.

Dr. Herrick agreed that not all massages are medical treatments, and the fact that respondent is a physician did not automatically classify his massages of P2 as medical care. Dr. Herrick was asked whether it affected his opinions that respondent did not view himself as P2's physician. Dr. Herrick noted that helping friends and family with medical issues is risky and "fraught" with potential problems. He has empathy for this situation, but explained that the ethical lines are blurry, especially if there was a romantic relationship with P2 prior to the massages.

132. Dr. Herrick offered several opinions that respondent departed from the standard of care, predicated upon his underlying opinion that respondent's provision of bioelectric massages to P2 created a doctor-patient relationship. Having P2 disrobe for the provision of electrotherapy at her home without offering a chaperone was a simple departure from the standard of care. Providing electrotherapy to P2 without obtaining informed consent about the procedure and the need to expose and/or manipulate the breasts during the procedure was another simple departure. Massaging P2's breasts during the provision of electrotherapy, without a chaperone, was an extreme departure from the standard of care. (Dr. Herrick offered a qualification, that if respondent and P2 were lovers or in an intimate relationship, then no chaperone was needed.)

133. Similarly, Dr. Herrick opined that if respondent kissed P2 during electrotherapy sessions or during the urgent care visit, these would be extreme departures from the standard of care, which prohibits romantic relations with patients (unless there was a pre-existing romantic relationship).

134. Dr. Herrick opined that, if in the course of a romantic relationship, a doctor starts to dangle promises of medical care to a person who perceives that a benefit of dating the doctor is free medical care, then this constitutes grooming, even if a doctor-patient relationship has not technically been created.

DR. TUCKER

135. Dr. Tucker reviewed documents in this matter including the Board's investigation report, respondent's text messages, police reports, medical records, and Dr. Herrick's two reports. Dr. Tucker also referenced materials from the literature about medical ethics. In addition to the above materials, Dr. Tucker was provided with information about the relationship between respondent and P2 by respondent's attorney. Dr. Tucker also had previous conversations with respondent about the allegations of P1 and P2.

Doctor-Patient Relationship

136. Dr. Tucker agrees with Dr. Herrick on many points regarding the nature of the doctor-patient relationship. However, Dr. Tucker placed more emphasis on the concept of consent by the physician, opining in his report that:

Being a physician involves great responsibility both inside and outside the office, but at all times the physician is the one who makes the determination when he or she is acting as a physician or as a private citizen. Certainly, people who know we are physicians may give more or less weight to our opinions based on that knowledge, but it does not give them the right to assume we are providing them with professional care with our every action.

Dr. Tucker also stressed the nature of the urgent care relationship, noting that it is effectively self-terminating after the urgent care visit. Dr. Tucker's report listed several factors to consider in determining how long the doctor-patient relationship lasts after the conclusion of an urgent care visit: duration of the doctor-patient relationship (single visit versus multiple visits); time elapsed since the last visit; nature of the condition being treated; historic details of the condition being treated; emotional status of the patient; and power dynamic of the relationship (life-and-death issue versus minor issue).

Sexual Misconduct and Grooming

137. Dr. Tucker did not dispute that sexual contact with a patient violates the standard of care. However, as discussed below, Dr. Tucker opined that neither P1 nor P2 was a current patient at the time of respondent's alleged conduct.

138. Dr. Tucker did not discuss the topic of grooming behavior.

P1

139. The basis for Dr. Tucker's opinions about P1 included information he obtained from respondent. At hearing, Dr. Tucker explained that he had been asked to appear as a non-expert witness in respondent's criminal proceedings, and that he discussed P1's allegations with respondent at that time. Respondent told Dr. Tucker that he had gone to P1's home to check on her concerns about vaccination reactions. Respondent denied trying to kiss P1 or holding her down. Respondent did not tell Dr. Tucker he had grabbed P1's upper arms, or provide any further details about what transpired at P1's apartment. Dr. Tucker was also provided with information about the bioelectrical massage device by respondent's counsel.

140. In Dr. Tucker's opinion, respondent was not in a doctor-patient relationship with P1 as of April 2021. He opined that the doctor-patient relationship had ended by a week after P1's November 2020 urgent care visit.

In Dr. Tucker's opinion, respondent's relationship with P1 after the urgent care visit was a social one. Dr. Tucker noted that respondent was listed in P1's contacts as "Todd." Dr. Tucker also stated that respondent's use of WeChat to communicate with P1, rather than the medical group's online patient portal, suggested it was a social relationship, not a physician-patient relationship. Dr. Tucker opined that respondent's text messages to P1 asking about her shoulder and offering electrotherapy were not a continuation of patient care. Dr. Tucker found that respondent was offering to give a friend a massage, which did not establish a doctor-patient relationship.

Dr. Tucker opined that respondent's text messages with P1 about the COVID vaccination, vaccine brands, and side effects, did not establish or re-establish a doctor-patient relationship. He differentiated between sharing general medical information and giving medical advice, opining that discussing COVID vaccines in a community setting is not medical treatment, while providing advice about vaccines in a medical office setting would be medical treatment. Dr. Tucker found that respondent giving P1 a ride to her vaccination appointment was not providing medical services. Similarly, Dr. Tucker opined that in checking on P1's complaint of rash at her home, respondent was checking on a friend, not making a medical house call.

P2

141. The basis for Dr. Tucker's opinions about P2 included information he obtained from respondent and respondent's counsel. In connection with the criminal proceedings, respondent discussed P2 with Dr. Tucker. Respondent described P2 as

being a friend from the volleyball group, and said he was in a romantic or dating relationship with P2, without providing further details. Prior to writing his expert report in this matter, Dr. Tucker was provided additional details about the relationship by respondent's counsel, including that respondent and P2's relationship progressed from a friendship, to a romantic relationship, to a sexual relationship. In addition, respondent's counsel provided Dr. Tucker with information about the bioelectrical massage device.

142. In Dr. Tucker's opinion, respondent was in a doctor-patient relationship with P2 only on the day of her urgent care visit on July 29, 2020, and perhaps for a day or two afterwards. Based on the information he was provided that respondent and P2 were in a previously existing romantic relationship, Dr. Tucker found respondent did not depart from the standard of care in treating P2 for a short-term minor complaint (a referral to dermatology). Dr. Tucker agreed that it is generally inappropriate to kiss a patient, but opined that if respondent had a romantic relationship with P2 preceding the urgent care visit, it was not a departure from the standard of care to kiss her.

143. Dr. Tucker did not consider the use of the bioelectric massage device to be medical treatment or to create a doctor-patient relationship with P2. If, however, such a device had been used in an office by a physical therapist as directed by a physician, he would consider it medical treatment. Dr. Tucker did not expect respondent to document his provision of massages to P2 in a medical file, because they were performed outside the context of a doctor-patient relationship.

Respondent's Additional Evidence

144. Respondent was placed on unpaid leave by PAMF on July 16, 2021, and subsequently resigned. He has not been employed for the past three years.

Respondent estimates that he has lost more than \$1.5 million in income during that time period. Respondent incurred more than \$250,000 in out-of-pocket legal costs for his defense in the civil harassment and criminal court proceedings, and for legal costs in the Board proceedings exceeding the coverage provided by his malpractice insurer.

145. Kelly Quang testified at hearing. She is a licensed vocational nurse who formerly worked with respondent. She corroborated respondent's testimony about P1's visit to the urgent care clinic on April 18, 2021 (Factual Findings 93-94). Quang has also previously acted as a chaperone for respondent in conducting examinations of female patients.

146. Richard Kyotoku testified at hearing. He has been friends with respondent for eight or nine years. Kyotoku described respondent as honest and caring, and providing trustworthy medical advice. He appreciated respondent's efforts to help people get vaccinated during the pandemic. Kyotoku received bioelectric massage twice from respondent at respondent's home, to help with healing after carpal tunnel surgery in 2019. Kyotoku did not undress for the massage, which was focused on his hands and wrists.

147. Thomas Qiu testified at hearing. He has played volleyball with respondent since 2020 and corroborated respondent's testimony about P2's conflict with Hank (Factual Finding 9). Qiu received bioelectric massage from respondent twice in 2021 after injuring his shoulder playing volleyball. Qiu disrobed his torso, and respondent massaged his back and shoulder, which provided him with pain relief.

148. Emily Chen testified at hearing. She has been friends with respondent's wife since high school, and has known respondent many years. In 2018 or 2019, Chen was visiting respondent's wife, and told respondent of her shoulder, neck, and back

pain. Respondent provided her a bioelectric massage at his home. Chen disrobed her torso, and respondent massaged her back. She found the massage effective.

149. Tram Le, M.D., testified at hearing. Dr. Le worked with respondent at the PAMF urgent care clinic. She corroborated respondent's testimony about personal protective equipment requirements during the pandemic. Dr. Le described respondent as honest and ethical. She trusted his judgment and was impressed with respondent's leadership when he was department chair. Dr. Le has not reviewed the accusation, although she knows "vaguely" why respondent was in this disciplinary hearing.

150. Daniel Taylor M.D., testified at hearing. Dr. Taylor worked with respondent at the PAMF urgent care clinic. He described respondent as honest and a good physician. When he heard the news reports about respondent's criminal charges, he found it hard to believe respondent could do such a thing. Dr. Taylor has not reviewed the accusation; he was informed of its allegations by respondent's attorney.

Ultimate Factual Findings

P1

151. The only non-hearsay evidence of what occurred while respondent was at P1's home was respondent's testimony. The allegations that respondent forcibly kissed and/or attempted to kiss P1, and forcibly held her down, were not established by clear and convincing evidence.

152. Dr. Herrick's opinions about respondent rekindling or maintaining a doctor-patient relationship with P1 via text messages were more persuasive than those of Dr. Tucker. However, the evidence was insufficient to establish that respondent

should have documented his provision of bioelectric massage to P1, or his interactions with P1 regarding the COVID vaccination, in a medical record.

153. Dr. Herrick's opinions about grooming were persuasive and un rebutted. Respondent's text messages, and his testimony about repeatedly asking P1 if she had feelings for him, also suggest a desire for a romantic relationship, interspersed with his repeated and detailed advice to P1 about medical issues. This constituted grooming behavior, but did not rise to the level of an extreme departure from the standard of care. Respondent's communications with P1 via text blurred the lines between general medical information, specific medical advice and treatment offers, social interactions, and flirting. The overall context of respondent's texting with P1 established unprofessional conduct by clear and convincing evidence.

P2

154. It was not established by clear and convincing evidence that P2 and respondent were in a doctor-patient relationship when he provided electrotherapy or bioelectric massage at her home, after meeting P2 socially through volleyball.

155. The evidence did establish that respondent engaged in grooming behavior of P2, even if a doctor-patient relationship was not created. He pursued a romantic relationship with P2, while also offering electrotherapy, facilitating access to medical care, and highlighting his status as a doctor. This was unprofessional conduct.

156. Respondent's testimony that he had a dating or romantic relationship with P2 was more credible than P2's testimony, which minimized the extent of her social relationship with respondent and insisted there was no romance whatsoever. However, respondent's testimony that he had consensual sex with P2 was not credible. P2's testimony that they did not have sex was more credible.

157. P2's testimony was credible that some sort of touching and/or kissing occurred during one or more of the bioelectric massages. However, her version of events was embellished in subsequent re-tellings. Regardless of what happened during the massages, however, it was not in the context of a doctor-patient relationship.

158. P2's testimony about respondent kissing her at the urgent care visit was credible and consistent. However, the evidence also established a pre-existing relationship between P2 and respondent.

159. The evidence did not establish that P2 and respondent were in a doctor-patient relationship at the time of the parking-lot conversation in late 2020.

Costs

160. The Board seeks to recover prosecution and enforcement costs. These claimed costs include \$65,230 for attorney and paralegal time billed by the Department of Justice; \$5,305.75 for investigator time; and \$3,800 for expert reviewer costs. These claimed costs are supported by declarations that comply with California Code of Regulations, title 1, section 1042, and are found to be reasonable, in a total amount of \$74,335.75.

LEGAL CONCLUSIONS

1. It is complainant's burden to establish the truth of the allegations by "clear and convincing evidence to a reasonable certainty," and that the allegations constitute cause for discipline of respondent's certificate. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence "requires a finding of high probability. The evidence must be so clear as to leave no

substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 846, citations omitted.) The burden of establishing mitigation or rehabilitation is on respondent and the standard of proof is a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164; Evid. Code, §§ 115, 500.)

2. Unprofessional conduct is grounds for discipline of a physician's and surgeon's certificate pursuant to Business and Professions Code sections 2227 and 2234.

Grossly negligent acts by a physician, which are acts involving extreme departures from the professional standard of care, are unprofessional conduct. (Bus. & Prof. Code, § 2234, subd. (b).) Repeated negligent acts by a physician, which are two or more separate and distinct acts involving simple departures from the standard of care, are also unprofessional conduct. (Bus. & Prof. Code, § 2234, subd. (c).) Failing to maintain adequate and accurate patient records relating to the provision of services is unprofessional conduct. (Bus. & Prof. Code, § 2266.)

Unprofessional conduct under Business and Professions Code section 2234 also broadly encompasses conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

First Cause for Discipline (Sexual Abuse, Misconduct, or Relations with Patient)

3. The commission of any act of sexual abuse, misconduct, or relations with a patient constitutes unprofessional conduct and grounds for discipline. (Bus. & Prof. Code, § 726, subd. (a).)

4. The evidence did not establish that respondent committed sexual misconduct with P1. While respondent maintained or re-established a doctor-patient relationship with P1, the evidence did not establish he forcibly touched or kissed P1. (Factual Findings 151-152.)

5. The evidence did not establish that respondent committed sexual misconduct with P2. (Factual Findings 154, 156-159.)

6. Cause for discipline for sexual misconduct with a patient does not exist under Business and Professions Code section 726, subdivision (a).

Second Cause for Discipline (Gross Negligence)

7. Complainant alleges that respondent committed gross negligence with respect to P1 by kissing or attempting to kiss her. That allegation was not established by the evidence. (Factual Findings 151-152, and Legal Conclusion 4.) Complainant also alleges that respondent committed gross negligence by pursuing a romantic relationship with P1 without unambiguous termination of the doctor-patient relationship. That allegation was not established by clear and convincing evidence. (Factual Findings 152-153.)

7. Complainant alleges that respondent committed gross negligence with respect to P2 by kissing and/or attempting to kiss her; pursuing a romantic

relationship without formal and/or unambiguous termination, and/or delineation of the boundaries, of their doctor-patient relationship; and by massaging her breasts without medical justification, informed consent, or offering a chaperone. These allegations were not established by clear and convincing evidence. (Factual Findings 154-159.)

8. Cause for discipline for gross negligence does not exist under Business and Professions Code sections 2227 and 2234, subdivision (b).

Third Cause for Discipline (Repeated Negligent Acts)

9. The evidence did not establish that respondent committed repeated negligent acts in the care and treatment of P1. (Factual Findings 151-153.)

10. The evidence did not establish that respondent committed repeated negligent acts in the care and treatment of P2. (Factual Findings 154-159.)

11. Cause for discipline for repeated negligent acts does not exist under Business and Professions Code sections 2227 and 2234, subdivision (c).

Fourth Cause for Discipline (Failure to Maintain Adequate and Accurate Records)

12. The evidence was insufficient to establish that respondent should have documented his provision of bioelectric massage to P1, or his interactions with P1 regarding the COVID vaccination, in a medical record. (Factual Finding 152.) There is no allegation that respondent's documentation of P1's urgent care visit was inadequate.

13. The evidence did not establish that respondent's provision of bioelectric massage to P2 constituted medical treatment, and thus that it should have been documented in a medical record. (Factual Finding 154.) There is no allegation that respondent's documentation of P2's urgent care visit was inadequate.

14. Cause for discipline for failure to maintain adequate and accurate records does not exist under Business and Professions Code sections 2227, 2234, and 2266.

Fifth Cause for Discipline (General Unprofessional Conduct)

15. General unprofessional conduct, as broadly defined under Business and Professions Code section 2234 and *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, does not depend on the existence of a doctor-patient relationship at any particular moment in time.

16. Respondent's interactions and communications with P1, as summarized in Factual Findings 152 and 153, constituted grooming behavior and general unprofessional conduct.

17. Respondent's interactions with P2, as summarized in Factual Finding 155, constituted grooming behavior and general unprofessional conduct.

18. Cause for discipline for general unprofessional conduct exists under Business and Professions Code sections 2227 and 2234.

Disposition

19. Cause for discipline having been established, the remaining issue is the appropriate level of discipline. In exercising its disciplinary functions, protection of the public is the Board's paramount concern. (Bus. & Prof. Code, § 2229, subd. (a).) At the

same time, the Board is charged with taking disciplinary action that is calculated to aid the rehabilitation of the licensee whenever possible, as long as the Board's action is not inconsistent with public safety. (Bus. & Prof. Code, § 2229, subds. (b), (c).)

20. The Medical Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (Guidelines) (12th ed., 2016)⁵ recommends, at a minimum, stayed revocation and five years' probation for general unprofessional conduct. The maximum discipline is revocation.

21. In this case, respondent has committed unprofessional conduct in respect to two women. He has demonstrated a failure to understand the appropriate boundaries of his status as a physician, and a serious lack of judgment. He has not fully taken responsibility for this conduct. Respondent has also demonstrated a lack of candor in some aspects of his testimony. However, the most serious allegations against respondent have not been proved. Respondent has no history of license discipline, and there is no evidence of any deficiencies in his provision of medical care.

Upon a consideration of the record as a whole, it is determined that placing respondent on probation for a period of five years, with conditions designed to address the areas of his misconduct, will adequately protect the public while also aiding in respondent's rehabilitation. These conditions include a professionalism (ethics) program and a professional boundaries program.

⁵ The Board's Disciplinary Guidelines are incorporated in California Code of Regulations, title 16, section 1361.

Costs

22. A licensee found to have committed a violation of the licensing act may be required to pay the Board the reasonable costs of its investigation and prosecution of the case. (Bus. & Prof. Code, § 125.3.) Respondent has committed violations of the licensing act. (Legal Conclusions 15-18.) As set forth in Factual Finding 160, the reasonable costs of prosecution and enforcement in this matter are \$74,335.75.

23. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth standards for determining whether costs should be assessed in the particular circumstances of each case, 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 raised a colorable challenge to the proposed discipline, financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. In this case, the evidence established only some of the allegations against respondent, and that probation is appropriate rather than outright revocation. Respondent also presented some evidence of financial hardship. Under these circumstances, it is appropriate to reduce the Board's cost recovery to \$50,000.

ORDER

Physician's and Surgeon's Certificate Number A 95558, issued to respondent Todd Tienwei Yao, M.D., is revoked; however, revocation is stayed, and respondent is placed on probation for five years under 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, 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 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 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 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, Accusation 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 months after respondent's initial enrollment shall constitute a violation of probation 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 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.

3. 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.

4. Supervision of Physician Assistants and Advanced Practice Nurses

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

5. 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.

6. 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.

7. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit.

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.

8. 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.

9. 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 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 a 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.

10. 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.

11. 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.

12. 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 or her license. 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.

13. Cost Recovery

Respondent is hereby ordered to reimburse the Medical Board of California the amount of \$50,000 for its enforcement costs, pursuant to Business and Professions Code section 125.3. Respondent shall complete this reimbursement within 90 days

from the effective date of this decision, or pursuant to a payment plan authorized by the Board.

14. 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.

DATE: 09/17/2024



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings