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

In the Matter of the Accusation Against: Edward Lewis Spellman, M.D. Physician's & Surgeon's Certificate No. G 154133 Respondent.	Case No. 800-2022-085838, 800-2021-075350, 800-2024-109673

DECISION

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

This Decision shall become effective at 5:00 p.m. on January 10, 2025.

IT IS SO ORDERED: December 13, 2024.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General
CHRISTINE FRIAR WALTON
Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **EDWARD LEWIS SPELLMAN, M.D.** **1570 Neptune Way** **Beaumont, CA 92223-3456** **Physician's and Surgeon's Certificate No. G 154133,** Respondent.	Case Nos. 800-2022-085838, 800-2021-075350, 800-2024-109673 OAH No. 2024050674 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Christine Friar Walton, Deputy Attorney General.

2. Respondent Edward Lewis Spellman, M.D. (Respondent) is represented in this proceeding by attorney Kathleen A. Stosuy of Kramer, deBoer & Keane, LLP, located at 74770 Highway 111, Suite 201, Indian Wells, California 92210.

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3. On or about February 9, 2018, the Board issued Physician's and Surgeon's Certificate No. G 154133 to Respondent. That Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2022-085838, and will expire on August 31, 2025, unless renewed.

JURISDICTION

4. Accusation No. 800-2022-085838 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 8, 2024. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2022-085838 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2022-085838. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands and agrees that the charges and allegations contained in the Second and Third Causes for Discipline in Accusation No. 800-2022-085838, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate. Respondent hereby gives up his right to contest those charges and allegations.

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in the Second and Third Causes for Discipline in Accusation No. 800-2022-085838, and that he has thereby subjected his license to disciplinary action.

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

CONTINGENCY

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

12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreement of the parties in this above entitled matter.

13. Respondent agrees that if he ever petitions for modification of these terms, or if a subsequent accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2022-085838 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile

signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 154133 issued to Respondent Edward Lewis Spellman, M.D. is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4), and it is further ordered that Respondent comply with the following attendant terms and conditions:

1. **PUBLIC REPRIMAND**

The Public Reprimand issued in connection with Accusation No. 800-2022-085838, against Respondent Edward Lewis Spellman, M.D., is as follows:

"On or about February 4, 2022, you provided negligent care and treatment to Patient 1 when you failed to follow appropriate protocol during a Needle Electromyography Procedure. Additionally, on or about February 1, 2021, you provided negligent care and treatment to Patient 2 when you failed to follow appropriate procedure during a funduscopic examination."

2. **PROFESSIONAL BOUNDARIES PROGRAM**

Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of Respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate Respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six (6) months after Respondent's initial enrollment shall constitute 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.

If Respondent fails to complete the program within the designated time period, Respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that Respondent failed to complete the program.

3. **INVESTIGATION/ENFORCEMENT COST RECOVERY**

Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena enforcement, as applicable, in the amount of $21,914.85 (Twenty-one thousand nine hundred fourteen dollars and eighty-five cents). Costs shall be payable to the Medical Board of California within one (1) year from the effective date of this Decision.

Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility

to repay investigation and enforcement costs.

4. **FAILURE TO COMPLY**

Failure to comply with any of the terms of this Disciplinary Order shall constitute unprofessional conduct and shall be a basis for further disciplinary action by the Board. In such circumstances, the Complainant may reinstate Accusation No. 800-2022-085838 and/or file a supplemental accusation alleging any failure to comply with any provision of this order by Respondent as unprofessional conduct.

5. **FUTURE ADMISSIONS CLAUSE**

If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2022-085838 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

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

DATED: _____

EDWARD LEWIS SPELLMAN, M.D.
Respondent

I have read and fully discussed with Respondent Edward Lewis Spellman, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

KATHLEEN A. STOSUY
Attorney for Respondent

to repay investigation and enforcement costs.

4. **FAILURE TO COMPLY**

Failure to comply with any of the terms of this Disciplinary Order shall constitute unprofessional conduct and shall be a basis for further disciplinary action by the Board. In such circumstances, the Complainant may reinstate Accusation No. 800-2022-085838 and/or file a supplemental accusation alleging any failure to comply with any provision of this order by Respondent as unprofessional conduct.

5. **FUTURE ADMISSIONS CLAUSE**

If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2022-085838 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

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

DATED: 10/8/24

EDWARD LEWIS SPELLMAN, M.D.
Respondent

I have read and fully discussed with Respondent Edward Lewis Spellman, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10-9-24

KATHLEEN A. STOSUY
Attorney for Respondent

ENDORSEMENT

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

DATED: October 9, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General
Christine Friar Walton
Digitally signed by Christine Friar Walton
Date: 2024.10.09 13:57:18 -07'00'
CHRISTINE FRIAR WALTON
Deputy Attorney General
Attorneys for Complainant

ROB BONTA
Attorney General of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **EDWARD LEWIS SPELLMAN, M.D.** **1570 Neptune Way** **Beaumont, CA 92223-3456** **Physician's and Surgeon's Certificate No. G 154133,** Respondent.	Case No. 800-2022-085838 **ACCUSATION**

PARTIES

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

2. On or about February 9, 2018, the Board issued Physician's and Surgeon's Certificate Number G 154133 to Edward Lewis Spellman, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2025, unless renewed.

JURISDICTION

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

indicated.

4. Section 2004 of the Code states:

The board shall have the responsibility for the following:

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

(b) The administration and hearing of disciplinary actions.

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

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

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

(f) Approving undergraduate and graduate medical education programs.

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

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

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

5. Section 2220 of the Code states:

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

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

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

and surgeon's error, negligence, or omission.

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

6. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

7. Section 2228.1 of the Code states:

(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board and the Podiatric Medical Board of California shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information internet web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.

(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

(C) Criminal conviction directly involving harm to patient health.

(D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendre or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information internet web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

STATUTORY PROVISION

8. Section 2234 of the Code states:

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

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

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more

negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

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

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

. . . .

9. Unprofessional conduct under Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 546, 575.).

COST RECOVERY

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

FACTUAL ALLEGATIONS

11. Since in or around 2018 and at all times relevant herein, Respondent worked as an independent Specialist Provider with Beaver Medical Group ("BMG"). Respondent specializes in neurology and psychiatry and electrodiagnostic medicine. BMG has outpatient locations throughout the Inland Empire in the State of California.

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Patient 1[1]

12. On or about February 4, 2022, Patient 1, a forty-nine (49) year-old female, presented to Respondent at BMG's location in Banning, California, for nerve conduction studies and electromyography (EMG)[2] in her bilateral upper extremities and left lower extremity. Patient 1's primary care physician at BMG had referred her to the Neurology Department at BMG for complaints of pain and numbness in her back, arms and legs following a car accident.

13. In order for Respondent to be able to access Patient 1's lower left leg during the EMG and nerve conduction study, Patient 1 had to remove her pants prior to the examination. Respondent's medical assistant, K.W., gave Patient 1 a cloth sheet to put on top of the bottom half of her body. K.W., however, did not remain in the room as a chaperone, but instead left the room and was able to hear portions of the examination outside the door, which was ajar.

14. On or about November 17, 2022, Respondent was interviewed by an investigator with the Health Quality Investigation Unit of the California Department of Consumer Affairs, Department of Investigation, about his care and treatment of Patient 1 ("2022 Interview"). At the 2022 Interview, Respondent explained that in order to conduct the nerve conduction study on a patient's arm, stimulating electrodes are placed at the hands and wrists. For a nerve conduction study of the leg, stimulating electrodes are placed at the ankles and knees. During the EMG portion of the study, a "needle electrode" is inserted into the muscle.

15. When Patient 1 saw Respondent on or about February 4, 2022, Respondent performed nerve conduction studies of Patient 1's right upper extremity and left lower extremity. He

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[1] The patients whose care and treatment are at-issue in this charging document are designated by number (e.g., "Patient 1") to address privacy concerns. The patients' identities are known to Respondent and will be further disclosed during discovery.

[2] Electromyography is a diagnostic procedure to assess the health of muscles and the nerve cells that control them (motor neurons). EMG results can reveal nerve dysfunction, muscle dysfunction or problems with nerve-to-muscle signal transmission. Motor neurons transmit electrical signals that cause muscles to contract. An EMG uses tiny devices called electrodes to translate these signals into graphs, sounds or numerical values that are then interpreted by a specialist. During a needle EMG, a needle electrode inserted directly into a muscle records the electrical activity in that muscle. EMG is an uncomfortable procedure, and patients are often anxious during the procedure.

performed needle EMG of both upper extremities and the lower left extremity ("Needle EMG Procedure").

16. In order to place the electrodes on Patient 1 for the study, Respondent had Patient 1 lie down facing up on the examination table. While Patient 1 was lying down, Respondent stood on Patient 1's left side and affixed electrodes to her right extremity. While Respondent was reaching over Patient 1's body to place the electrodes, his arm made contact with Patient 1's right breast.

17. Later during the Needle EMG Procedure, Respondent had Patient 1 sit on the examination table. As he was inserting the needles, Patient 1 closed her eyes and took deep breaths to cope with the pain. Patient 1 reported that during this portion of the examination she felt something hard press against her bare left knee at least three times. Each time she felt something, she opened her eyes to try to determine what was making contact with her knee. Each time she observed Respondent standing very close to her. Patient 1 concluded that Respondent was pushing his penis into her knee.

18. During Patient 1's visit with Respondent on or about February 4, 2022, before the examination was complete, Respondent abruptly left Patient 1 alone in the room. Respondent did not tell Patient 1 why he was leaving the room or how long he would be gone. Patient 1 believes she heard him using the restroom. When Respondent returned, Respondent appeared distracted and confused.

19. At the conclusion of the examination, Respondent began typing at the computer in the examination room and instructed Patient 1 to get dressed. Patient 1 was lying down at the time with the sheet over her lap. Her jean pants were across the room. Patient 1 then sat up on the examination table and waited for Respondent to leave the room so she could get up and put her pants back on. Instead of leaving the room, Respondent continued to write up his EMG report on the computer in the examination room. Patient 1 reported that Respondent again asked her to get dressed to which she responded that she was waiting for him. Respondent told her the examination was over and she should get dressed. When Respondent still did not leave the examination room, Patient 1 got up to put her pants back on even though she was uncomfortable

with Respondent still being in the room. As she put her pants back on, she watched Respondent to ensure that he did not turn his head to see her getting dressed.[3]

20. After both Respondent and Patient 1 left the examination room, Patient 1 asked Respondent's medical assistant, K.W., if she could speak with her. K.W. took Patient 1 to a private area to talk. K.W. observed that Patient 1 was upset. Patient 1 told K.W. what had occurred during the examination, including[4] that Respondent had her dress while Respondent was still in the room. K.W. confirmed that she had heard Respondent instruct Patient 1 to get dressed and observed that he had not left the room. Together Patient 1 and K.W. then reported the incident to both the Resident Nurse Manager, C.T., and Site Administrator, S.P., at the BMG location in Banning.

Patient 2

21. On or about February 1, 2021, Patient 2, a twenty-six (26) year-old female, presented to Respondent at BMG's location in Banning, California, with a history of seizures since childhood. Patient 2 had been under the care of another neurologist for years and was seeking a second opinion from Respondent regarding her seizure disorder.

22. Upon arrival to the Banning BMG office, Patient 2 was escorted to an examination room where she waited for Respondent. No chaperone was present in the examination room.

23. During Patient 2's visit on or about February 1, 2021, after asking Patient 2 a series of health-related questions, Respondent began to perform a neurological examination on Patient 2. Respondent began by performing a standard funduscopic examination on Patient 2, which involves examining the patient's eyes, including the back of the eye ("Funduscopic Exam").[5]

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[3] During the 2022 Interview, Respondent admitted that he remained in the room with Patient 1 while she dressed after the Needle EMG Procedure on or about February 4, 2022.

[4] As used herein, "including" means "including, without limitation."

[5] A funduscopic examination is an important and necessary part of the neurological examination. It is part of the cranial nerve examination of the neurological physical examination. During the funduscopy, the neurologist uses an ophthalmoscope to specially examine the back of the eye (fundus). The procedure by nature requires the neurologist to get very close to the patient's face and look through the lens of the eye, finding and focusing on the fundus establishing the optic disc.

Patient 2 had undergone this exam with other neurologists in the past and was familiar with the procedure.

24. During the Funduscopic Exam, with Patient 2 seated on an examination table, Respondent remained standing and used an ophthalmoscope to look into Patient 2's right eye. In so doing, Respondent placed one hand on the back of Patient 2's head and neck in order to bring her closer to him so he could look into her eye. Patient 2 became uncomfortable and felt that Respondent was too close to her. Both Respondent and Patient 2 were masked during the examination, and but for the masks their faces would have been touching. Patient 2 tried to move her body away from Respondent but was unable to do so. Patient 2 then told Respondent that he was "too close" to her and that she was uncomfortable. Respondent told Patient 2 that in order to look in her eye and do the funduscopic exam, he had to stand right up to the eye and look in her eye with the light from his ophthalmoscope. Respondent then continued with the examination and began to check her left eye. Respondent documented in Patient 2's medical chart that she was "alert," "oriented" and "somewhat anxious" during the examination.

25. During the Funduscopic Exam, as Respondent continued to check her eyes, he remained very close to Patient 2 and Patient 2 began to feel Respondent's penis rubbing against her leg. Patient 2 was shocked.

26. After completion of the Funduscopic Exam, Respondent told Patient 2 he had to check his computer and left the examination room. Patient 2 thought this was odd because there was a computer in the room. Once Respondent left, Patient 2 began to cry. Patient 2 calmed herself before Respondent returned to the room.

27. Upon completion of Respondent's examination of Patient 2 on or about February 1, 2021, Respondent observed Patient 2 speaking to his medical assistant, K.W. Patient 2 heard Respondent ask K.W., "What is she telling you?" After Patient 2 left the office, Respondent also spoke to K.W. and told her that Patient 2 might have felt uncomfortable during the examination. Specifically, he told K.W. that Patient 2 had told him during the examination that he was too close to her while he was examining her eyes.

28. Patient 2 promptly reported Respondent's behavior during her visit with him on or

about February 1, 2021, to her insurance company, Inland Empire Health Plan, among others.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

29. Respondent Edward Lewis Spellman, M.D. is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he engaged in gross negligence in the care and treatment of Patient 1. The circumstances are as follows:

30. The facts and circumstances alleged in paragraphs 11 and 20 above are incorporated here as if fully set forth.

31. The applicable standard of care in the medical community for performing a nerve conduction study while a patient is lying down is as follows: The patient is positioned supine with the arm abducted approximately 45 degrees away from the body. The forearm is fully supinated and the wrist is in a neutral position. The electrodes are then placed on the hand. The standard of care further calls for the examiner to approach the patient and apply the electrodes to the same side of the patient that is being examined. As the electrodes are being placed on the patient's hand while the arm and forearm are fully extended at a 45 degree angle from the body, the patient's breasts should not be touched. The patient's hand is not in the proximity of the patient's chest or breasts.

32. On or about February 4, 2022, Respondent committed gross negligence when he approached Patient 1 from the left side to apply electrodes to her right extremity, causing him to unnecessarily reach over Patient 1's body and make contact with her right breast.

33. The applicable standard of care in the medical community during a needle EMG examination provides that the patient can either lie down on the examination table or sit in a recliner chair. The patient should be made as comfortable as possible. It is optimal for the patient to be lying down on the examination table as to allow for complete relaxation of the muscles being studied. Relaxation of the patient is an important principle in performing needle EMG. The standard of care provides that the examiner's body should not be pressed against the patient's body during the needle EMG study.

34. On or about February 4, 2022, Respondent committed gross negligence during his

performance of the Needle EMG Procedure on Patient 1 when he touched or pressed his penis against the patient during the Needle EMG Procedure. Groping and pressing one's penis against a patient is never part of the needle EMG procedure.

35. The applicable standard of care in the medical community requires that a physician always respect a patient's privacy when the patient is disrobing or dressing. A patient should be allowed to disrobe and dress in private and be offered cover gowns and appropriate drapes. A physician should knock on the door before entering an examination room. After instructing a patient to disrobe or dress, a physician must leave the room so the patient can disrobe and dress in private.

36. On or about February 4, 2022, Respondent committed gross negligence when he failed to leave the examination room after instructing Patient 1 to get dressed. By remaining in the room, Respondent violated Patient 1's privacy and denied her the right to dress in private.

37. Respondent's acts and/or omissions as set forth in paragraphs 30 through 36, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. As such, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

38. Respondent Edward Lewis Spellman, M.D. is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he engaged in repeated negligent acts in his care and treatment of Patient 1 and Patient 2. The circumstances are as follows:

39. The facts and circumstances alleged in the First Cause for Discipline above are incorporated here as if fully set forth.

Patient 1

40. The applicable standard of care in the medical community for performing a needle EMG study is to make the patient as comfortable as possible. The examiner should comfort the patient through communication by explaining the procedure, the muscles to be examined, and engaging in continuous communication with the patient during the study. This communication is

an integral part of the examination. The patient should know what is happening during the examination, especially if there is an interruption during the study.

41. During the Needle EMG Procedure, Respondent was negligent in his failure to adequately communicate with Patient 1, including when Respondent abruptly exited and returned to the examination room without any explanation to Patient 1.

Patient 2

42. The facts and circumstances alleged in paragraphs 21 through 28 above are incorporated here as if fully set forth.

43. The applicable standard of care in the medical community requires that when performing a funduscopic examination of an alert, oriented, and compliant adult patient, the procedure should be explained to the patient before starting, including warning the patient if the examiner plans to turn off the lights. The standard of care further requires that the examination be performed in a manner that avoids touching the patient's head and face with the examiner's head and face. The examiner should use the same eye to examine the patient's same eye., i.e., use the right eye to examine the patient's right eye. This helps to avoid the awkwardness of facing the patient nose to nose or lip to lip. The examiner should use his or her right hand to hold the ophthalmoscope when examining the right eye and the left hand when examining the left eye. The examiner's contralateral hand (the free hand) can be rested on the patient's shoulder or above the patient's eye with the thumb rested on the eyebrow. The thumb of the free hand can be used to keep the upper eyelid from blinking. The position of the thumb also helps to avoid contacting the patient's face. If the circumstances such as the height of the exam table, patient or the examiner causes body-to-body contact, then the examiner should use techniques to avoid such contact. For example, the patient can be asked to lower his/her upper body and lean forward while seated. Similarly, the examiner can bend his/her upper body forward while standing to avoid body-to-body contact.

44. On or about February 1, 2021, Respondent was negligent in his care and treatment of Patient 2 in that he failed to follow the appropriate procedure for a funduscopic examination. During the Funduscopic Exam, Respondent was too close to Patient 2 such that he repeatedly

made bodily contact with her. Further, Respondent held Patient 2's neck and the back of her head during the examination and forced her face toward his face. Respondent's bodily contact with Patient 2 made her uncomfortable. Moreover, after Patient 2 informed Respondent that he was "too close" and making her uncomfortable, it was inappropriate for him to continue with the examination of the other side of Patient 2's face.

45. Respondent's acts and/or omissions as set forth in paragraphs 39 through 44, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. As such, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

46. Respondent Edward Lewis Spellman, M.D. is subject to disciplinary action under Code section 2234, generally, in that Respondent engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. The circumstances are as follows:

47. The facts alleged in the First and Second Causes for Discipline are incorporated herein as if set forth fully.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 154133, issued to Respondent Edward Lewis Spellman, M.D.;

2. Revoking, suspending or denying approval of Respondent Edward Lewis Spellman, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Edward Lewis Spellman, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

4. Ordering Respondent Edward Lewis Spellman, M.D., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.1; and

5. Taking such other and further action as deemed necessary and proper.

DATED: FEB 08 2024

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

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