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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>Kimberly Joy Willard, M.D.<br><br>Physician's and Surgeon's Certificate No. A 120972<br><br>Respondent. | Case No. 800-2022-084952 |

## 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 December 5, 2025.

IT IS SO ORDERED November 7, 2025.

MEDICAL BOARD OF CALIFORNIA

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

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

## In the Matter of the Accusation Against:

## KIMBERLY JOY WILLARD, M.D.,

## Respondent.

## Agency Case No. 800-2022-084952

## OAH No. 2025010263

## PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 21 through 24, 2025, by videoconference.

Rebecca L. Smith, Deputy Attorney General, represented Complainant. Respondent was present on all hearing days and was represented by Lindsay M. Johnson, Ray & Bishop PLC.

At the outset of the hearing, Complainant moved to make two amendments to the Accusation, which motion was unopposed, and granted.

The Accusation was amended, at paragraph 23, at line 26 (Ex. 1, p. A8), by striking the first sentence of the paragraph and inserting in its place: "A follow-up note

from the speech therapy department is documented from November 6, 2018, noting that Patient 1's mother reported..... "

The Accusation was further amended at paragraph 33, line 6 (Ex. 1, p. A11) by striking the word "Respondent" and inserting in its place "the speech and language pathologist" [discussed her assessment].

Prior to the hearing Complainant moved for a protective order which will issue as a separate document.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 24, 2025.

## SUMMARY OF THE CASE

Complainant brought this action against Respondent, a pediatrician employed by Kaiser Permanente (Kaiser), alleging three acts of simple negligence during her treatment of a child between approximately May 2016 and late August 2019, and a failure to maintain adequate and accurate medical records. The first of the three alleged negligent acts is that Respondent failed to document age-appropriate developmental screenings by failing to document the child's Checklist for Autism in Toddlers (CHAT) score, and failing to import the actual CHAT questionnaire into the medical records at the time of two visits in 2016, and failing to document a developmental examination at a January 2019 visit. (Ex. 1, p. A12.)

The second alleged act of simple negligence is a claim that Respondent failed to timely refer the child for a full developmental screening after he was identified as having social and pragmatic speech concerns in October 2018. Further, it is alleged

Respondent did not refer the patient to a developmental pediatrician after that was recommended for the child by a speech therapist. (*Ibid.*)

Third, it is claimed that a speech and language evaluation recommended a developmental evaluation for the child in question due to concerns about the child's social and pragmatic language development. It is alleged Respondent failed to address this referral with the child's family. (*Ibid.*)

In October 2019, the child was assessed by a developmental pediatrician, and diagnosed with Autism Spectrum Disorder (ASD).

As a separate claim, Complainant alleges that Respondent failed to maintain adequate and accurate medical records.

## FACTUAL FINDINGS

### The Parties and Jurisdiction

1. Complainant Reji Varghese is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. He brought and maintained the Accusation in his official capacity.

2. Respondent Kimberly Joy Willard is licensed by the Board to practice medicine. She holds Physician's and Surgeon's Certificate Number A 120972 (license), which will expire on November 30, 2025, unless renewed. Respondent has no history of license discipline.

3. Respondent timely filed a Notice of Defense, seeking a hearing and contesting the allegations against her. All jurisdictional requirements have been met.

## Respondent's Background

4. Respondent is a general pediatrician. She received her undergraduate degree from UCLA, and then entered the University of Kansas School of Medicine, where she obtained her doctorate in 2010. She was an intern and then a resident at Kaiser's Los Angeles Medical Center. She was board certified in 2013 and has since recertified. After her residency, she worked per diem jobs for a time, then went to work in a private practice in San Diego. She left the private practice to work for Kaiser beginning in 2016, and is currently working at Kaiser's East Los Angeles facility and is a module lead. Respondent's current position has her working with the administration at the Kaiser East Los Angeles facility, and she precepts over students and residents.

5. In 2016, early in her employment at Kaiser East Los Angeles, Respondent took over a panel of patients then assigned to another pediatrician, who was leaving Kaiser. Patient 1 was one of those patients.

## Patient 1

6. Patient 1 is a boy who was born on November 15, 2014. He was his mother's first child, delivered via vacuum assisted vaginal delivery. Mother was diagnosed with preeclampsia during the pregnancy, but no other issues appear in the records in terms of the pregnancy. Patient 1 had jaundice after he was born. At times relevant to this matter he lived with his parents, his aunt and three cousins, and his younger brother. (Ex. 9, pp. A2335, 2677.)

## Complainant's Expert

7. Complainant presented testimony by an expert witness, Nicole H. Gorton, M.D., a general pediatrician licensed in California since 1994. Dr. Gorton graduated

with honors from Emory University in 1988 with a Bachelor of Science degree in biology. She attended the University of Florida, earning a Doctor of Medicine degree with honors there in 1992. After earning her medical degree, Dr. Gorton was an intern and then a resident at the University of California, San Diego, completing her residency in 1995. She practices with Scripps Coastal Medical Group in San Diego and has done so since 1996; she is Site Medical Director for Pediatrics. Dr. Gorton has served several stints as Chief of Pediatrics for Scripps Mercy Hospital.

8. Dr. Gorton wrote a report dated April 15, 2024, and she testified in a manner consistent with her report, which was received as Exhibit 7, though her testimony was sometimes expansive of the report. Prior to rendering any opinions, she reviewed documents including a complaint letter from the patient's mother (Mother), medical records for the patient, Respondent's written response and a copy of the grievance submitted by Mother to Kaiser, a transcript of Respondent's interview with the Board, and the report of the Board's investigator. Dr. Gorton also reviewed two publications. Dr. Gorton tended to focus on the patient's well-care visits or were visits that addressed developmental concerns; sick or illness visits generally were not included unless developmental issues were discussed. (Ex. 7, p. A64.)

9. Respondent did not designate an expert witness.

## The Course of Treatment

10. The Accusation lays out, in some detail, Patient 1's care and treatment at Kaiser, including some references to visits when the child was ill. The Findings that follow tend to focus on well-child visits, and especially those referenced by Dr. Gorton

//

## THE APRIL 21, 2016 VISIT

11. Patient 1 was seen by Nathan Lee, M.D., on April 21, 2016; the patient was then 17 months old. The records indicate that Jeanena Querubin, LVN, used a medical questionnaire to obtain information about the boy. Mother was with Patient 1, and it is reasonably inferred that the information obtained by the nurse came from that parent's report.

12. Responses to the questionnaire indicated (among other things) that the child took an interest in other children, that he would bring objects to his parent or show her something, and would look her in the eye for more than a second or two. However, it was reported the child did not say at least six different words. (Ex. 9, pp. A2250-2251.)

13. The record for this visit states: "Autism screening questionnaire, completed by parent, was reviewed. See CHAT questionnaire." (Ex. 9, p. 2255.) The CHAT questionnaire is the Checklist for Autism in Toddlers. (See Ex. 15, p. A4249, discussing the M-CHAT.) The CHAT is used as a screening tool between 16 and 30 months of age. (Ex. 8, p. A775.) Just after that, under "DEVELOPMENT," it is stated that Patient 1 "says 7 to 10 words," in contrast to the entry described above in Factual Finding 12. (*Id.*, capitalization in original.) Thereafter, under "ASSESSMENT," it is stated "All responses to CHAT questionnaire reflect normal development with no suggestion of developmental delay." (*Id.*, capitalization in original.)

14. The CHAT questionnaire from the visit with Dr. Lee is not found in the chart, nor was the scoring set out in the chart.

//

## THE MAY 20, 2016, 18-MONTH WELL CHILD VISIT

15. On May 20, 2016, Patient 1 had his 18-month well child examination with Respondent, approximately four weeks after he was seen by Dr. Lee. He was accompanied by his mother. The health questionnaire used during the April 2016 visit with Dr. Lee was administered by a nurse, Giselle Lozoya, LVN. Responses indicated, among other things, that the child took an interest in other children, brought objects to his parent or would show her something, but it was reported on this visit that the child did not look his mother in the eye for more than a second or two, contrary to the results of the April 2016 visit, noted in Factual Finding 12. (Ex. 9, p. A2275.)

16. The chart states that the nursing intake note and health questionnaire were reviewed. It also states: "autism screening questionnaire, completed by parent, was reviewed. See CHAT questionnaire." (Ex. 9, p. A2279.) The chart also states that the child then said seven to ten words. (*Id.*) In the assessment portion of the chart it states: "Well child. Growth and development within normal limits. All responses to CHAT questionnaire reflect normal development with no suggestion of developmental delay." (*Id.*, p. A 2280.) This is the same language as used by Dr. Lee one month earlier.

17. The CHAT questionnaire is not found in the medical records nor are any scores from it set forth in the chart.

## THE NOVEMBER 23, 2016 TWO-YEAR WELL CHILD VISIT

18. Mother took Patient 1 to Kaiser on November 23, 2016, for his two-year well child visit. The standard health questionnaire, seen in the record for other visits, was administered by Rosa Lopez, a nurse. As with prior questionnaires, it was reported that Patient 1 took an interest in other children, brought objects to his mother or showed her something, and it was reported that Patient 1 would look his mother in the

eye for more than a second or two. (Ex. 9, p. A2315.) Mother also reported Patient 1 could say two-word phrases and could say more than 20 words. Mother, according to the questionnaire, did have other questions or concerns about her child's health, development, or behavior. (*Id.*, p. A2316.) Just what they were is not disclosed in the chart.

19. The medical records for this visit state that "autism screening questionnaire, completed by parent, was reviewed. See CHAT questionnaire." (Ex. 9, p. A2318.) It is further noted that "growth and development within normal limits. All responses to CHAT questionnaire reflect normal development with no suggestion of developmental delay." (*Id.*, p. A 2319.)

20. The CHAT questionnaire is not contained in the records, nor is the score from the questionnaire disclosed.

## THE TELEPHONE VISIT ON NOVEMBER 25, 2016 AND REFERRAL TO SPEECH THERAPY

21. On November 25, 2016, two days after the two-year well child visit, Mother contacted Respondent by telephone. She wanted to send Patient 1 to speech therapy, noting he got frustrated when he could not communicate. Respondent added a diagnosis of speech delay to his chart, and made a referral to speech and language the same day as the phone call took place.

22. On December 8, 2016, Patient 1 was seen by Paige E. Plotkin, a Kaiser speech therapist, and diagnosed with Developmental Expressive Language Disorder. (Ex. 9, p. A2334.) Ms. Plotkin assessed his rehabilitation potential as "good," and called for therapy twice per week for six months. (*Id.*, p. A2235.) His parent did not report language regression to Plotkin, also reporting he said his first words at 9 months and

that he did not use two words together. (*Id.*, p. A2336.) However, at another point in the chart, it states the parent reported that "[Patient 1] uses two-word sentences or phrases, such as 'throw ball' or 'Daddy gone.'" (*Id.*, p. A 2339.)

23. A standard test instrument (REEL-3) was utilized and the child's receptive language score placed in the third percentile, with expressive language found in less than the first percentile. (Ex. 9, p. A2337.) Plotkin's impressions were that Patient 1 presented with moderate receptive and expressive language delay, but he was displaying typical/social pragmatic language skills. (*Id.*, p. A2338.) She recommended he be re-evaluated in one to two years, and that he undergo an audiological/hearing assessment.

24. Patient 1 engaged in speech therapy "briefly then stopped." (Ex. 9, p. A2757.) Mother testified that he went through a period of battling various health problems, which caused him to miss speech therapy sessions, and the speech clinic informed Mother that her son was missing too many therapy sessions and it would send the referral back. Further, in 2017 his mother's physical and mental health issues interfered with her ability to have the boy participate in speech therapy. Mother testified that with her child often sick, "I just forgot" about the speech therapy.

## THE JANUARY 2018 THREE-YEAR WELL CHILD EXAM

25. Patient 1 was seen by Respondent on January 9, 2018, for his three-year well child exam, accompanied by both parents. Respondent set forth diagnoses of speech delay and fine motor delay; such are also reflected under "assessment." (Ex. 9, p. A2480; p. A2484.) Regarding three-year-old milestones, the chart states the boy could not copy a circle and he did not talk in understandable sentences. (*Id.*, p. A2483.) Respondent charted "none" as to educational, developmental, or medical concerns.

(*Id.*, p. A2484.) Mother responded to a health questionnaire, stating Patient 1 did not talk in understandable sentences, and, according to the questionnaire, parents did not have any other questions or concerns about their son's health, development or behavior. (*Id.*, p. A2498.)

26. Under "visit summary" there is a list of "health problems reviewed," which includes well childcare; pediatric counseling for nutrition, exercise, screen; healthy child; body mass index child 84 to 94 percentile for age; speech delay, and fine motor developmental delay. (Ex. 9, p. A2490.)

27. The plan was a referral to both physical and occupational therapy and for visual acuity screening. Respondent made the referrals to physical and occupational therapy, and it is noted Dr. Gorton deemed them to be timely.

28. A developmental screening was not documented for the three-year well child visit.

## The October 2018 Speech and Language Assessment

29. On October 10, 2018, Patient 1 was seen by Respondent, apparently for an upper respiratory infection, and Mother told Respondent that Patient 1's school wanted to do an IEP—Individualized Education Plan—and wanted "MD and speech therapy input." (Ex. 9, p. A2655.) Respondent placed a referral for speech and language services that day. (*Id.*, pp. A2657, 2659.)

30. On October 24, 2018, Patient 1 was seen by a speech therapist, Jennifer Zinner Rathwell, accompanied by his mother. Mother reported Patient 1 used his first words at nine months and two words together at 14 months. (Ex. 9, p. A2677.) However, his mother reported he was able to produce three or more two-word

phrases, "(mostly three word phrase per mother report)." (*Id.*, p. A2678.) Testing showed he was in the first percentile in receptive language, and the tenth percentile in expressive language. (*Id.*) Testing of his speech sound production placed him in the 16th percentile.

31. Rathwell charted other notable reported or observed behaviors, which included low frustration threshold, melt-down behaviors and tantrums, echolalia, hitting his mother, and it was reported he liked to watch movies over and over and sing the songs. (Ex. 9, p. A2680.)

32. Rathwell recommended two one-hour sessions of speech therapy per week, for six months. Under a separate heading of "other recommendations," Rathwell recommended a referral to Dr. Loo, developmental pediatrician, with MD approval, as well as an HNS referral to examine his tonsils. It should be noted that text in the box for other recommendations instructs to "include any information regarding requests for special consultation, etc., reviewed with family at the time of recommendation." (Ex. 9, p. A2681.)

33. Rathwell testified that the usual process would have been to route her report to the patient's doctor, but she could not say if that happened in this case.

34. In the section titled parent instructions, it states: "Kaiser will call you to set up and [sic] appointment with Dr. Loo, Developmental Pediatrician HNS referral with MD approval d/t enlarged tonsils and snoring with MD approval." (Ex. 9, p. A2696.)

35. On October 29, 2018, Mother contacted Respondent, requesting a referral to a specialist to treat Patient 1's tonsils. On that day, Respondent referred the patient to the head and neck surgery department. She did not make a referral to Dr.

Loo, the developmental pediatrician. In this regard, Mother testified she wasn't aware that a referral to Dr. Loo had been recommended by Rathwell. Respondent testified Mother was focused on the tonsils and that the referral to Dr. Loo did not come up. Two days later, on October 31, 2018, Patient 1 was seen by a head and neck surgeon, who diagnosed the child with tonsil hypertrophy and snoring. The surgeon decided to treat Patient 1 with Flonase, and to monitor for a time. Adenoidectomy and tonsillectomy were to be considered at a later day.

36. On November 6, 2018, Mother contacted the speech therapist to obtain copies of the two speech evaluations that had been performed on her son. Rathwell testified that copies of the evaluations were sent to Mother, who testified that she did not understand them.

### THE JANUARY 23, 2019, FOUR-YEAR WELL CHILD VISIT

37. Patient 1 was seen by Respondent on January 23, 2019, for his four-year well-child exam; he was accompanied by his mother. The chart shows several "diagnoses" including well childcare "w abnl findings," speech delay unspecified, along with severe obesity and upper respiratory infection. (Ex. 9, p. A2873.) The chart notes the patient was receiving speech therapy, but there is no information as to what, if any, progress the child was making.

38. Karla Portillo, an LVN, noted she was not able to do a vision or hearing test because of "inability to comprehend, non-cooperation, or poor attention during test/distractibility." (Ex. 9, p. A2872.)

39. Respondent did not document any developmental history or exam at the four-year old exam.

### THE REFERRAL TO THE DEVELOPMENTAL PEDIATRICIAN

40. On August 22, 2019, Mother phoned Rathwell, who reviewed a speech therapy progress report that had been generated by Patient 1's speech therapist, Amy Gallo. The chart indicates Rathwell agreed to send the progress report to Mother. (Ex. 9, p. A3124.) Where the progress report had a provision for "other recommendations" which were to include "any information regarding requests for specialist consultation, etc." Gallo wrote "n/a." (*Id.*)

41. On August 27, 2019, Mother called Respondent, asking that Patient 1 be evaluated for ASD, citing behavioral problems and because his school was expressing concern. (Ex. 9, pp. A3135-A3136.) Respondent made a referral to the developmental pediatrician on that day.

42. On September 9, 2019, Mother had a phone conversation with Rathwell wherein the two discussed the speech therapy progress report and other issues. Mother reported concerns about her son, including with his speech skills, expressive and receptive language skills and pragmatics, further reporting that Patient 1 had difficulty with social cues and personal space. According to the chart, among the things discussed was the role of the developmental pediatrician, and Rathwell noted that Mother expressed understanding. (Ex. 9, p. A3201.)

43. Patient 1 was diagnosed with ASD in October 2019.

## Mother's Testimony

44. Mother testified that she had raised concerns about her son's speech and behaviors at an early date. For example, she recounted how her son walked at 13 months, which she appeared to think was late, and when the boy did walk, she

described him as going straight to running. She testified that Patient 1 had a "strong motor" and was very active, at one point describing him as "chaotic." Mother testified that she discussed these issues with Respondent, who she testified, attributed his behaviors to being a boy, advising he would grow out of it.

45. According to Mother, at the 18-month visit she raised concerns about Patient 1's speech, because her son had what Mother labelled "minion talk," and that while she and her husband could understand him, others could not. Mother testified that at the two-year visit she still had concerns about his speech articulation and his high energy. According to Mother, Respondent asked if the home was a bilingual house, and when Mother confirmed it was, Respondent said that can be confusing. When talking with a neighbor about Patient 1, the neighbor told Mother that speech therapy had benefited her son, and she advised Mother to look into that. Mother called Respondent two days after the office visit and obtained a speech therapy referral from Respondent.

46. Mother testified that during the October 2018 speech evaluation with Rathwell, the latter asked if Patient 1 had been diagnosed with autism, and Mother asked Rathwell what that was, and that Rathwell then said, "never mind."

47. Mother stated that during the October 24, 2018 phone call with Respondent, they talked about the referral to the ENT physician and an audiology test. The referral to a developmental pediatrician did not come up, in part because Mother wasn't aware that Rathwell had recommended it. Mother also testified that if she had known of the recommendation, she would have pushed for it.

//

//

48. Mother recalled little of the four-year visit, although she testified Respondent asked if Patient 1 was attending the speech therapy twice per week, which Mother confirmed.

49. At hearing, Mother testified Respondent told her a bi-lingual household could contribute to speech problems. Finally, Mother testified that when she spoke to Respondent about the referral to Dr. Loo, they had a disagreement, and she claimed Respondent told her that she was a doctor, and Mother was a teen mom.

50. Mother recounted filing a grievance against Respondent with Kaiser. She believes she lost nearly a year of treatment opportunities for her son because of the delay in getting Dr. Loo involved with Patient 1's care, and hoped that Kaiser would remediate matters, perhaps with training. Kaiser did not sustain the grievance.

## Respondent's Testimony

51. Respondent testified to having a vague recollection of the first visit with Patient 1 (the 18-month visit), and relied upon her usual practice, which would be examining the chart, reviewing the questionnaires, and going in to talk to the family. Visits during 2016 to 2019 were approximately 15 minutes long for children under 13 years of age, and 30 minutes for older children. Respondent testified that she saw 16 patients in a half day, and up to 32 in a full day; she estimated the number of patients in a day was in the high 20's. Now she is allocated 20 minutes for visits with all children. It must be noted that Respondent, in explaining this aspect of her practice milieu, did not blame Kaiser for having too large a caseload.

52. Respondent believes that at the 18-month visit, where there was an issue about eye contact, she would have had the family elaborate on it. She noted that eye contact is just one piece of data.

53. At the 24-month visit, the report of the child using 20 words would not have been concerning; Respondent pointed out that she was taught that at age two children should be intelligible to strangers for 25 percent of their speech. Respondent had no particular memory of Mother calling and asking for a speech and language referral just after the two-year visit in November 2016, but knows from the chart that she provided it the day Mother called.

54. Respondent could not recall the particulars of the three-year visit but stated that the circle trace is a standard part of the three-year exam. If the child cannot draw a circle, that implicates fine motor skills, and such issues are referred to occupational therapy, just as speech issues are sent to speech and language therapists. As noted above, Respondent did refer Patient 1 to occupational therapy.

55. Respondent did recall the telephone visit that led to the referral to the HNS physician, describing Mother as "hyper focused" on the head and neck referral. Respondent could not explain, however, why the referral to Dr. Loo was not acted upon that day.

56. As to use of the CHAT, Respondent testified that Kaiser was then using it at the 18-month and 24-month visits, but not during three and four-year exams. She testified that she would give the completed CHAT questionnaire to the staff, who were to upload it to the patient's records. (Dr. Gorton recalled that in the period 2016 to 2019, the CHAT questionnaire was a paper document.) Kaiser no longer uses CHAT, having moved to POSI, Parental Observations of Social Interactions, in late 2021. Respondent noted that POSI auto-populates to the chart.

//

//

57. In regard to the four-year visit in January 2019, Respondent noted that Patient 1's respiratory infection would have been a focus during the visit, and would have cut into the time she had to talk to the patient and parent.

58. Respondent denied telling Mother that she was a teen mom, and denied stating that a bi-lingual household could contribute to speech problems. She noted that her background is bi-lingual, and noted that a large percentage of the mothers seen at Kaiser East Los Angeles are younger women. She stated she would not refer to the gender of the patient because gender is not causative.

59. Respondent has not been disciplined in some way by Kaiser; her employer has not required her to do remedial work. During the hearing, she acknowledged that her record keeping in this case had shown deficiency which she sought to remediate by completing a course in record keeping provided by the University of California, Irvine Medical School. The course was completed in June 2025, and she was awarded 17 credits. (Ex. C.)

60. Respondent testified that she has had time to reflect on this matter, and has spoken with her colleagues about it, asking what they would have done differently. Respondent has become meticulous about developmental issues, typically asking a parent if they think their child could have ASD. She asks leading questions of the parents to elicit information. She noted Kaiser is using a new screening tool, one that auto-populates to the chart, and which will highlight red flags as well.

61. Respondent is active in her community and with charitable causes, such as Operation Smile, which send doctors and other medical professionals around the world to perform cleft lip and palate surgery. Another organization she serves with is

Hippocrates Circle, which performs a mini-medical school course with middle school students.

62. Respondent believes she is a good provider who cares about her patients and understands their situations, because she grew up near Kaiser East Los Angeles. She pointed out she is not in a dual income household; her husband is out of the country, and she is trying to bring him here. Meanwhile, she supports her mother.

## Dr. Gorton's Opinions

63. In summary, Dr. Gorton is of the opinion that Respondent committed three acts of simple negligence in the care and treatment of Patient 1, which she set forth in her report and testified to at the hearing.

64. First, Dr. Gorton opined that Respondent failed to document age-appropriate developmental screenings, noting that while Respondent documented using the CHAT questionnaire during the 18-month and 24-month well-child exams, no score or the actual questionnaire document is found in the chart. Dr. Gorton deems this to be a simple departure from the standard of care. In her testimony, she stated that the standard of care in the period 2016 to 2019 called for screening for autism, and she noted the American Academy of Pediatrics recommended screening at 18 and 30 months. Dr. Gorton was critical of Respondent's failure to chart developmental screenings at the three and four-year exams. Dr. Gorton also pointed out that Mother had said no eye contact during the 18-month visit, but that appears unaddressed in the chart. In Dr. Gorton's opinion, such should have been discussed.

65. Regarding her second finding of simple negligence, Dr. Gorton opined that Respondent failed to provide a timely referral for a full developmental evaluation for Patient 1. It was the expert's position that the standard of care required a referral if

concerns about social developmental delay were discovered. In her testimony, Dr. Gorton expanded on her report, asserting that issues such as Patient 1's speech deficits, along with inconsistent eye contact, and fine motor problems, augured for a referral for a full evaluation, sooner than that happened. Essentially, Dr. Gorton believes that the October 2018 speech and language assessment should have spurred Respondent to assess Patient 1, not just because of the recommendation for a developmental pediatrician, but the behaviors that were noted indicated further assessment should be performed.

66. As to the third claim of negligence, Dr. Gorton opined that the standard of care required Respondent to coordinate care recommendations from specialists. In her report she states, in part, that the speech and language evaluation recommended a developmental evaluation, which was not addressed by Respondent with the family. (Ex. 7, p. A70.) To Dr. Gorton, the failure to address the care recommendation from the speech evaluation represented a simple departure from the standard of care. However, Dr. Gorton acknowledged Respondent had referred Patient 1 to speech therapy twice, to occupational and physical therapy, and an ophthalmologist.

67. Dr. Gorton was critical of Respondent's seeming failure to address issues that were being raised during the exams, such as the eye contact issue at the 18-month visit. Dr. Gorton had problems with the documentation of the two-year visit given that Mother called two days later and asked for a speech evaluation. At the three-year visit, speech issues went seemingly unaddressed, even though Patient 1 had been in, and dropped out of, speech therapy. At the four-year visit, appropriate milestones were not documented, and the matter of the child's ongoing speech therapy, and any progress or lack thereof appeared to have not been discussed. It

must be noted, however, that Mother testified that Respondent inquired about Patient 1's speech therapy.

## The Case Against Respondent's Record Keeping

68. Dr. Gorton's report does not focus on the claim that Respondent had inadequate or inaccurate medical records for Patient 1, though her criticism that the CHAT questionnaire or scores were not found in the chart implicates that claim. During her testimony she noted that Respondent had not charted various things, such as a developmental exam at three or four years, but that does not necessarily prove the records are inaccurate; if a step wasn't taken, then it should not have been charted. When interviewed by the Board, Respondent stated she, at one point, had a concern about Patient 1's speech, that she had not documented. (Ex. 11, pp. A4192; A4194.) Dr. Gorton pointed to inaccuracies and contradictions in the records. At bottom, if the particulars are not laid out as clearly as they might be, Respondent acknowledged there were deficits in her records pertaining to Patient 1, and hence her completion of a record-keeping course at UC Irvine.

## Respondent's Character References

69. Jerry Cheng, M.D. testified on Respondent's behalf and also wrote a letter of support. Dr. Cheng is a pediatric oncologist who has worked at Kaiser for 18 years and has been chief of the Department of Pediatrics for the past seven years. He has known Respondent for 15 years; she served her residency under him. Respondent reports to Dr. Cheng. He rounds every quarter, so has an opportunity to see Respondent in her practice.

70. Dr. Cheng stated that Respondent is in good standing with Kaiser, with no history of any plans of correction. He deems her to be very competent, and he

described Respondent as very compassionate and having an affinity for the East Los Angeles population Respondent serves.

71. Notwithstanding the pendency of this proceeding, Dr. Cheng maintains his high opinion of Respondent, and he noted she is leading in all expected metrics. He would have no concern about Respondent treating his children.

72. Dr. Cheng wrote a letter on Respondent's behalf, found in Exhibit A at pages B3 and B4. He described Respondent as taking pride in delivering equitable bilingual care in the medically underserved East Los Angeles community, and he noted her volunteer work with Hippocrates Circle and with Operation Smile. He described her further as a very strong advocate for her patients. He believes Respondent has learned from this experience and will continue to practice safely and effectively.

73. A number of colleagues wrote letters attesting to Respondent's professional abilities, integrity, generosity, and dedication to the practice of medicine. For example, Michael Aguinaldo, M.D., a pediatrician at Kaiser's Pasadena facility, has known and worked with Respondent since 2013. He was aware of the claim regarding a delay in referral, and described her as dedicated to her patients in East Los Angeles, declining numerous invitations to join him in Pasadena, "due to her unwavering dedication to her community." (Ex. A, p. B1.) He noted Respondent's volunteer work with several organizations.

74. Susan Carre, M.D. is an Associate Professor of Family Medicine at the Keck School of Medicine. She has worked with Respondent for nine years in the Kaiser East Los Angeles facility. Dr. Carre has taken her own children to Respondent for care. She described Respondent as a dedicated physician, collegial and accessible to

patients, willing to add a patient into an already full schedule when need be. Dr. Carre also referenced Respondent's volunteer work. (Ex. A, p. B2.)

75. Harmonyanne Crutcher M.D. has worked with Respondent since 2016 and is the Physician-In-Charge at Kaiser's East Los Angeles facility. Dr. Crutcher wrote:

> [Respondent] provides culturally competent care to our East Los Angeles community where she advocates fiercely for children who might otherwise fall through the cracks. She approaches each patient with empathy and always takes the time to listen and educate families. Her ability to connect with young patients, many of whom face complex social and medical challenges, is truly remarkable. She is collaborative with her colleagues and takes the time to teach the next generation of physicians through her work as a mentor to Kaiser Permanente School of Medicine medical students as well as holding Adjunct Associate Professor status at Keck School of Medicine.

(Ex. A, pp. B5-B6.)

Dr. Crutcher is aware of this proceeding, but reiterated her opinions that Respondent is a skilled pediatrician and a person of exceptional character.

76. Davina Hsu, M.D. has known Respondent for approximately 10 years, working as a partner physician with her. She has collaborated with Respondent on "countless patients," and deems her to be an outstanding physician, such that Dr. Hsu has her three children treated by Respondent. (Ex. A, p. B7.) Dr. Hsu knows of the pendency of this proceeding, but her opinion of Respondent is not affected by it.

77. Bianca Lizarraga, M.D., M.P.H. first met Respondent some five years ago when Respondent acted as Dr. Lizarraga's resident. Dr. Lizarraga entrusts treatment of her children to Respondent, because she has "complete confidence in [Respondent's] clinical judgment and character." (Ex. A, p. B8.) She is aware of this proceeding, commenting "I can only speak to the character and professionalism I have consistently witnessed over the years." (*Id.*)

78. Marlen Luna, M.D. is the Assistant Physician-in-Charge of the Kaiser East Los Angeles facility, and has been for approximately five of the nine years Respondent and Dr. Luna have worked together. As others noted, the facility has a patient demographic that is low-income, working class, and non-English speaking. Dr. Luna pointed out Respondent was recently promoted to be the physician lead for the pediatricians in the East Los Angeles office, and Respondent precepts medical students from the University of Southern California (USC). Dr. Luna is aware that many of Respondent's colleagues bring their children to Respondent for care.

## Other Matters

79. There were some discrepancies between what Mother told the Board's investigator, or asserted in her grievance to Kaiser, and her testimony at the hearing. For example, she told the investigator she went to Respondent for a referral to a developmental pediatrician or other specialist so her son could be tested, and Mother stated Respondent dismissed the need for a developmental pediatrician. (Ex. 3, p. A33.) Mother asserted in her grievance that Respondent refused to refer Patient 1 to the developmental pediatrician, and that she had to go through her son's school to get her son evaluated by Dr. Loo. (Ex. 5, p. A48.) However, at hearing, Mother testified she didn't know what a developmental pediatrician was and had no knowledge Rathwell had recommended such a referral. The claims that Respondent refused to refer Patient

1 to a developmental pediatrician are not credited, in part because it is inconsistent with the fact that Respondent referred the boy to other specialists without hesitation, such as to the speech and language evaluations, and the occupational therapist. Indeed, when Mother broached the issue of ASD in August 2019, Respondent made a prompt referral to Dr. Loo. And, Dr. Gorton acknowledged Respondent, with the exception of the late referral to Dr. Loo, made timely referrals to specialists.

80. There were inconsistencies in Mother's reports to Respondent and other medical personnel. For example, Mother reported Patient 1 did not speak in two-word phrases on some occasions, but described her son as doing so on other occasions, including during the October 2018 speech evaluation. (Factual Finding 30.) At another point, in December 2016, it was reported Patient 1 would use two-word sentences or phrases, such as "'throw ball' or 'Daddy gone.'" (Ex. 9, p. A2339.)

81. Dr. Gorton, who based her opinions in part on her review of Mother's statements to the investigator and in her grievance, acknowledged there were discrepancies between what Mother told the investigator and what is in the chart.

82. Dr. Gorton acknowledged that the chart does not contain documentation that an outside provider was performing speech therapy. She noted as well that there were no reports from occupational therapy, or other outside vendors. She did not lay this at Respondent's doorstep. This absence of documentation may have been a systemic issue with Kaiser, and not the fault of Respondent.

83. Dr. Gorton acknowledged Respondent made prompt referrals to care specialists including speech therapists, occupational and physical therapists, an ENT surgeon, and an ophthalmologist.

//

84. Mother's claims that Respondent called her a teen mom and stated that the child's bi-lingual household could be contributing to speech issues are not credited given the discrepancies in her claims referred to above, and Respondent's denials.

85. Respondent was respectful of the Board and of this process during the hearing.

## Costs

86. The Board has incurred costs in the investigation and prosecution of this matter that total $37,092.50. The costs are reasonable on their face.

# LEGAL CONCLUSIONS

## Jurisdiction

1. Jurisdiction to proceed in this matter pursuant to Business and Professions Code sections 2004 and 2227 was established based on Factual Findings 1 through 3. (Further statutory references are to the Business and Professions Code.)

## Rules of General Applicability

2. The standard (as opposed to the burden) of proof in this proceeding is that of clear and convincing evidence, to a reasonable certainty. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853.) Complainant was therefore obligated to adduce evidence that was clear, explicit, and unequivocal—so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating

assent of every reasonable mind. (*In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

3. (A) The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. [Citations.]" (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.* at p. 67–68, quoting from *Nevarov v. Caldwell* (1958) 161 Cal.App.2d 762, 777.) The testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

(B) The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. Disbelief does not create affirmative evidence to the contrary of that which is discarded. "The fact that a jury may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative." (*Hutchinson v. Contractors' State License Bd. of Cal.* (1956) 143 Cal.App.2d 628, 632, quoting *Marovich v. Central Cal. Traction Co.* (1923) 191 Cal. 295, 304.)

(C) Discrepancies in a witness's testimony, or between that witness's testimony and that of others does not necessarily mean that the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal.App.3d 865, 879.)

//

(D) "On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted -- but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. [Citation.] .....But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability. [Citation.]" (*Wilson v. State Personnel Bd., supra*, 58 Cal.App.3d at 877–878.)

(E) An expert's credibility may be evaluated by looking to his or her qualifications. (*Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 786.) It may also be evaluated by examining the reasons and factual data upon which the expert's opinions are based. (*Griffith v. Los Angeles County* (1968) 267 Cal.App.2d 837, 847.)

(F) The trier of fact may reject the testimony of a witness, including an expert witness even if it is uncontradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) The expert's opinion is no better than the facts on which it is based and, "where the facts underlying the expert's opinion are proved to be false or nonexistent, not only is the expert's opinion destroyed but the falsity permeates his entire testimony; it tends to prove his untruthfulness as a witness." (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923–924.)

(G) Even when the witness qualifies as an expert, he or she does not possess a carte blanche to express any opinion within the area of expertise. For example, an expert's opinion based on assumptions of fact without evidentiary support, or on speculative or conjectural factors, has no evidentiary value and may be excluded from evidence. Similarly, when an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an expert

opinion is worth no more than the reasons upon which it rests. (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1118.) The bare conclusion of an expert without supporting facts is not entitled to evidentiary weight. (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493.)

(H) The presiding officer in an administrative proceeding may evaluate evidence based on his or her experience or training. (Govt. Code, § 11425.50, subd. (c).)

4. A professional is negligent if he or she fails to use that reasonable degree of skill, care, and knowledge ordinarily possessed and exercised by members of the profession under similar circumstances, at or about the time of the incidents in question. Just what that standard of care is for a given professional is a question of fact, and in most circumstances must be proven through expert witnesses. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997-998, 1001; *Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 215; see 6 B. Witkin, *Summary of California Law* (9th. Ed.), Torts, §§ 749, 750, and 774.)

5. "Repeated negligent acts" is defined as two or more acts of negligence. (*Zabetian v. Medical Board* (2000) 80 Cal.App.4th 462, 468; see also § 2234, subd. (c)(1).)

6. (A) "Mere error of judgment, in absence of a want of reasonable care and skill . . . , will not render a doctor responsible for untoward consequences in the treatment of his patient. [Citations.]" (*Hufman v. Lindquist* (1951) 37 Cal.2d 465, 475.)

(B) In selecting a method of treatment, skillful members of the medical profession may differ; however, the practitioner must keep within the "recognized and approved methods." (*Callahan v. Hahnemann Hospital* (1934) 1 Cal.2d 447, 458.) If so, negligence is not shown by evidence that other medicines or treatment might have

been employed. *(Jensen v. Findlay* (1936) 17 Cal.App.2d 536, 544.) The mere fact that there is a difference of medical opinion concerning the desirability of one particular medical procedure over another does not establish that the determination to use one of the procedures was negligent. (*Clemens v. Regents of Univ. of Cal.* (1970) 8 Cal.App.3d 1, 13.)

## Legal Conclusions Pertaining to the Alleged Causes for Discipline

7. It was established that Respondent committed a simple act of negligence by failing to document developmental exams at three and four years. However, the fact that the CHAT questionnaire and scores from the 18 and 24-month visits are not in the records does not clearly and convincingly establish negligence. Respondent's testimony that the paper CHAT document was given to staff to transmit to the chart is credited. Dr. Lee, who saw the child at 17 months, noted that the CHAT had been utilized, but his documentation and scoring was not in the chart either. This may indicate a systemic issue in the record keeping process at Kaiser at the time in question.

8. It was established that Respondent committed a simple act of negligence by failing to provide a timely evaluation referral for a full developmental evaluation. The October 2018 speech evaluation recommended such a referral, and gave a basis for such a referral.

9. It was established that Respondent committed a simple act of negligence by not coordinating care recommendations from specialists, by not addressing the recommendation by the speech therapist in October 2018.

10. Cause exists to discipline Respondent's license pursuant to section 2234, subdivision (c), for repeated negligent acts, based on Legal Conclusions 7 through 9.

11. Cause was established to discipline Respondent's license pursuant to section 2266, for her failure to maintain adequate and accurate records.

## Disposition

12. Turning to the negligent acts, Complainant did not sustain all of his claims as to the alleged failure to document age-appropriate developmental screenings, given that Respondent's testimony about processing the CHAT questionnaires was credited. As to the second and third alleged delicts, they are very much two sides of the same coin, in that both are predicated on Respondent's failure to act on the October 2018 speech evaluation, by failing to refer Patient 1 for a developmental evaluation and by failing to address the speech therapist's recommendation.

13. The Board's Manual of Disciplinary Orders and Disciplinary Guidelines, 12th Edition (Guidelines) set a range of penalties for repeated negligent acts and failure to maintain adequate records, the maximum penalty being outright revocation, and the minimum being a stayed revocation with five years' probation. However, the Guidelines provide that in cases charging repeated negligent acts with one patient, a public reprimand may, under appropriate circumstances, be ordered. (Ex. 17, p. A4355.)

14. Respondent's main failing was not following up on the October 2018 speech and language report, which recommended referral to a developmental specialist. That failure occurred seven years ago. Since that time, Respondent has practiced without any untoward incidents. She has been given leadership responsibilities by Kaiser, despite the pendency of this matter. Her colleagues believe she is a skilled, competent, and caring pediatrician, and several of them entrust their children to her care. She has taken a record keeping course as a remedial step.

15. The purpose of proceedings of this type is to protect the public, not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) While public protection is the highest priority of the Board and the ALJ, the Board and the ALJ "shall, whenever possible take action that is calculated to aid in the rehabilitation of the licensee, ....." (§ 2229, subd. (b).) However, that rehabilitative effort must not endanger the public. (*Id.*, at subd. (c).)

16. On balance, it is concluded that in this particular case probation is not necessary to protect the public, and it would tend to be punitive given the costs it imposes on a licensee. In this case a public reprimand, as authorized by section 2227, subdivision (a)(4), is the appropriate response.

## Costs

17. As set forth in Factual Finding 86, the Board has incurred costs in the amount of $37,092.50. Because grounds for discipline have been established, the Board may recover its costs under section 125.3. However, that does not end the analysis. Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Board in imposing costs in such situations must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised a

colorable claim. The Board must consider the licensee's ability to make payment. Finally, the Board "may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct." (*Ibid.*)

18. In this case, Respondent has defended her position with a good faith belief in the merits of her case. She has had the severity of the discipline reduced. It is appropriate to reduce the costs by one half, and to allow Respondent to pay the costs on an installment basis. Thus, the costs awarded shall be $18,546.25, which she can pay over a two-year period.

## ORDER

Respondent Kimberly Joy Willard, M.D., Certificate number A 120972, is hereby reprimanded.

Respondent shall pay costs to the Board in the amount of $18,546.25, in monthly installments of at least $500, with the total amount being due two years after the effective date of this order.

DATE: 10/16/2025

Joseph Montoya

JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings