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

In the Matter of the Accusation Against:	)	
SIAMAK S. OURIAN, M.D. **aka: SIMON OURIAN, M.D.**	)	File No. 06-2003-152406
Physician's and Surgeon's Certificate No. A 65201	)	
Respondent	)	

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 **July 30, 2009 .**

IT IS SO ORDERED **June 30, 2009 .**

MEDICAL BOARD OF CALIFORNIA

By: Barbara Yaroslavsky

Barbara Yaroslavsky
Chair, Panel B

EDMUND G. BROWN JR., Attorney General
of the State of California
ROBERT McKIM BELL
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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: SIAMAK S. OURIAN, M.D., AKA SIMON OURIAN, M.D. 444 North Camden Drive Beverly Hills, CA 90210 Physician's and Surgeon's Certificate No. A 65201 Respondent.	Case No. 06-2003-152406 OAH No. L-2008020387 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Barbara Johnston (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Gloria L. Castro, Deputy Attorney General.

2. Respondent Siamak S. Ourian, M.D., who is also known as Simon Ourian, M.D., (Respondent) is represented in this proceeding by his attorney, Peter R. Osinoff, Esq., Bonne Bridges Mueller O'Keefe & Nichols, whose address is 3699 Wilshire Boulevard, 10th Floor, Los Angeles, California 90010-2719.

3. On or about May 15, 1998, the Medical Board of California issued Physician and Surgeon's Certificate No. A 65201 to Siamak S. Ourian, M.D. The name on his license was subsequently changed to Simon Ourian, M.D. The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 06-2003-152406 and will expire on December 31, 2009, unless it is renewed.

JURISDICTION

4. Accusation No. 06-2003-152406 was filed by the Medical Board on December 29, 2005. The Board subsequently amended this Accusation: first on October 11, 2007, and then on April 11, 2008. The Second Amended Accusation is the pleading currently pending against Respondent. The Board properly served all statutorily required documents (Notice of Defense, Statement to Respondent, and Request for Discovery) on the Respondent. Respondent timely filed his Notice of Defense contesting the Accusations filed in this matter. A copy of the Second Amended Accusation, Board Case No. 06-2003-152406, is attached as Exhibit A and incorporated here by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 06-2003-152406. Respondent has also carefully read, fully discussed with 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 his right to a hearing on the charges and allegations in the Accusation; his right to be represented by counsel at his own expense; his right to confront and cross-examine the witnesses against him; his right to present evidence and to testify on his own behalf; his right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; his right to reconsideration and court review of an adverse decision; and all other rights accorded to him 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 in paragraph six.

CULPABILITY

8. Respondent admits the truth of the charges and allegations in the Second, Third, Seventh, Ninth, Eleventh, Thirteenth, Sixteenth, Nineteenth, Twenty-second, Twenty-fourth, Thirtieth and Thirty-third Causes for Discipline in Second Amended Accusation, Case No. 06-2003-152406.

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

CONTINGENCY

10. 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.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician and Surgeon's Certificate Number A 65201 issued to Respondent Siamak S. Ourian, M.D. (Simon Ourian, M.D.), is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. EDUCATION COURSE Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) amounting to an additional 20 hours, for a total of not less than 45 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified, limited to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 45 hours of continuing medical education of which 20 hours were in satisfaction of this condition.

2. CLINICAL TRAINING PROGRAM Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California, San Diego School of Medicine ("Program").

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at minimum, a forty-hour (40) program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision, Accusation, and any other

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information that the Division or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Division or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Division or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Division or its designee that respondent failed to complete the clinical training program.

3. MEDICAL RECORD KEEPING COURSE Respondent shall enroll in, at his expense, and successfully complete the Physician Assessment and Clinical Education (PACE), Medical Record Keeping Course offered at the University of California at San Diego, School of Medicine. On January 26-27, 2005, Respondent completed the PACE Medical Record Keeping Course in satisfaction of this condition. A certificate of completion is attached as Exhibit B and is incorporated by reference herein as if fully set forth.

4. ETHICS COURSE Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in ethics, at his expense, which has been previously approved in advance by the Board or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics 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 toward the fulfillment of this condition if the course had been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

5. CLINICIAN-PATIENT COMMUNICATION COURSE

Respondent shall enroll in and successfully complete a clinician-patient communication course at his expense. On October 29, 2005, Respondent completed the clinician-patient communication course in satisfaction of this condition. A certificate of completion is attached as Exhibit C and is incorporated by reference here as if fully set forth. The Board accepts the course taken toward the fulfillment of this condition.

6. MONITORING - PRACTICE Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including, but not limited to, any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and a proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully

understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours, and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine or billing, or both, and whether Respondent is practicing medicine safely, billing appropriately or both.

It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, Respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within three calendar days after being so notified by the Board or designee.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement

program at Respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

7. SOLO PRACTICE Respondent is prohibited from engaging in the solo practice of medicine.

8. NOTIFICATION Prior to engaging in the practice of medicine, the Respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or memberships are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

9. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is prohibited from supervising physician assistants.

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

11. QUARTERLY DECLARATIONS Respondent shall sign under penalty of perjury quarterly declarations using forms provided by the Board or its designee, stating whether he has been complying with all the conditions of probation. Respondent shall submit his quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12. PROBATION UNIT COMPLIANCE Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of both

his business and residence addresses. Respondent shall immediately communicate changes of such addresses in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in him place of residence. Respondent shall maintain a current and renewed California Physician and Surgeon's license.

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

13. INTERVIEW WITH THE BOARD OR ITS DESIGNEE

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

14. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of his departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this

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condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically canceled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be canceled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two-year period shall begin on the date probation is completed or terminated in that state.

15. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically canceled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

16. COMPLETION OF PROBATION Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120

calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

18. LICENSE SURRENDER Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent reapplies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

19. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which are currently set at $3,173.00, but may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. of Bonne Bridges Mueller O'Keefe & Nichols. I understand the stipulation and the effect it will have on my Physician 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 the State of California.

DATED: 6/12/09

SIAMAK S. OURIAN, M.D. (SIMON OURIAN, M.D.)
Respondent

I have read and fully discussed with Respondent Siamak S. Ourian, M.D., also known as Simon Ourian, 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: 6/16/09

PETER R. OSINOFF, ESQ.
BONNE BRIDGES MUELLER O'KEEFE & NICHOLS
Attorney for Respondent

ENDORSEMENT

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

DATED: 6/16/09

EDMUND G. BROWN JR., Attorney General
of the State of California

GLORIA L. CASTRO
Deputy Attorney General
Attorneys for Complainant
MEDICAL BOARD OF THE STATE OF CALIFORNIA

DOJ Matter ID: LA2005600477
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Exhibit A
Accusation No. 06-2003-152406

EDMUND G. BROWN JR., Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 11, 2008
BY Arlene Gregson ANALYST

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

In the Matter of the First Amended and Supplemental Accusation Against: SIAMAK S. OURIAN, M.D., Also Known As Simon Ourian, M.D. 436 North Bedford Drive, Suite 304 Beverly Hills, California 90210-4320 Physician and Surgeon's Certificate No. A65201, Respondent.	Case Nos. 06-2003-152406 06-2004-160369 06-2004-161296 06-2004-160515 06-2004-161339 17-2006-173029 09-2006-172250 **SECOND AMENDED AND SUPPLEMENTAL ACCUSATION**

Complainant alleges:

PARTIES

1. Barbara Johnston (Complainant) brings this First Amended and Supplemental Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board). This pleading amends and supplements the First Amended Accusation filed on October 11, 2007, with three additional Causes For Discipline (# 30, 31, & 32) set forth beginning with Paragraph 167.

2. On or about May 15, 1998, the Board issued Physician and Surgeon's Certificate Number A65201 to Siamak S. Ourian, also known as Simon Ourian, M.D., (hereinafter, the "Respondent" or "Dr. Ourian"). The certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31,

2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws.

4.Section 2227 of the Code[1] provides:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Be publicly reprimanded by the division.

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

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section

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1. All section references are to the Business and Professions Code unless otherwise indicated.

803.1."

5.Section 2234 of the Code provides:

"The Division of Medical Quality 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 relevant sections:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice Act.

(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.

(d) Incompetence.

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

6. Section 2261 of the Code states, in pertinent part:

"Knowingly making or signing any certificate or other document

directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

7. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

8. Section 651 of the Code provides, in pertinent part:

"(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A 'public communication' as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

"(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

"(1) Contains a misrepresentation of fact.

"(2) Is likely to mislead or deceive because of a failure to disclose material facts.

"(3)(A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been

altered in any manner from the image of the actual subject depicted in the photograph or image.

"(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For the purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

"(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents 'before' and 'after' views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any 'before' and 'after' views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same 'before' and 'after' results may not occur for all patients.

"(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

"(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

"(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

"(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

"(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

"(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, 'as low as,' 'and up,' 'lowest prices,' or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

"(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

"(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

"(f) Any person so licensed who violated this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

"(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action. . . . ."

9. Section 17500 of the Code provides:

"It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any * * * person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine."

10. Section 2271 of the Code provides:

"Any advertising in violation of section 17500, relating to false or misleading advertising, constitutes unprofessional conduct."

MEDICAL TERMS

11. Hyperemia -- The presence of an increased amount of blood flow in a part or an organ.

12. Dysplastic Nevi -- Abnormal tissue development in a circumscribed malformation of the skin

13. Actinic Keratotic Lesions -- A premalignant warty lesion occurring on the sun-exposed skin of the face and hands in aged light-skinned persons. Hyperkeratosis may form a cutaneous horn, and squamous cell carcinoma of low-grade malignancy may develop in a small proportion of untreated patients.

14. Lentigos – A benign, acquired brown macule resembling a freckle except that the border is usually regular and microscopic elongation of rete ridges is present

15. Syringoma – A benign, often multiple, sometimes eruptive neoplasm of the sweat gland ducts composed of very small round cysts.

FIRST CAUSE FOR DISCIPLINE

(Patient S. O.[2])

(Gross Negligence)

16. On or about June 9, 2003, S.O. sought treatment in the form of a Coolaser™ cosmetic laser peel from respondent to address her complaints of wrinkles and skin discolorations. In the consent form provided to S.O. dated May 19, 2003, S.O. consented to respondent's use of the Coolaser™ to treat her complaints, and agreed to pay respondent the sum of $3,700.00 for his services. S.O. further consented to the use of a dermal filler (Radiance) to pump up creased, furrowed, or sunken facial skin. Although the consent form addressed "unforseen conditions" that may arise during the course of a treatment which, in the judgment of the physician, required additional treatment or a different procedure, none of the consents signed by S.O. specifically addressed the use of an Erbium YAG laser, Diolight 532 laser, or scalpel surgery. There is no documentation in the medical record that respondent discussed with S.O. that he may employ alternative

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2. In this Accusation, patients will be referred to by their initials. The full names of the patients will be disclosed to respondent when discovery is provided pursuant to Government Code section 11507.6.

treatment methods other than the Coolaser™ technique that S.O. thought she would receive.

17. On June 9, 2003, respondent's preoperative diagnosis for S.O. included facial, neck, arm, and trunk dysplastic nevi, actinic keratotic lesions, solar lentigos, and wrinkles. There is no documentation in the medical record that a physical, or any type of diagnostic examination was performed in support of respondent's diagnoses. The procedure note for June 9, 2003, indicates that respondent performed laser ablation of the pigmented lesions of her face and neck, followed by Erbium YAG resurfacing of her face and neck. The unsigned operative report also indicates that the Diolight 532 was utilized, scalpel surgery was performed, and "multiple areas on the face and neck were ablated." Respondent's operative note indicates that he treated S.O.'s face with the Erbium laser to 40 microns. There is no indication in the medical record that specimens from the scalpel surgery were submitted for pathology. S.O. states that she never sought treatment from respondent for destruction of pre-malignant lesions, and that she did not have any lesions on her face or neck when she sought treatment from respondent.

18. After the first treatment on June 9, 2003, S.O. suffered no ill effects, and she returned to respondent's office on July 14, 2003 for further treatment. Respondent's unsigned procedure note for this visit and treatment is identical to his procedure note dated June 9, 2003, which indicates that the procedure performed on July 14, 2003, was performed in exactly the same manner as the procedure on June 9, 2003.

19. After the second procedure, S.O. experienced pain, itching, burning and stinging to her anterior neck, and on July 17, 2003, sought treatment from her dermatologist who referred her to the Grossman Medical Center for treatment of first to second degree burns to her neck. S.O. presented at the Grossman Medical Center for treatment on July 18, 2003, four days after her laser treatment with respondent. The medical record from Grossman Medical Center describes a partial thickness burn to the anterior neck, which was swollen and healing, dry, and scabbing.

20. Respondent's treatment of S.O. as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of practice.

A. There is no documentation in the medical record that respondent performed an adequate physical examination of respondent prior to performing laser treatment.

B. Respondent diagnosed S.O. with dysplastic nevi. The treatment of dysplastic nevi with laser is contrary to the standard of practice because dysplastic nevi can, in fact, be a melanoma or eventually develop into a melanoma, and laser destruction of these lesions is an extreme departure from the standard of practice.

C. Respondent 's operative report references scalpel surgery, actinic keratosis, and dysplastic nevi. If scalpel surgery had been performed, then specimens would have been obtained for pathology, however, no pathology specimens were submitted by respondent.

D. S.O. consented to the use of the Coolaser™ and the consent she signed discussed Coolaser™ treatment. However, respondent used a combination laser program which included an Erbium YAG laser and a Diolight 532 laser. Neither of these modalities of treatment are consented for in the forms signed by S.O., and there is no documentation in the medical record that respondent discussed these specific treatment modalities with S.O.

E. There is no documentation in the consent forms signed by S.O. that the laser would be utilized for the treatment of lesions or that scalpel surgery would be utilized. There is no documentation in the medical record that laser treatment for lesions or scalpel surgery were discussed with S.O. prior to or after treatment.

F. There is no documentation in the medical record of a preoperative consultation with S.O. for either the June 9, 2003, treatment or the July 14, 2003, treatment. The unsigned operative reports are clearly duplicative and do not accurately represent what respondent was treating on those dates.

G. The medical record does not document what laser settings respondent used in the treatment of S.O. However, the extent of the inflammation and crusting is consistent with a deeper Erbium laser peel. There is no documentation in the consent form signed by S.O. that she consented to any deeper type of laser treatment.

H. It is well documented that the neck heals very poorly and/or erratically. Respondent 's treatment of S.O.'s neck with the Erbium laser at the settings that the respondent must have utilized is an extreme departure from the standard of practice.

21. Respondent's acts and/or omissions as set forth in paragraphs 16 through 20, inclusive, above whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234 (b) of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Patient S.O.)

(Repeated Negligent Acts)

22. Respondent is subject to disciplinary action under section 2234 (c) of the Code in that respondent's care and treatment of patient S.O. constituted repeated negligent acts. The circumstances are as follows:

23. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

24. Respondent's acts and/or omissions as set forth in paragraph 23 above, whether proven jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234 (c) of the Code. Therefore, cause for discipline exists.

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THIRD CAUSE FOR DISCIPLINE

(Patient S.O.)

(Inadequate Records)

25. Respondent is subject to disciplinary action under section 2266 of the Code in that respondent failed to maintain adequate records of his care and treatment of patient S.O. The circumstances are as follows:

26. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

27. Respondent's acts and/or omissions as set forth in paragraph 26 above constitute the maintenance of inadequate records within the meaning of section 2266 of the Code. Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Patient S.O.)

(Incompetence)

28. Respondent is subject to disciplinary action under section 2234(d) of the Code in that respondent's care and treatment of S.O. demonstrates incompetence (lack of knowledge or ability). The circumstances are as follows:

29. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

30. Respondent's acts and/or omissions as set forth in paragraph 29 above constitute incompetence within the meaning of section 2234(d) of the Code. Therefore, cause for discipline exists.

FIFTH CAUSE FOR DISCIPLINE

(Patient S.O.)

(Dishonest and Corrupt Acts and/or Knowingly Making a False Document)

31. Respondent is subject to disciplinary action under sections 2234(e) and 2261 of the Code in that respondent's acts and/or omissions in billing her insurance

company for the care and treatment provided to S.O. constitute dishonest and corrupt acts and/or knowingly making or signing a false document as follows:

32. The allegations of the First Cause for Discipline are incorporated herein as if fully set forth.

33. On or about June of 2003, S.O. paid respondent the sum total of $3,700.00 for Coolaser™ treatment. None of the treatments that S.O. received from respondent were to be covered by her insurance carrier. S.O. did not have lesions on her face or neck when she presented for treatment on June 9, 2003, nor did respondent advise S.O. that he would be removing lesions from her face or neck. After receiving an Explanation of Benefits (EOB) dated September 11, 2003, from her insurance carrier, S.O. discovered that respondent had billed her insurance company for the alleged destruction of pre-malignant lesions during the June 9, 2003 treatment. Respondent billed the insurance carrier $9, 363.33 for this treatment and procedure.

34. On or about September 2003, S.O. received another EOB statement from her insurance carrier dated September 12, 2003, which indicated that respondent billed S.O.'s insurance carrier $2, 350.00 for the "destruction of benign malignant lesions" and "destruction of 2-14 lesions."

35. Respondent is subject to discipline pursuant to sections 2234 (e) and 2261 of the Code in that he engaged in dishonest and corrupt acts which are substantially related to the qualifications, functions or duties of a physician, and/or knowingly made, and/or signed a false document as follows:

A. Respondent billed S.O.'s insurance carrier for services and treatment that he did not perform on S.O. Respondent billed for the destruction of pre-malignant lesions when S.O. did not present for treatment of lesions on her face or neck.

B. Respondent did not have the consent of S.O. to perform a procedure on June 9, 2003, or July 14, 2003, for the destruction of pre-malignant lesions or

lesions on her face or neck, and respondent did not have the permission of S.O. to bill her insurance carrier for this procedure.

C. Respondent documented in the medical record identical procedure notes dated June 9, 2003, and July 14, 2003, that scalpel surgery was performed on S.O. However, if scalpel surgery was actually performed, pathology specimens should have been submitted and none were.

D. Respondent double-billed S.O. and her insurance carrier for treatment and services that he performed on June 9, 2003 and July 14, 2003.

36. Respondent's acts and/or omissions as set forth in paragraphs 32 through 35, inclusive, whether proven individually, or in any combination thereof, constitute a violation of sections 2234(e) and/or section 2261 of the Code. Therefore, cause for discipline exists.

SIXTH CAUSE FOR DISCIPLINE

(Patient C.H.)

(Gross Negligence)

37. On or about December 13, 2003, patient C.H. consulted with respondent regarding a dermal filler called Radiance to treat depressions in her face caused by acne scarring. During the consultation, respondent assured C.H. that the dermal filler was safe and that if something went wrong, and the area did not turn out smooth, he could fix it. On that date, after a brief look at C.H.'s face, respondent told her she would need up to 6cc's of Radiance.

38. On or about December 16, 2003, C.H. returned to respondent' office and received her first injections of Radiance. Respondent injected 4 ccs of Radiance into her face. When respondent needed to refill the syringe, he inserted the soiled needle back into the vial to draw more Radiance into the syringe.

39. On or about January 20, 2004, C.H. returned to respondent for a follow-up visit. She complained that her right cheek and left jaw, where the Radiance had been injected, were bumpy.

40. On March 29, 2004, C.H. still complained to respondent of bumpiness in her face. Respondent recommended cortisone injections to correct the deformity, and these treatments were administered over the next several months. There is no documentation in the medical record that respondent injected C.H. with cortisone. When respondent was interviewed by the Medical Board investigator on March 17, 2005, he did not recall injecting cortisone into C.H.'s face.

41. There are no medical records for any additional treatments or visits for C.H. other than her initial consultation, and first treatment in December of 2003. However, there are signed consent forms for additional treatments, and there are Release of Claims forms dated March 29, 2004, and May 17, 2004. There is one progress note for December 15, 2003, indicating that 4 cc's of Radiance was used in treatment, and that C.H. may need additional injections. There is no documentation in the medical record for C.H. that a physical examination was performed.

42. Respondent's acts and/or omissions in the care and treatment of patient C.H. constitute extreme departures from the standard of practice as follows:

A. There is no documentation in the medical record of any office visits after December 15, 2003.

B. There is no documentation in the medical record of any interaction or discussion between C.H. and respondent regarding C.H.'s treatment and the procedure to be performed.

C. There is no clear good faith examination of C.H. documented in the medical records.

D. There is no documentation in the medical record of the specific areas of C.H.'s face that were injected with dermal filler.

E. Radiance is provided in syringes and not in vials. Respondent's act of injecting C.H. with Radiance he allegedly withdrew from a vial for multi-purposes is an extreme departure from the standard of practice.

F. There is no documentation in the medical record that respondent injected cortisone into C.H.'s face.

43. The allegations set forth in paragraphs 37 through 42, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234 (b) of the Code. Therefore, cause for discipline exists.

SEVENTH CAUSE FOR DISCIPLINE

(Patient C.H.)

(Repeated Negligent Acts)

44. Respondent's acts and/or omissions in the care and treatment of C.H. constitute repeated negligent acts as follows:

45. The allegations of the Sixth Cause for Discipline are incorporated herein by reference as if fully set forth.

46. Respondent did not take an adequate previous history from C.H. of treatments she may have received in the same affected areas. This act and/or omission constitutes a simple departure from the standard of practice.

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

EIGHTH CAUSE FOR DISCIPLINE

(Patient C.H.)

(Incompetence)

48. Respondent's acts and/or omissions in the care and treatment of C.H. constitute incompetence as follows:

49. The allegations of the Sixth and Seventh Causes for Discipline are incorporated herein as if fully set forth.

50. Respondent's acts and/or omissions as set forth in paragraph 49 above, constitute incompetence pursuant to section 2234(d) of the Code. Therefore, cause for discipline exists.

NINTH CAUSE FOR DISCIPLINE

(Patient C.H.)

(Inadequate Record Keeping)

51. Respondent is subject to disciplinary action under section 2266 of the Code in that respondent failed to maintain adequate records of his care and treatment of patient C.H. as follows:

52. The allegations of the Sixth and Seventh Causes for Discipline are incorporated herein by reference as if fully set forth.

53. Respondent's acts and/or omissions as set forth in paragraph 52 above, constitute the maintenance of inadequate records within the meaning of Code section 2266. Therefore, cause for discipline exists.

TENTH CAUSE FOR DISCIPLINE

(Patient S.B.)

(Gross Negligence)

54. On or about July 26, 2004, patient S.B. consulted with respondent's assistant, Rana, about the Coolaser™ treatment because she was unhappy with the brown spots on her face and neck which were the result of years of sun damage. S.B. sought treatment from respondent because she saw an infomercial promoting his practice, and in that infomercial he claimed that he had invented the "Coolaser"™ procedure, and that it was a very safe method for treating all types of skin-related complaints.

55. At the initial consultation, respondent's assistant told S.B. that the laser treatment would be mildly uncomfortable, and that afterward it would feel like she had a sunburn on her face. The assistant minimized the risk of the procedure and told S.B. the healing time would be quite short, just a few days. The assistant also told S.B. that the total cost for three laser treatment would be $4,500. S.B. made a $1,000.00 deposit on July 26, 2005, and made an appointment for the first treatment. S.B. also signed consent forms on July 25, 2004 for the Coolaser™ treatment.

56. The first laser treatment was performed on Friday, August 20, 2004. Following the treatment, S.B.'s face was very red and painful. S.B. became concerned and telephoned respondent the following day, August 21, 2004. Respondent advised S.B. that her condition was normal, advised her to continue applying cool compresses, and told her to follow the instruction booklet she was given.

57. On Friday, September 17, 2004, S.B. returned to respondent for her second treatment. During the second treatment, the pain was very intense. When S.B. awoke the next day, she had a hard dry crust all over her face and was bleeding from her cheek and chin. S.B. could not open her mouth to eat or speak. S.B. was upset and telephoned respondent. Respondent appeared annoyed, and told her to read the instruction booklet. By Tuesday, September 21, 2004, S.B.'s face began to peel and the skin underneath was bright red. S.B. could not return to work for one full week following the second treatment. After the second treatment, S.B. attempted to obtain a refund of the money paid to respondent. S.B. was advised by respondent's office staff that the $4,500.00 she was charged covered "up to three" treatments, and that she still owed the full amount. She was advised that the total amount is collected even if there is only one procedure performed.

58. The medical record does not document the treatment that respondent provided to S.B. The medical record does not document respondent's laser settings in the treatment of S.B. The medical record does not document that respondent performed a good faith examination of patient S.B. The medical record does not document the postoperative care provided to S.B. When respondent was asked during an interview with the Medical Board Investigator on March 17, 2005, why he did not make notes in the medical record as to the care and treatment provided to this patient, respondent responded that he does not make notes because notes are "sometimes used against him, when a patient is unhappy with the result, and the issue goes to court."

59. Respondent's acts and/or omissions in the care and treatment of patient S.B. constitute extreme departures from the standard of practice as follows:

A. Respondent did not document and/or perform a good faith examination of S.B.

B. Respondent did not document the nature of the treatment performed or the laser settings used on S.B.

C. Respondent did not document any of S.B.'s post operative complaints or concerns in the medical record.

D. S.B. was misled by the marketing materials utilized by respondent and by the recommendations made by his assistant, Rana, as to the potential for problems associated with the laser procedure respondent performed. The amount of crusting and oozing experienced and documented by S.B. at 76 hours post-laser surgery is far beyond the expectations a patient would have for a procedure advertised as "no down time."

60. The allegations set forth in paragraphs 54 through 59, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234 (b) of the Code. Therefore, cause for discipline exists.

ELEVENTH CAUSE FOR DISCIPLINE

(Patient S.B.)

(Repeated Negligent Acts)

61. Respondent's acts and/or omissions in the care and treatment of S.B. constitute repeated negligent acts as follows:

62. The allegations of the Tenth Cause for Discipline are incorporated herein as if fully set forth.

63. At the consultation, respondent did not adequately advise S.B. of the potential problems that could occur with respect to the treatment he performed. This act and/or omission constitutes a simple departure from the standard of practice.

64. Respondent's acts and/or omissions as set forth in paragraphs 62 through 63, inclusive, above, whether proven jointly, or in any combination thereof constitute repeated negligent acts pursuant to section 2234(c) of the Code. Therefore, cause for discipline exists.

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TWELFTH CAUSE FOR DISCIPLINE

(Patient S.B.)

(Incompetence)

65. Respondent's acts and/or omissions in the care and treatment of S.B. constitute incompetence as follows:

66. The allegations of the Tenth and Eleventh Causes for Discipline are incorporated herein as if fully set forth.

67. Respondent's acts and/or omissions as set forth in paragraph 66 constitute incompetence pursuant to section 2234(d) of the Code. Therefore, cause for discipline exist.

THIRTEENTH CAUSE FOR DISCIPLINE

(Patient S.B.)

(Inadequate Record Keeping)

68. Respondent is subject to disciplinary action under section 2266 of the Code in that respondent failed to maintain adequate records of his care and treatment of patient S.B. as follows:

69. The allegations of the Tenth and Eleventh Causes for Discipline are incorporated herein by reference as if fully set forth.

70. Respondent's acts and/or omissions as set forth in paragraph 69 above, constitute the maintenance of inadequate records within the meaning of Code section 2266. Therefore, cause for discipline exists.

FOURTEENTH CAUSE FOR DISCIPLINE

(Patient S.B.)

(False or Misleading Advertising and/or Dishonest and Corrupt Acts)

71. Respondent is subject to disciplinary action under sections 2271, 17500, and 651 of the Code for false and misleading advertising and/or dishonest and corrupt acts under section 2234(e) of the Code as follows:

72. The allegations of the Tenth and Eleventh Causes for Discipline are incorporated herein as if fully set forth:

73. At the initial consultation on July 26, 2004, respondent's assistant, Rana advised S.B. that the laser treatment would be mildly uncomfortable, and that afterward it would feel like a sunburn on her face. This assistant also told S.B. that the healing time would be quite short. S.B. was also given an information sheet on the Coolaser™ which stated that treatment required "minimal or no downtime." S.B. relied on the assistant's representations to her, and on the Coolaser™ information sheet provided to her in making her decision to have the treatment performed by respondent. After the second laser treatment, S.B. was in intense pain, her face was crusted and bleeding, and she missed a full week of work.

74. At the initial consultation on July 26, 2004, respondent's assistant, Rana advised S.B. that the $4,500.00 she deposited would cover the cost of three laser treatments. When S.B. attempted to have a portion of the $4,500.00 returned to her after the second treatment, she was advised by respondent's staff that she owed the full amount because the $4,500.00 is charged even if only one laser procedure is performed.

75. Respondent's acts and/or omissions set forth in paragraphs 71, 72, and 73 constitute false and/or misleading advertising in violation of sections 2271, 17500, and 651 of the Code, and/or dishonest and corrupt acts that are substantially related to the duties, functions, and qualifications of a physician in violation of section 2234(e) of the Code. Therefore, cause for discipline exists.

FIFTEENTH CAUSE FOR DISCIPLINE

(Patient S.J.)

(Gross Negligence)

76. On or about October 27, 2003, patient S.J. sought treatment for small bumps under her eyes which she advised respondent's office staff was a condition known as "syringoma." At the consultation on October 27, 2003, respondent's assistant told S.J. that respondent could treat the bumps under her eyes. When S.J. asked to actually see the doctor, the assistant said, "I can tell you he can do it because he has treated this before." S.J. insisted on seeing respondent, and respondent eventually looked at her face. Respondent gave a cursory look

at S.J.'s face and told her he could take care of the "bumps." S.J. agreed to pay respondent $3,700.00 for a total of three laser treatments.

77. Respondent performed the first Coolaser™ treatment on November 10, 2003. After this first procedure was performed, S.J. noticed that the small bumps on her face were spreading into the center of her face.

78. On January 9, 2004, S.J. returned to respondent's office for her second treatment. At that time, respondent told S.J. that it would take all three treatments for the syringoma to disappear. Given this explanation, S.J. agreed to the second treatment. After the second treatment, S.J. noticed that the "syringoma" had spread to other portions of her face. S.J. called respondent's office to complain about this problem, but she received no response from respondent or his staff.

79. On February 6, 2004, S.J. returned to respondent's office for her third treatment. When she asked respondent why he had not responded to her messages, he did not offer any explanation. After the third treatment, the small bumps on her face continued to spread down her face and across her forehead above her nose. S.J. made several calls to respondent' office to complain again, and left messages requesting her medical records, but never received a response.

80. In addition to the laser treatments for the treatment of the syringoma, respondent also performed three laser treatments on S.J.' hands for brown spots. The treatment of S.J.'s hands is not documented anywhere in respondent's medical records.

81. S.J. was given a cream allegedly developed by respondent to help lighten her skin. The cream's packaging did not list its ingredients. There is no documentation in S.J.'s medical records that respondent gave S.J. this cream. When respondent was interviewed by the Medical Board Investigator and Medical Board Consultant on March 17, 2005, about his care and treatment of S.J., he stated that he did indeed give S.J. a cream that he developed. According to respondent, the cream contains Retin A, two bleaching agents, hydrocortisone, and a strong moisturizer.

82. During the March 17, 2005 interview, respondent stated that he doubted that the bumps on S.J.'s face were syringoma. Respondent stated that a biopsy would need to be performed in order to make a diagnosis as to what the bumps were, which he did not do. Respondent further admitted that he did not perform a biopsy since the treatment for whatever the condition on her face was would be the same, and that is why he recommended a course of three laser treatments.

83. During the interview on March 17, 2005, respondent stated that he does not note the laser settings in his medical records because the Coolaser™ settings are always the same, did not change per patient, therefore, there was no reason to record them.

84. Respondent's acts and/or omissions in the care and treatment of patient S.J. constitute extreme departures from the standard of practice as follows:

A. The medical record does not indicate a clinical diagnosis so it is impossible to know what condition respondent was treating on S.J.'s face. The medical record only indicates that S.J. told respondent that the bumps on her face were "syringoma."

B. S.J. presented with clinical lesions on her face which is a medical condition that respondent failed to address, and this failure put S.J. at risk.

C. Respondent did not perform a biopsy of the bumps on S.J.'s face.

D. Respondent did not perform a good faith examination of S.J. prior to treating her condition.

E. Respondent did not document the nature of the treatment performed or the laser settings used when treating S.J.

F. Respondent did not document any of S.J.'s post-procedure complaints in the medical record.

G. Respondent's treatment of syringoma with non-invasive lasering is an extreme departure from the standard of practice since the treatment of syringoma typically requires a level of invasion utilizing electrocautery or destructive laser modality of each individual lesion.

H. Respondent failed to consider or discuss alternative treatment options with S.J.

I. Because of the rapid proliferation of the bumps and/or lesions after S.J.'s first treatment, respondent should have known that he was not treating syringoma since rapid proliferation of syringoma would be atypical. Respondent admitted that he had no clinical data regarding the condition he was treating on S.J.'s face, which constitutes an extreme departure from the standard of practice.

J. There is no documentation in the medical record that respondent treated S.J.'s hands for hyper-pigmentation.

K. There is no documentation in the medical record, other than a receipt that indicates S.J. paid for a cream, as to what type of cream respondent provided to S.J., and the medical indication for that cream.

L. There is no documentation in the medical record that respondent considered and/or discussed less risky modalities to treat the hyper-pigmentation on S.J.'s hands.

85. The allegations set forth in paragraphs 76 through 84, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234 (b) of the Code. Therefore, cause for discipline exists.

SIXTEENTH CAUSE FOR DISCIPLINE

(Patient S.J.)

(Repeated Negligent Acts)

86. Respondent's acts and/or omissions in the care and treatment of S.J. constitute repeated negligent acts as follows:

87. The allegations of the Fifteenth Cause for Discipline are incorporated herein as if fully set forth.

88. The consents that S.J. signed on October 27, 2003, are not specific for the condition for which S.J. presented and/or the treatment to be performed.

89. Respondent's acts and/or omissions as set forth in paragraphs 87 and 88 above, whether proven jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234(c) of the Code. Therefore, cause for discipline exists.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Patient S.J.)

(Incompetence)

90. Respondent's acts and/or omissions in the care and treatment of S.J. constitute incompetence as follows:

91. The allegations of the Fifteenth and Sixteenth Causes for Discipline are incorporated herein as if fully set forth.

92. Respondent's acts and/or omissions as set forth in paragraph 91 constitute incompetence pursuant to section 2234(d) of the Code. Therefore, cause for discipline exists.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Patient S.J.)

(Inadequate Records)

93. Respondent is subject to disciplinary action under section 2266 of the Code in that respondent failed to maintain adequate records of his care and treatment of patient S.J. The circumstances are as follows:

94. The allegations of the Fifteenth and Sixteenth Causes for Discipline are incorporated herein by reference as if fully set forth.

95. Respondent's acts and/or omissions as set forth in paragraph 94 constitute the maintenance of inadequate records within the meaning of Code section 2266. Therefore, cause for discipline exists.

NINETEENTH CAUSE FOR DISCIPLINE

(Patient P.A.)

(Repeated Negligent Acts)

96. On or about July 22, 2003, patient P.A. consulted with respondent regarding a scar-revision technique that would improve several scars on her nose and chin. P.A.

contacted respondent after viewing information on the Epione website. P.A. was impressed with the claims made by Epione, and the results evidenced by the before and after pictures displayed on the website. During her consultation with respondent on July 22, 2003, P.A. made specific reference to a photograph displayed on the website that depicted the before and after results of scar revision techniques. One of the photographs of which P.A. inquired looked very much like a before and after photograph she had seen in a brochure from another physician's clinic. When P.A. asked respondent about this specific photograph on his website, respondent claimed that the before and after photograph of the patient on the website was his patient, and that he had performed the procedure.

97. During the July 22, 2003, consultation, respondent told P.A. that his Coolaser™ technique could produce the results seen in the photographs and there would be no risk of scarring. Respondent drew P.A. a diagram of a skin cell and the skin layers, noting that the Coolaser™ would produce far better results than either a CO2 or Erbium laser. P.A. advised respondent that she only wanted the scars on her nose, and some indentations in her chin treated. This initial consultation lasted approximately 30 minutes.

98. On August 4, 2003, P.A. returned to respondent's office for a second consultation. The only documentation in the medical record for this visit is a series of consents that are signed and dated by P.A. During this consultation, respondent encouraged P.A. to have her entire face treated with the Coolaser™, however, P.A. declined and told him she only wanted her nose and chin treated. P.A. was provided materials from respondent's office listing what she needed to do in preparation for the Coolaser™ treatment.

99. On August 8, 2004, P.A. returned to respondent's office for her treatment. The medical record indicates that P.A. signed another series of consent forms dated August 8, 2004.

100. At the August 8, 2004 visit, P.A. was placed in a room by an assistant who applied numbing cream to her nose and chin. When respondent came into the room, he appeared rushed, picked up the laser, and was about to begin treatment when P.A. asked him if he was going to take before and after photos of her face. Respondent took P.A.'s photograph and then

spent a few seconds using the laser on her chin and nose. After he finished, P.A. protested that he had not given her the full treatment and respondent replied that she could not expect more from a "freebie." For some reason, respondent did not think that P.A. had paid for this procedure, and when he was advised to the contrary, he agreed to continue with treatment of her nose, chin, and her left cheek. When P.A. told respondent that she only wanted her nose and chin done, respondent told her that he would have to finish or her results would be uneven. There is no documentation in the medical record of the procedure respondent performed on August 8, 2003. There is no documentation in the medical record of the type of laser, the laser wavelength, or the laser settings used in the treatment of P.A.

101. After the treatment, P.A.'s face was blotched and oozing, and she contacted respondent's office to complain. Respondent offered to see her again in the office, however, P.A. declined because she was afraid to expose her raw skin to the sunlight.

102. The consent forms that P.A. signed were very detailed and clearly stated that there were no warrantees, no guarantees, and no promises with respect to results. The consent forms also informed the patient of unforseen conditions and complications, and informed the patient that scarring was rare. However, the Epione web page that P.A. accessed advertised that the treatments were very safe, there was usually no recovery time, and that at Epione they proudly stood behind the fantastic results of their treatments. The web page further advertised that Epione delivered optimum results and that at Epione a "written satisfaction guarantee" was offered. These guarantees and warrantees on the web page are inconsistent with the consent materials that were given to P.A. by respondent's staff prior to her treatments.

103. Respondent's care and treatment of P.A. constitute repeated negligent acts as follows:

A. Respondent's failure to perform and/or document an adequate history for P.A. constitute a simple departure from the standard of practice.

B. Respondent's failure to perform and/or document an adequate physical examination of P.A. constitute a simple departure from the standard of practice.

C. Respondent's failure to document in the medical record that he discussed the risks, benefits, or any other treatment alternatives with P.A. constitutes a simple departure from the standard of practice.

D. Respondent's website guarantees a level of satisfaction for the patient and guarantees results. The standard of practice does not allow the physician to provide any guarantee of treatment success. Respondent's advertisements regarding guarantees constitute a simple departure from the standard of practice.

E. Respondent failed to consider and/or document that he discussed with P.A. a more minimally invasive treatment to treat the scar on her nose. Respondent's acts and/or omissions in this regard constitute a simple departure from the standard of practice.

F. Respondent did not adequately follow P.A. postoperatively. Respondent's acts and/or omissions in this regard constitute a simple departure from the standard of practice.

G. The medical record does not indicate what procedure was performed on P.A., the laser wavelength, or laser used. Respondent's acts and/or omissions in this regard constitute a simple departure from the standard of practice.

104. Respondent's acts and/or omissions as set forth in paragraphs 96 through 103, inclusive, above, whether proven jointly, or in any combination thereof constitute repeated negligent acts pursuant to section 2234(c) of the Code. Therefore, cause for discipline exists.

TWENTIETH CAUSE FOR DISCIPLINE

(Patient P.A.)

(Gross Negligence)

105. Respondent's acts and/or omissions in the care and treatment of P.A. constitute gross negligence as follows:

106. The allegations of the Nineteenth Cause of Discipline are incorporated herein as if fully set forth.

107. Given the multitude of simple departures, respondent's overall care and treatment of P.A. constitute gross negligence pursuant to section 2234(b) of the Code. Therefore, cause for discipline exists.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Patient P.A.)

(Incompetence)

108. Respondent's acts and/or omissions in the care and treatment of P.A. constitute incompetence as follows:

109. The allegations of the Nineteenth and Twentieth Causes for Discipline are incorporated herein as if fully set forth.

110. Respondent's acts and/or omissions as set forth in paragraphs 109 above, constitute incompetence pursuant to section 2234(d) of the Code. Therefore, cause for discipline exists.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Patient P.A.)

(Inadequate Records)

111. Respondent is subject to disciplinary action under section 2266 of the Code in that respondent failed to maintain adequate records of his care and treatment of patient P.A. The circumstances are as follows:

112. The allegations of the Nineteenth and Twentieth Causes for Discipline are incorporated herein by reference as if fully set forth.

113. Respondent's acts and/or omissions as set forth in paragraph 112 above, constitute the maintenance of inadequate records within the meaning of Code section 2266. Therefore, cause for discipline exists.

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TWENTY-THIRD CAUSE FOR DISCIPLINE

(Patient P.A.)

(False or Misleading Advertising and/or Dishonest and Corrupt Acts)

114. Respondent is subject to disciplinary action under sections 2271, 17500 and 651 of the Code for false and/or misleading advertising, and/or dishonest and corrupt acts under 2234(e) of the Code as follows:

115. The allegations of the Nineteenth and Twentieth Causes for Discipline are incorporated herein as if fully set forth:

116. Respondent's website guarantees the patient's satisfaction with the treatment, and further advertises that a written satisfaction guarantee is offered at Epione. However, when P.A. presented for treatment at respondent's office, she was given consent forms to sign that were inconsistent with the guarantees advertised by respondent on his website. The consent forms stated that there were no warrantees, no guarantees, and no promises made with respect to the results from a treatment.

117. When P.A. inquired about the photograph of the patient that was exhibited on respondent's website during the initial consultation, respondent told her that the patient in the photograph was his patient, and that he had performed the procedure. In fact, the patient depicted on the website was not respondent's patient, and that patient's procedure had been performed by another physician.

118. Respondent's acts and/or omissions in paragraphs 115, 116, and 117 constitute false and/or misleading advertising in violation of sections 2271, 17500, and 651 of the Code, and/or dishonest or corrupt acts that are substantially related to the duties, functions, or qualifications of a physician in violation of section 2234(e) of the Code. Therefore, cause for discipline exists.

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TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Patients S.O., C.H., S.B., S.J., and P.A.)

(Repeated Negligent Acts)

119. Respondent's acts and/or omissions with respect to his care and treatment of patients S.O., C.H., S.B., S.J., and P.A. constitute repeated negligent acts as follows:

120. The allegations of the First, Second, Third, Sixth, Seventh, Ninth, Tenth, Eleventh, Thirteenth, Fifteenth, Sixteenth, Eighteenth, Nineteenth, Twentieth, and Twenty-Second Causes of Discipline are incorporated herein as if fully set forth.

121. Respondent's acts and/or omissions set forth in paragraph 120 above, whether proven jointly, or in any combination, thereof constitute repeated negligent acts under section 2234 (c) of the Code. Therefore, cause for discipline exists.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(False or Misleading Advertising and/or Dishonest and Corrupt Acts)

122. Respondent is subject to disciplinary action under sections 2271, 17500 and 651 of the Code for false and/or misleading advertising, and/or dishonest and corrupt acts under section 2234(e) of the Code as follows:

123. On or about November 2, 2004, an undercover operation was conducted by Medical Board Investigators at Epione, respondent's place of business. Investigator Sylvia Salcedo posed as a patient seeking a consultation from respondent about brown spots on her face. When Investigator Salcedo signed in at the front desk, she was given a folder which contained paperwork for her to complete, and other informational materials for her to take home with her.

124. Investigator Salcedo completed the paperwork and then returned the paperwork to the front desk. While in the waiting room, Investigator Salcedo observed a woman waiting in the back of the office whose face, neck, and chest were very red.

125. Investigator Salcedo was escorted into an examination room by an unidentified female wearing a blue uniform who advised her that someone would be seeing her shortly. Approximately five minutes later, a woman wearing a white coat entered the room and identified herself as "Roxanna," a consultant. Roxanna looked at Investigator's Salcedo's chart

and asked what she wanted to have done. Investigator Salcedo advised her that she was most concerned about brown spots on her face.

126. Roxanna told Investigator Salcedo that the Coolaser™ treatment would work for her brown spots and for the fine lines around her eyes. When Investigator Salcedo inquired about a small indentation located in the area between her eyes, Roxanna recommended the Coolaser™. When Investigator Salcedo inquired about the removal of the freckles on her chest, Roxanna recommended the Coolaser™.

127. Investigator Salcedo advised Roxanna that she was concerned about her face burning after a laser treatment. Roxanna advised her that the first treatment would determine if she could tolerate the procedure, and also how her skin reacted to the laser. Roxanna advised Investigator Salcedo that the second and third treatments are more intense and will give the appearance of being in the sun at the beach all day. Roxanna advised Investigator Salcedo that the Coolaser™ treatment consisted of three treatments.

128. Roxanna advised Investigator Salcedo that the downtime with the Coolaser™ treatment was one to two days, and that their office would provide all of the creams she would need.

129. Investigator Salcedo asked Roxanna if a patient had ever had a bad reaction to the treatment, Roxanna responded that only one patient had a bad reaction to the treatment and that occurred because the patient had cold sores and had not informed the staff or respondent about them.

130. When Investigator Salcedo told Roxanna that she had seen people who looked like burn victims after the treatment, Roxanna replied that those patients had received more aggressive treatments.

131. When Investigator Salcedo asked Roxanna about any side effects of the Coolaser™, she was informed that her skin would be red for a day or two. When Investigator Salcedo asked if she could speak to the physician to ask him some questions, Roxanna left the room, returned five minutes later, and told Investigator Salcedo that respondent was performing a procedure.

132. Investigator Salcedo was shown more before and after photos of patients who underwent the Coolaser™ treatment. She then told Roxanna that she would think about whether to have the procedure done and left the office. Several weeks later, Investigator Salcedo received a telephone call from "Vicky" of Epione who said she was following up on her visit. When Investigator Salcedo told Vicky that she would be traveling, Vicky informed her that she could put twenty percent down to hold a date since they were very busy and it could take months to get in.

133. Respondent's acts and/or omissions, and his employee's acts and/or omissions, constitute false and/or misleading advertising, and/or dishonest and corrupt acts as follows:

A. Respondent's assistant, Roxanna, informed Investigator Salcedo that the treatment with the Coolaser™ consisted of three treatments. However, during the Medical Board interview on March 17, 2005, respondent admitted that the Coolaser™ treatments are only sold in a package of "up to three treatments" and that the second or third treatment are only done if necessary.

B. Respondent's assistant, Roxanna, informed Investigator Salcedo that they only had one patient who experienced a bad reaction from the Coolaser™ treatment. This statement was false since patients S.O., C.H., S.B., S.J., and P.A. all complained of a bad reaction to the Coolaser™ treatment to respondent and to respondent's staff.

C. When Investigator Salcedo inquired about the Coolaser™ treatment burning her face because she had seen other patients who looked like burn victims, Roxanna again mislead her by stating that those patients received more aggressive treatments when, in fact, that was not true since patient S.O. was treated for first and second degree burns after her Coolaser™ treatment with respondent.

134. Respondent's acts and/or omissions as set forth above constitute false and/or misleading advertising under sections 2271, 651 and 17500 of the Code, and/or dishonest and corrupt acts that are substantially related to the duties, functions, or qualifications of a physician under section 2234(e) of the Code. Therefore, cause for discipline exists.

ADDITIONAL STATUTES

135. Sections 2052, 2054, 2262, and 2264 of the Code provide as follows:

2052 (a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

2054 (a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

(b) A holder of a valid, unrevoked, and unsuspended certificate to practice podiatric medicine may use the phrases "doctor of podiatric medicine," "doctor of podiatry," and "podiatric doctor," or the initials "D.P.M.," and shall not be in violation of subdivision (a).

2262. Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars ($500) for a violation of this section.

2264. The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.

TWENTY-SIXTH CAUSES FOR DISCIPLINE

(Patient F.L.)

136. Respondent is further subject to disciplinary action for unprofessional conduct pursuant to the following Business and Professions Code sections: 2234 (general unprofessional conduct) and/or 2234(b) (gross negligence); and/or 2234(c) (repeated negligent acts) and/or 2234(d) (incompetence); and/or section 2234(e) (dishonesty or corruption); and/or 2261(false representations in documents); and/or 2262 (alteration of medical records); and/or 2264 (aiding and abetting unlicensed practice of medicine); and/or 2266 (inadequate records); and/or 2234(a) in conjunction with 2052(a) and/or 2052(b) (aiding and abetting unlicensed practice of medicine); and/or 2234(a) in conjunction with 2054(a) (aiding and abetting misrepresentation as a physician). The facts and circumstances are as hereinafter set out.

137. On or about February 9, 2006, the Medical Board of California received information from Marc Ruiz, Special Agent, Federal Food and Drug Administration, Office of Criminal Investigations, that Dr. Ourian may be aiding and abetting the unlicensed practice of medicine. During an FDA investigation of Dr. Ourian's possible use of unapproved Botox type products, it was revealed Dr. Ourian may have aided and abetted Daniel Serrano, a registered nurse, in performing face lift surgeries at Dr. Ourian's office.

138. The FDA provided reports that documented an interview with Radka Kralik, a former employee of Dr. Ourian's at Epione Medical Corporation (EMC) from approximately February 2004 through January 2005. Ms. Kralik stated the following to the FDA:

A. She was a back office medical assistant. One of Dr. Ourian's friends was introduced to the EMC staff as "Dr. Daniel" (subsequently identified as Daniel Serrano), an Argentinian health practitioner, who did not possess a California medical license. From approximately September to December 2004, she observed, with Dr. Ourian's knowledge and consent, Dr. Daniel perform cosmetic surgeries (i.e., face lift operations) for patients. According to Dr. Ourian, it was forbidden for her or any other EMC staff member to disclose Dr. Daniel's medical license status and /or the surgical procedures conducted by him at EMC.

139. Also included with the reports was an FBI report documenting an interview with Daniel Serrano (Serrano) on March 30, 2005. The interview revealed the following, which is alleged in this Accusation as being substantially true and correct:

A. Serrano is not a licensed physician in the United States. In 2004 he became a licensed Registered Nurse in the United States. In 2004, he was introduced to Dr. Ourian through a friend. He and Dr. Ourian had a discussion regarding mesotherapy treatments. Dr. Ourian told him that he was interested in learning about a procedure called Quicklift. Serrano told Dr. Ourian that the Quicklift surgery produced amazing results within one hour and that it only required local anesthesia. Dr. Ourian and Serrano decided that together, they would perform the Quicklift surgeries at Dr. Ourian's place of business which is located in Beverly Hills. Dr. Ourian and Serrano informally discussed that Serrano would be paid forty percent of the total profits earned from Quicklift surgeries. The cost to receive the Quicklift surgery is approximately $5,000.00 to $10,000.00.

B. Serrano became aware of three individuals who were interested in having the Quicklift surgery performed on them [subsequently identified as Patients B.M., Patient A.F., and F.L. (all adult females)]. Each of the three friends went to Dr. Ourian's clinic for the surgery on separate occasions. All three surgeries were performed in or about

October and/or November of 2004, during non business hours weekdays or on Sundays. The surgeries were performed in rooms that Dr. Ourian utilized for laser treatments. On all three occasions, Serrano performed the surgeries and Dr. Ourian administered the local anesthesia. The local anesthesia was comprised of adrenaline, xylocaine 2%, and saline. All three patients, as well as Dr. Ourian, were completely aware that Serrano would be performing the surgeries, even though he was not a licensed physician in the United States. Dr. Ourian told Serrano that it was not a problem for Serrano to perform the surgeries as long as Dr. Ourian was there to supervise. The surgeries were videotaped by a young French woman who was one of Dr. Ourian's employees.

C. Serrano provided the disposable surgical equipment for the first Quicklift surgery and Dr. Ourian purchased the equipment for the remaining two surgeries. All three of the patients who received the Quicklift surgeries had pre-examinations and they all signed consent forms. These patients were not charged for their surgical procedures, in exchange for them giving consent to the videotaping. Serrano believes that the patients may have only been charged for the materials used for the surgeries. Serrano did not receive any payments from Dr. Ourian for performing the surgeries, as there were no profits made. Dr. Ourian wrote physician's notes in the patient charts for these three individuals.

D. Dr. Ourian once asked Serrano to assist with another type of surgery on one of Dr. Ourian's patients. On this occasion, Serrano performed a surgery where he removed the fat from under the patient's eye. This patient was a Persian female who Serrano was not familiar with. Serrano performed the surgery and Dr. Ourian administered the local anesthesia.

E. The "One Hour Lift" is Dr. Ourian's patented name for a laser technique that he performs at his clinic. Radiance is a product that Dr. Ourian utilizes as a cosmetic filler and it is composed of hydroxyapatite.

140. On April 4, 2006, Medical Board Investigator Jon Genens interviewed Serrano. The interview indicated as follows, which is alleged in this Accusation as being substantially true and correct:

A. Serrano met Dr. Ourian through a lady named Berk [later identified as Michele Berk]. Berk and Dr. Ourian were working together selling a skin cream. It was something from Israel to help with recovery after laser skin treatment. He met Berk approximately the year 2004 at an office on Roxbury where he was working with a woman named Julia. Berk said he would be perfect to work with Dr. Ourian because Dr. Ourian has a busy office.

B. Approximately September 2004, Berk made an appointment and they (Berk and Serrano) both met with Dr. Ourian. On his first meeting Dr. Ourian showed Serrano an Internet site on the Quicklift procedure and wanted him to work with him doing Quicklifts. They talked about the details of the operation and he explained the surgery to Dr. Ourian. Dr. Ourian knew Serrano was not a doctor in California because Serrano told Dr. Ourian he was a doctor in Argentina but not in California. He gave Dr. Ourian copies of his registered nurse (RN) certificates. Dr. Ourian said Serrano could work under his supervision because he was an R.N.

C. Serrano told Dr. Ourian that he was doing Artecoll injections and Dr. Ourian told him to stop because he could get into trouble. Dr. Ourian said he was using Radiance and it was long lasting and approved by the FDA.

D. On the second meeting with Dr. Ourian, Berk was present at least part of the time. The second meeting was approximately September or October 2004. They talked about the technical aspects of the operation. Dr. Ourian was going to be supervising him and he was going to be doing the operations. Dr. Ourian is not a plastic surgeon and he did not know how to do the Quicklift. Serrano does not know if Dr. Ourian is board certified. They operated at the same time and he had to tell Dr. Ourian what to do. They did not talk about money because they were going to figure it out after they did some practice patients.

E. Serrano and Dr. Ourian talked about operating on three to four patients, possibly on some friends, and charging just the cost of the surgery, to practice, before they did a big promotion. They operated on Patients B.M., A.F., and F.L. They did not operate on any more patients because Serrano was arrested after that. Patient F.L. was operated on for free. Patient B.M. and Patient A.F. each paid $1,000 for materials. Serrano did not get paid for operating on these three patients.

F. The first person Serrano and Dr. Ourian operated on was F.L. They operated on her on a Sunday approximately 0900 hours at Dr. Ourian's office. The second person they operated on was Patient A.F. They operated on her around 1800 or 1900 hours approximately on a Wednesday. The third person they operated on was Patient B.M. They operated on her on the Sunday before he was arrested. They operated on her approximately 0900 hours. Dr. Ourian's office was not normally opened on Sundays. The day they operated on F.L., they also operated on a Persian woman after F.L's surgery. They operated on the Persian woman to remove fat from her lower eyelids. The Persian woman was approximately in her 40's. There were no other patients on the day they operated on Patient B.M.'s mother. When they operated on Patient A.F. there were lots of other patients and Dr. Ourian's office appeared to be open.

G. On the Sundays Serrano worked at Dr. Ourian's office the only other employee was a young woman who was an assistant. Each time they worked on a patient there was only three of them involved in the operation, the assistant, Dr. Ourian and him. They always operated in the same room. It was at the end of an "L" shaped hallway after you left the waiting room. The operating room was off to the left at the end of the hallway.

141. At said April 4, 2006 interview, Investigator Genens showed Serrano a videotape of the surgeries which had been obtained during the FDA investigation. Serrano indicated as follows, which is alleged in this Accusation as being substantially true and correct:

A. Serrano recognized Dr. Ourian's office. The first tape clip showed Patient F.L. and her daughter as they walked into Dr. Ourian's office. Serrano did a mini face lift on Patient F.L. He identified Dr. Ourian wearing blue scrubs.

B. On the second tape clip, Serrano recognized Patient B.M. On the tape, Patient B.M. introduced herself. Serrano said the marking around Patient B.M.'s jaw was the antiseptic Pervinox which Dr. Ourian painted on her. The tape then shows Dr. Ourian putting local anesthetic into Patient B.M. Serrano indicated he was the one doing the cutting in the tape. Serrano indicated that he can tell the difference between him and Dr. Ourian in the tape because Serrano has his gown tucked into his gloves whereas Dr. Ourian does not. During all three surgeries Dr. Ourian was in the room with him. At approximately 5:31 of the tape, Dr. Ourian is doing the surgery. At approximately 8:00 of the tape Dr. Ourian is shown pulling Patient B.M.'s face muscle. He does not know who the person in the background is wearing the white shirt at approximately 8:25 of the tape.

C. Dr. Ourian never did the Quicklift procedure before. He was the one that knew how to do this procedure. The idea was that in the future, Dr. Ourian would put another doctor with him. Dr. Ourian was not even that interested in learning how to do the procedure. At approximately 8:52 of the tape clip, Serrano is the one doing the suturing.

D. The day he got arrested, Serrano saw Patient B.M. at Dr. Ourian's office.

142. On or about April 30, 2006, Investigator Genens further interviewed Serrano by telephone, which indicated as follows, and which is alleged in this Accusation as being substantially true and correct:

A. Dr. Ourian sent Serrano's tools to sterilize before each surgery. Dr. Ourian still has his surgery tools. They are in a silver colored, metal box. Among the tools in the box are scissors, a half tel which are used to retract tissue, a large and small portable needle for stitches, and two separator tools. The last time he spoke to Dr. Ourian was when he did Patient B.M.'s surgery.

143. On or about January 19, 2007, Investigator Genens further interviewed Serrano by telephone, which indicated as follows, and which is alleged in this Accusation as being substantially true and correct:

A. The Quicklift procedure was only for the face. A local anesthetic was administered which consisted of Lidocaine 2% with saline solution and epinephrine. An incision was made in front of the ear at the hair line and brought around, to approximately one to two centimeters, behind the ear. The whole incision is approximately eight to ten centimeters (approximately four inches). The incision was made with a number 15 scalpel. The incisions were made on both sides of the face. After the incision is made you separate the skin from the muscle working about two inches towards the nose. Using an electric coagulator, any vessels that are bleeding are coagulated. A nylon 2-0 thread was then attached to the zygomatic periosteum. The nylon thread was advanced towards the nose by weaving back and forth through the smas (a muscle covering). The nylon is advanced to the nose approximately two inches in a "C" or a "U" shape. The end of the thread is then attached to the beginning. The thread is then pulled and it pulls the muscle up. The excess skin that is created because of this is cut away from the whole length of the incision by the ear. A number 15 scalpel is used to cut away this excess skin. The incision by the ear is then reattached using a 5.0 thread.

B. Serrano did the Quicklift procedure on Patient B.M., Patient A.F. and Patient F.L. On all three of these patients, Dr. Ourian did the anesthesia infiltration. Serrano made all the incisions from the front of the ear to the back of the ear. Both Dr. Ourian and Serrano separated the muscle from the skin. On all the patients, Dr. Ourian mostly did the coagulation. On all three patients Serrano threaded the 2-0 nylon thread and did the attachment to the zygomatic periosteum. On all three patients Serrano advanced the thread to the nose in a "C" or "U" shape. In all three patients Serrano attached the end of the thread to the beginning. In all three patients Serrano pulled the thread to pull the muscle up. On all three patients Serrano cut off the excess skin.

C. Dr. Ourian was present during the majority of the time during all three procedures. He may have gone in and out a couple times. There was a nurse in the room with them. Dr. Ourian was very clear that Serrano could not operate without being supervised by a physician because he was an R.N. Dr. Ourian said that because he was a physician he could supervise Serrano and Serrano could do the procedures under his supervision which would be legal. Otherwise Serrano did not need Dr. Ourian and he could do the procedures himself.

D. Serrano did not tell Dr. Ourian that he, Serrano, was being supervised by another physician. Dr. Ourian knew Serrano was working at another place doing mesotherapy and injecting substances like Restylane. The first meeting Serrano had with Dr. Ourian was the one where Berk was with them. They met at Dr. Ourian's office.

144. On February 7, 2007, Investigator Genens received three e-mails from Serrano containing digital photographs of Patient A.F., Patient B.M. and Patient F.L. The pictures were taken by Serrano with his digital camera. He gave the pictures to Dr. Ourian's secretary who downloaded them from his memory stick. Dr. Ourian's secretary later sent the pictures to him by e-mail.

145. On November 3, 2006, Investigator Genens interviewed Radka Kralik. Kralik indicated, *inter alia*, the following, which is alleged in this Accusation as being substantially true and correct:

A. Kralik worked at Dr. Simon Ourian's office as a back office medical assistant for approximately one year, from February 2004 to January 2005. Her duties included taking patients in, checking the medical supply inventory, assisting nurses and doctors with laser operations and cream applications, and storing pharmaceutical drug products such as Botox and collagen. Dr. Ourian's office was known as Epoine Medical Center and was located at 436 North Bedford Drive, Suite 304 in Beverly Hills. She was introduced to Dr. Ourian by Jana Kramer, RN at a Christmas party in 2003.

B. Kralik knew Serrano only as "Dr. Daniel." She saw him only a few times in the last month or two before she stopped working for Dr. Ourian. She did not know

what Serrano's title was at the office. She thought Serrano was a medical doctor. She was never formally introduced to Serrano. She knew him through the office staff. She heard from the office staff that Serrano had a medical degree in another country, possibly somewhere in South America. She knew Serrano did not have a California Medical license because she overheard a conversation in the office between staff members. She does not remember who the staff members were but she is sure it was not Dr. Ourian. Also, Dr. Simon Ourian personally told her, in his office, that it was forbidden for her or any other EMC staff member to disclose Serrano's medical license status and/or the surgical procedures conducted by him at EMC. She did not ask why she could not disclose this information about Serrano but it was her opinion that she could not tell anyone because Serrano could not practice medicine in the United States and it was wrong for him to do this.

C. Kralik personally saw Serrano doing a face lift operation at Dr. Ourian's office one time. She was in the room when Serrano was doing a procedure on a female patient. She was in the room for approximately 30 minutes. She was there just because she wanted to see the procedure. She did not arrange it with anyone ahead of time, she just walked in. She believes Rana, a consultant, or another clinic consultant may have been there too. Dr. Ourian was also in the room. This occurred possibly within the last three months she was employed at Dr. Ourian's office. She saw Serrano lift the patient's face up. Serrano was definitely in charge of the operation because he was performing the surgery. As far as she could tell, Dr. Ourian was not performing the surgery.

D. Kralik is aware of Serrano operating on more people than the time she saw him though she did not personally witness any of those occasions. She knows of additional operations because she heard the office staff talking about it.

E. Dr. Ourian did not perform face lift operations on patients before Serrano started working there. Serrano was performing a regular face lift. She did not believe Serrano had an office at another location.

146. On December 8, 2006, Investigator Genens spoke to attorney Peter R. Osinoff, Esq., of Bonne, Bridges, Mueller, O'Keefe & Nichols, by telephone. Osinoff, who was representing Ourian, stated the following:

A. Dr. Ourian told Osinoff that Serrano was merely using Dr. Ourian's facility. Serrano was not an employee and did not receive payment from Dr. Ourian. Serrano was under the supervision of another physician. Dr. Ourian has no standardized procedures for Serrano. Serrano's patients were not Dr. Ourian's patients. Dr. Ourian has no medical records for the procedures Serrano did. Dr. Ourian did not participate in the procedures Serrano did. Dr. Ourian went in to observe Serrano's procedure on Patient B.M. several times, at Serrano's request.

147. On January 12, 2007, Investigator Genens received a letter from attorney Osinoff dated January 10, 2007 regarding Dr. Ourian's relationship with Serrano. Mr. Osinoff wrote:

> "Dr. Ourian did not employ Serrano in any capacity: therefore, he does not have any employment records for Serrano. Nor does Dr. Ourian have any records of payments to or from Serrano, nor any correspondence or other documents pertaining to Serrano's work. Dr. Ourian briefly allowed Serrano to use his facility. Before doing so, Dr. Ourian contacted other physicians in whose offices Serrano had worked, including a Dr. Matlock, and was not advised about any problems involving Serrano. Further, Serrano himself showed papers to Dr. Ourian, including a letter from the Medical Board of California, indicating that Mr. Serrano could perform certain procedures, including suture lifts. Dr. Ourian did not have an R.N. standardized procedure for Serrano (Dr. Ourian had such a document for his own employees). Dr. Ourian was never Serrano's supervisor; Dr. Ourian spoke with the physician who supervised Serrano when he agreed to allow Serrano to use his premises. Serrano performed a procedure on [Patient B.M.] in a room in Dr. Ourian's office. Dr. Ourian was called into the room by Serrano on several occasions during that procedure on [Patient B.M.]. However, Dr. Ourian did not perform the procedure, and was not Serrano's supervisor. Serrano was simply using Dr. Ourian's facility, and the facility fee was paid directly by the patient, not by Serrano.
>
> "In addition to [Patient B.M.], Dr. Ourian believes that Serrano performed a procedure on [Patient A.F.]. Dr. Ourian does not have any medical records concerning the procedures performed on any patients by Serrano. Nor does Dr. Ourian know the names of any other patients, if any, upon whom Serrano performed medical procedures at Dr. Ourian's office. These were not Dr. Ourian's patients; he did not know them. Based on the papers shown to Dr. Ourian by Serrano, and the discussions that Dr. Ourian had with Serrano's supervising physician and other physicians in whose offices Serrano worked, Dr. Ourian allowed Serrano to use his office space. That use of Dr. Ourian's office space only

lasted for a brief time. Dr. Ourian's relationship to Serrano involved sharing space, rather than any employer-employee or supervisor-supervisee relationship.

148. On June 19, 2007, Investigator Genens interviewed Dr. Ourian at Osinoff's office located at 3699 Wilshire Boulevard, 10th Floor in Los Angeles. Also present was Adrian Panton, Deputy Attorney General, and Michael A. O'Flaherty, Dr. Ourian's personal attorney and Osinoff. During said interview, Dr. Ourian represented or allowed to be represented, *inter alia*, the following:

A. Dr. Ourian is not board certified. His specialty is cosmetic, non-surgical enhancement. His current address is 444 North Camden Drive in Beverly Hills. It is not a surgery center and is not licensed or accredited as a surgery center. He has been at the address for over a year. Before that he was at 436 North Bedford Drive, Suite #304 in Beverly Hills. He was at that address since approximately 1999. The office on Bedford Drive was not an accredited surgery center.

B. While he was at the Bedford location, other physicians used Dr. Ourian's facility. The other physicians would pay for the use of his facility. The financial arrangements were on a per case basis. Some doctors would pay a monthly set fee and some doctors paid a per use fee for a half a day or a full day. There was no set fee for a monthly basis. It was based on the doctor's use, what they were going to bring to his office and what the doctor was going to do. Approximately five to ten doctors used his facility per year. Depending on the doctor, they brought their own nurse, equipment, and the things they were going to use. If they needed something they did not bring they would ask the facility for assistance. Most of the doctors that came in used his facility for consultations so there was not much of a need for equipment or instruments. If they needed to use equipment, he would let them use whatever equipment they needed. The initial contact a patient from an outside doctor would have would be with his front desk.

C. Dr. Ourian does not recall renting his facility out to other health professionals like physician assistants, nurse practitioners or registered nurses like he would do for physicians. According to Osinoff the only exception to that was Serrano and

that was a supervised arrangement with another physician. Dr. Ourian said his Bedford facility had approximately ten rooms, there was a front space where patients would check-in and a back entry for patients who did not want to be seen by others, it was a more private entry. There were rooms all the way to the end of the office and each room had a number and a designated use. Some rooms were solely for seeing patients and consultations, things that were quick, injections or quick treatments that would be no more than five or ten minutes and did not require the patient to stay in the room for a long period of time. There were two procedure rooms that were for procedures that would take longer than a half hour. He does not remember the room number of the procedure rooms.

D. Currently Dr. Ourian only performs injectables, lasers and ultrasound procedures. When he was at the Bedford facility that was the case as well. He would do those procedures on the body and face of patients. He did not perform procedures under general anesthesia. He performed procedures under local anesthesia at the Bedford facility. By local anesthesia he means nerve block or an injection to numb that area or topical anesthesia. He was not using regional blocks. Before he performed a procedure under local anesthesia, he would obtain a consent form from the patient. Every patient who enters into his office, regardless of what they are going to end up doing and regardless of who they are going to see, has to have the basic paperwork filled out. The basic paperwork is an information sheet or basic questionnaire that the patient fills out, a consent form for him, his staff or anyone in the facility to see the patient, an arbitration form, HIPPA form, a release if they have had contact with their facility before, and a cancellation policy. It is a packet that the patients sign. They have everyone sign the paperwork first and if they end up not becoming their patient they just keep a shadow file on them. The paperwork he provided to Investigator Genens for the three patients requested were shadow charts except one of the patients subsequently became his patient sometime after the events with Serrano.

E. Investigator Genens asked Dr. Ourian if he regularly took before and after pictures of the patients. Osinoff interjected that he would not like Dr. Ourian to answer

the current line of questioning that seemed to be off point with the matter specifically relating to Serrano. Investigator Genens explained to Dr. Ourian that Serrano alleged Dr. Ourian had taken part in the procedures and that Investigator Genens was trying to differentiate paperwork that would have regularly been filled out by Dr. Ourian as opposed to paperwork Serrano would fill out. Mr. Osinoff said that Dr. Ourian observed but was certainly not assisting in any of Serrano's procedures and did not maintain any medical records because these were not his patients at that time.

F. Investigator Genens showed Dr. Ourian the letter Osinoff sent Genens, dated January 10, 2007. Osinoff said that Dr. Ourian had not previously reviewed the letter so Investigator Genens asked Dr. Ourian to review the letter. Looking at the sentence that said, "further, Mr. Serrano himself showed papers to Dr. Ourian, including a letter from the Medical Board of California, indicating that Mr. Serrano could perform certain procedures, including suture lifts," Dr. Ourian believes this was from the Board of Registered Nursing, not the Medical Board of California. The rest of the letter appeared to correct to Dr. Ourian. The document from the Board of Registered Nursing that Serrano showed him listed what registered nurses could do under the supervision of a physician. He remembers that registered nurses could do sutures, remove sutures and do injections. It was a very extensive list. It was a computer printout and Serrano took the document back. When Dr. Ourian first met Serrano, Serrano had a big binder that had a lot of before and after pictures in it.

G. Dr. Ourian met Serrano approximately mid to late October 2004. Berk introduced him to Serrano, as Dr. Daniel. That meeting took place in his office. Berk told him that she knew a very skilled doctor who wanted to rent space and wanted to know if he would be interested in meeting him. During the first meeting with Serrano, Serrano explained his training and background. Serrano showed him paperwork that showed he was a plastic surgeon from Argentina. Serrano showed him his M.D. continuing training he received while training in California, and he showed him his registered nurse degree. Serrano had a lot of before and after pictures of patients he had done and a lot of letters

from different doctors who had praised him, letters from patients, licenses he had from different institutions, and documentation that he was a training instructor for a suture company.

H. At the time of the first visit, Dr. Ourian represented he did not know that Serrano was only licensed as a registered nurse in California. Slowly Serrano let him know that he was trying to get his Board certification in California, that it may take a few more months, but in the mean time to be able to perform the procedures that he has been doing, he has obtained the registered nursing license and with that he can do almost everything except for the face lifts or breast augmentations. However, he said he had performed a lot of procedures in different doctors' offices and had very good results.

I. The suture lift was the subject Dr. Ourian discussed with Serrano. The suture lift or a variation of it was the procedure Serrano wanted to do on patients he brought to his facility. Dr. Ourian does not remember what Serrano called it. They talked about the actual procedure not the name. There are many different names for it such as suture lift, contour lift, thread lift, suspension lift, minimally invasive lift, mini face lift and Quicklift. He has heard it many different ways and it is the same thing. Every doctor develops their own minor adjustment of the procedure. Investigator Genens read Dr. Ourian the description of the Quicklift procedure which Serrano had given Genens on January 19, 2007. Dr. Ourian said that was not the description of the procedure that he and Serrano had discussed.

J. Dr. Ourian said the Quicklift is done by specialty threads that are barbed. As the barbed sutures are placed underneath the skin, they are tagged up and the tension the thread creates underneath the skin lifts the skin up and keeps the skin back tight. The suture itself comes with the needle attached to it. The needle and the thread are thread underneath the skin, tagged, and pulled up. The thread stays there and the skin is pulled back up. It was his understanding that Serrano was not using a scalpel in his procedure.

K. They (Dr. Ourian and Serrano) did not reach an agreement about Serrano using his facility after the first meeting. He had some subsequent telephone calls with

Serrano. During the subsequent telephone calls he asked Serrano to give him the names of the doctors he was working with. Serrano provided him with a few names he could use as a reference and one doctor who would be supervising him. The references were "Dr. Matlock," and another doctor working at Rodeo Surgery Center, who he does not remember the name of, "Dr. Isse," and "Dr. Michelson." "Dr. Michelson" worked with Serrano at one or more surgery centers in Beverly Hills. One surgery center may have been in Glendale or Burbank. His understanding was that "Dr. Michelson" was Serrano's supervisor.

L. "Dr. Michelson" was in Dr. Ourian's office briefly but he did not see him. He was seeing patients and "Dr. Michelson" could not wait any longer. "Dr. Michelson" was with Serrano and asked Dr. Ourian to call him back. He called Michelson back. Michelson was a younger guy and just finished a residency in ENT. He praised Serrano and said Serrano was a very capable doctor. He said Serrano had done treatments with him before and he has watched Serrano do treatments and he felt very confident that it would be a great place for them to start working. He said they needed to get a place for now on a short term basis and if everything worked out, they wanted to open multiple offices. "Dr. Michelson" said Serrano was working under him. "Dr. Michelson" did not use the word supervisor but that is the impression he had. He had a separate conversation with Serrano who said he was working under "Dr. Michelson."

M. Dr. Ourian represented that he never supervised Serrano. He observed Serrano. He was not nurse Serrano's supervising doctor. He observed Serrano's procedure on two or three patients. Investigator Genens read the names [Patient B.M., Patient A.F. and Patient F.L.] but Dr. Ourian indicated that he did not remember which ones he had observed. Serrano was performing procedures in his (Dr. Ourian's) office and Serrano called him in to see how things were going. Dr. Ourian was interested to see how things were done and he wanted to know what was going on. Serrano never assisted him in any medical procedures. Outside of his observing, he never physically assisted Serrano in doing a medical procedure.

N. Dr. Ourian represented that his agreement for the use of his facility was with "Dr. Michelson," not Serrano. They were supposed to pay but they made arrangements that the patients were going to pay him directly. The patients paid for the use of the facility directly instead of the patients paying Serrano and "Dr. Michelson" and then them paying him. His agreement with "Dr. Michelson" was a verbal agreement. They were in a very preliminary stage about reaching any sort of a conclusive agreement.

O. Patient B.M. was then discussed. This patient did not subsequently become his patient. The patient information for Patient B.M. is a shadow chart. The shadow charts are kept with the rest of the medical records. Shadow charts are physically no different from a regular chart. A lot of patients walk into their office but in order to get anything they have to fill out paperwork. If a patient does not receive a procedure in their office they are called a prospect patient and a preliminary chart is maintained. The prospect patients and the shadow chart patients are all grouped together, meaning nothing has been done for them. When an outside physician generates paperwork, it does not end up in the shadow chart. They want to maintain a minimum record to show if someone was in the office or not. It was legal advice that had been given to him to keep some records on anybody who comes into the office. The shadow charts would have been kept for those five to ten outside physicians who rented space at his office. Regardless of who saw the patient or even if the patient saw someone or not, they would ask the patient to fill out the paperwork. Osinoff said this was for liability reasons if someone said they tripped and fell. Dr. Ourian does not have any of the treatment records for other doctors.

P. On Patient B.M.'s chart, looking at a record dated June 27, 2005 with what appears to be "I/U W/Drs-", written at the bottom, Dr. Ourian said it is a cover sheet on the file. He does not know what the writing at the bottom says and it is not his handwriting. Looking at the consent form for Patient B.M. dated November 7, 2004, Dr. Ourian said it was a standard consent form from his office. It was not typical that an outside physician would use his office's consent form. This consent form is part of the packet of information that all perspective patients coming into the clinic would fill out.

He does not know who obtained the consent dated November 7, 2004. He does not remember if he witnessed Patient B.M. sign the consent. Looking at a prescription note from Inland Region Medical Group dated October 28, 2004 that says patient okay for surgery under local anesthetic, Dr. Ourian said he did not recognize the doctor's signature at the bottom. Dr. Ourian said he asked "Dr. Michelson" and Serrano to have everything done, he wanted things done right, and before their patients came in he needed to see their paperwork. Because he did not have any prior relationship with them he wanted to make sure everything was done right before he said they were on their own and they could bring patients in. In their contract it says if you bring a patient that requires treatment and the treatment requires preauthorization, the treating physician is responsible to make sure that happens. This was something they were responsible for and he told them in general terms he did not want them to see patients until everything is done right. They ask the outside physicians to make sure all the presurgical forms and authorizations are done prior to the patient coming to their facility. He does not remember if he requested "Dr. Michelson" and Serrano to obtain blood tests but it is up to them to get the right documentation.

Q. Serrano performed a thread lift or suture lift on Patient B.M. It was what he had described before. Looking at the form dated November 8, 2004 with Patient B.M. written at the top, with squares blacked out, Dr. Ourian said the $1,000 was the facility fee. He suspects the paper is filled out by the accounting department. Where it says neck lift, he supposes that was the general area where the procedure was done on the patient. Investigator Genens noted that many of the forms were filled out on Sunday, November 7, 2004. Dr. Ourian said his clinic used to be open on Sundays. He was there on Sundays from 9:00 a.m. to 7:00 or 8:00 p.m.

R. Dr. Ourian represented that no one was assisting when Serrano was doing Patient B.M.'s procedure. Serrano just asked him if he wanted to see what was going on and he entered and Serrano was proud of what he was doing. He was called into the room several times. He also went into the room without being asked as well. He does not have an approximation of the total amount of time he was in the room. The procedure lasted

more than an hour. He went into the room to observe. When he went into the room, he had gloves, a mask, and a gown on. When he was observing, he did not manipulate or use thread, needle or medical instrument on Patient B.M. He was more concerned to see how things were done and what was going on. Osinoff stated that at each of these procedures, Dr. Ourian was anticipating "Dr. Michelson" to be present. He expected "Dr. Michelson" to be present at each of the procedures because Serrano told him he was going to be supervised and he was going to have "Dr. Michelson" come in and be there. Serrano did not ask Dr. Ourian to assist him in any way. It was a one man job. He was doing it by himself. He was taking the roll of explaining things to Dr. Ourian. He was proud of the way he was doing it and he was explaining it like a professor would explain how things are done. Dr. Ourian had not done a suture lift of this precise technique that Serrano was using but he had done a suture lift before.

S. Dr. Ourian represented that if Serrano ran into a complication he would be able to take over or assist. The basics of the suture lift are the same. The most specific part of the procedure was the type of thread Serrano was using. That is what made it different and also the technique that was unique to Serrano. Serrano's claim was that he knows this magical technique that nobody else has done before and he is good at it and that is why he is doing it. He explained it as a technique he learned in Argentina. Serrano used a lot more sutures than he did. Serrano manipulated the sutures more underneath the skin. From where he was standing, which was on the other side of the head, it seemed like Serrano was pulling the sutures a lot more and tightening it more. Very early on through the procedures he decided he was not going to learn how to do this, it was not his forte. He was just going to watch it, and stop his relation with this as quickly as possible. He was not there trying to learn a lot more, he just wanted to finish this and end it peacefully and move on. Patient B.M. was not the first patient done. Osinoff interjected that this was not the first time that "Dr. Michelson" was supposed to be there and did not show up. The same day that Patient B.M. had her procedure, Patient A.F. had a procedure as well.

T. Dr. Ourian said he was not there for the consent or the prework up of Patient B.M. He was there to observe to make sure that everything went well. His plan was to sever any kind of relationship with Serrano and he just wanted everything to end in peace and without any harm done. He was there to do his best to make sure everything took place okay. He had met Patient B.M. briefly in a hallway, just saying hi before he saw her on the day of the procedure.

U. Patient A.F. was then discussed. Originally he met Patient A.F. through Serrano. Subsequently, months later, she came back and asked him if he could do Botox and laser treatments and she became his patient at the practice. Looking at the December 8, 2004 note titled *Procedure Note For Botox Injection*, Investigator Genens noted it said pictures were taken, but Genens received no pictures. Dr. Ourian said they had an old computer system and at some point it crashed. They would have taken a picture at that point but the reason the pictures are not in the chart is it may still be in the computer.

V. The packet of information that the patients fill out are in Patient A.F.'s chart and are dated November 10, 2004. His Botox treatment of Patient A.F. was December 8, 2004. Serrano knew this patient very closely and that is why she came into the practice. He cannot tell if November 10, 2004 was the date Serrano did his procedure. The paperwork was merely filled out when the patient walked into his office and does not reflect the date of the procedure. He does not have an independent recollection of this patient. He remembers two days in which Serrano provided treatment to patients. The second time Serrano did a treatment at his office, which was the last time, he told Serrano he could not do procedures in his office anymore. This was also the second time that Serrano's supervisor did not show up. He never assisted Serrano in doing any medical procedure on Patient A.F.

W. Patient F.L. was then discussed. Berk was the one who introduced them. Dr. Ourian represented that Patient F.L. was "Dr. Michelson" and Serrano's patient, not a patient of his. It was his understanding that each one of these patients was a patient of "Dr. Michelson" not Serrano, except that a month or two months later, Patient A.F.

became Dr. Ourian's patient. He does not remember if he was present when Patient F.L. was consented. Serrano performed a suture lift on Patient F.L., the same as for the other patients being discussed. Patient F.L. was the first case. He was in and out of the room when Serrano was doing the procedure on Patient F.L. The procedure lasted over an hour. He does not have an approximation of how long he was in the procedure room. He went into the procedure a few times and watched and came out and went in again and watched but he does not remember if it was on Serrano's request or if he just walked in to see what was going on. When he went in he was wearing a mask, gloves, and a gown. Serrano did not have any objections to him going in the room.

X. Dr. Ourian represented that he had not met Patient F.L. prior to the date of her procedure. By looking at the records for Patient F.L., he cannot tell when the date of Patient F.L.'s procedure was. When he was observing Patient F.L.'s procedure, he did not inject her with anything, use a needle and thread or use medical equipment. He did pick up the thread to examine them. He did not apply the thread to the patient. He looked at the needle and thread both before and after the thread went into the patient. He was not using the thread to medically manipulate the patient's face.

Y. Dr. Ourian represented that he does not know if Serrano video taped any of his procedures on the three patients we discussed. He does know that Serrano took before and after pictures. He would not video tape procedures. He does not remember a video or remember consenting Patient B.M. or Patient F.L.

Z. Investigator Genens brought a video camera which he had digitally recorded a copy of the tape which he obtained from the FDA on April 3, 2006. Investigator Genens showed the video to Dr. Ourian on the video camera's monitor. After he showed the video to Dr. Ourian, Dr. Ourian said he still did not have a clear recollection of what was going on. Based on his recollection his core involvement was to create a peaceful situation for the patient to be taken care of and then to tell Serrano they would not be working together anymore. The name Roxanna was heard in the video. Dr. Ourian said Roxanna used to work for him and her last name was Borani (phonetically

spelled). She was a medical assistant. He does not remember if she took any of the video. He had a French woman that worked for him named Natalie. He does not remember Natalie's last name. Natalie was a medical assistant that does not work there any longer. He does not recall if he introduced Serrano to employees at his office. He did not have a conversation with his employees in which he told them not to discuss Serrano working at his office.

AA. Osinoff said that from the video, he could see participation by Dr. Ourian in the procedures from the time of consenting the patient, to the time of aftercare instructions, and to being there and interacting with the patients. In the second tape clip, he could see Dr. Ourian was there intraoperatively. He could see a licensed physician much more involved in the patient care from beginning to end from the clips viewed. Dr. Ourian is doing the presentation of what is happening. Dr. Ourian said Serrano's point was that his technique was so much more superior than any other technique out there that he was showing him how to do things that other doctors do not do. Osinoff interjected that it would be like a drug company representative showing a surgeon different techniques and how to place things. Dr. Ourian said Serrano told him he was an instructor for the suture lift company.

BB. Dr. Ourian then indicated that he wanted to clarify a comment he made. After the two occasions that Serrano worked at his office, he told Serrano he did not want him to work there anymore and he did not want him to come to his office. Because Serrano had developed some friendship with some of the employees, he told the employees that Serrano was not working with or for him or with the office and he was not part of the practice and asked the employees not refer to him as Dr. Daniel. Three or four weeks later Serrano was indicted.

149. On March 29, 2007, Investigator Genens completed a transcript of the video tape obtained by the FDA on March 28, 2006 showing Serrano and Dr. Ourian performing medical procedures on Patients F.L. and Patient B.M. This video was obtained by the Medical Board on April 3, 2006. Excerpts from videotape as it relates to Patient F.L include the following:

Video showing Dr. Ourian's office starts at 35 seconds into the video. The approximately 35 seconds of video before does not relate to this case.

Michele Berk and (Patient F.L.) are shown walking through a door.

Serrano: Hello, how are you?

Berk: (Unintelligible) We're excited.

Patient F.L.: Excited, I'm excited.

(Berk and Patient F.L. talking over each other).

Berk: Even more gorgeous today

Patient F.L.: Oh yes, I'm so happy here. This was arranged for me and I'm just excited and I know everything will be fine. I'm not nervous at all.

Berk: And we're going to be sisters. Right? You're going to look so fabulous.

Serrano: That's going to be great, so come over to the office.

Patient F.L.: Sure.

Berk: So follow the doctor. Right. Straight ahead.

(At 1:21 of the tape Dr. Ourian is seen in blue scrubs and Patient F.L. is resting in a reclined position with her head on a pillow.)

Ourian: Do you need more light or are you okay?

Serrano: No that's okay.

Ourian: (Unintelligible) how are you today?

Patient F.L.: I'm sorry. Doctor I'm fine.

Ourian: Okay good.

Patient F.L.: I know I'm in good hands.

Ourian: Okay good. What we are going to be doing is that, uh, as you understand we gonna tuck this in a little bit higher up where you are, where you showing a little bit of sagging on your face and this is hopefully a fairly quick procedure. And what we are going to do is that we are just going to take away some of the extra skin here and bring it back up. And if you lean forward, what we will be doing is that we going to pull this area up and kind of give you the, that, this look, that is just kind of pulling all this skin from the bottom and bringing it up, all here. And, uh, it is, we are going to numb you so you are going to be awake. As you understand this is

a very quick procedure. We are going to be doing some training on today so a lot of this we may stop and talk on the camera because we want to have other doctors learn from this method also and at the same time you'll be aware and awake and you see what's going on. If you have any questions (unintelligible) you can raise your hand, we stop and we can talk. It's kind of like, it's very similar to having been to a dentist office.

Patient F.L.: I see.

Ourian: Okay?

Patient F.L.: uh hmm.

Ourian: Alright, do you have any more questions for us?

Patient F.L.: No.

Ourian: Okay.

Patient F.L.: Sounds great.

Ourian: Alright then Pat, all the consent forms are already signed. You have, you ready to go, you gonna get started in a few minutes. Just go ahead and relax.

(2:54 - 2:55 shows an unknown male).
(2:55 - 3:02 is a still picture of Patient F.L.).
(3:03 - 3:04 shows an unknown male and then Serrano talking on the telephone).

(3:05 - 3:11 is a still picture of Patient F.L. with a small picture of Patient F.L. held to the side of her face. I recognize the picture held to the side as the same picture labeled Picture 291 in attachment #30. This picture was seized from a digital camera, during a federal search warrant of Daniel Serrano's car, on November 17, 2004.)

(3:12 - 3:13 shows Serrano talking on the telephone).

(3:14- 3:17 shows a close up of the picture held by Patient F.L.'s face.)

(3:18 Dr. Ourian is shown in scrubs and a Patient F.L. is shown laying down.)

Ourian: So, how the procedure is done, we have we do the treatment around the eye, around the face, if you can come a little bit closer, we gonna show the area how the area here got tightened in the neck very nicely. We made a small incision around the ear, this is larger than what we normally would, but because she had, uh, Chloe had so much extra skin, we actually pulled off the neck very nicely. If you could sit up right now. Chloe also if you can tell me did you have any pain during the procedure?

Patient F.L.: No pain whatsoever.

Ourian:	Good.
Patient F.L.:	Didn't feel a thing.
Ourian:	Good. And we did this under local anesthesia, we just numbed the area, we also removed some of the moles around her eyes so those are going to fall off in the next few days.
Patient F.L.:	Oh, that's great.
Ourian:	Yep. And the next is going to tighten up. All the sutures are inside so we don't need to remove anything, uh, the area that you have a little bit of a excess blood is going to fall off and this other side is also very nicely done, it's going to be a very nice improvement here to. Go ahead open your mouth. Okay, very good. You are going to be numb for the next few days and the swelling will come down. The biggest most important area is the jaw line that is going to be very nice and even and we are going to get rid of this fat in here too. And that's it, how are you feeling?
Patient F.L.:	I feel wonderful.
Ourian:	Good.
Patient F.L.:	I'm so happy it's done. And . . .
Ourian:	Good.
Patient F.L.:	I was in good hands.
Ourian:	Let me (unintelligible) give you the mirror to look at also.
Patient F.L.:	Oh my goodness. I look so much younger. Oooh. Hooray.
Ourian:	It's going to look so much better.
Patient F.L.:	Yes.
Ourian:	As time goes by. And I will see you again in the next few days to make sure that it has all gone well. We're all set.
Patient F.L.:	Thank you, thank you doctor.
Ourian:	Your welcome. You can take the (unintelligible) off and we'll be all set to go.
Patient F.L.:	Okay, wow. I feel great.
Ourian:	You'll be all set to go.
Patient F.L.:	Okay.
Ourian:	I will need to see you again in a couple days then.

Patient F.L.: Okay, I'll be back.

(Dr. Ourian and Patient F.L. are shown walking down a hallway to the front desk and talking but the conversation cannot be heard. The tape ends at 5:54).

150. Excerpts from videotape as it relates to Patient B.M. include the following:

The next video segment shows Patient B.M. at approximately three seconds into the video clip.

Serrano: Hey, how are you?

Patient B.M.: Great . . .

Serrano: Come over.

Patient B.M.: excited.

Serrano: Excited?

Patient B.M.: Yes.

Serrano: Take a seat.

At 45 seconds into the tape Patient B.M. is seen with her head covered in a plastic cap.

Patient B.M.: Hey, my name is [Patient B.M.]. I am 54 years old.

Ourian: We are going to be, today we gonna do the one hour face lift. It's going to be basically getting some of the skin around this area, pulling the muscle from the neck up and lifting it back and up which is the exact direction of how a person ages. We age as the skin goes down and also we get more sunken and hollow. This is what we are going to try to correct, this is a tiny little procedure today. It is done by cutting a tiny little line around your ears, side of ear and pulling your muscle (unintelligible). Now I just want to make sure you understand because of the fact this is an educational program we are going to be talking and there is going to be a lot of

Patient B.M.: That's fine.

Ourian: talking back and forth (unintelligible) testing (unintelligible)

Patient B.M.: That's fine.

Ourian: We will be talking back and forth. It is a very successful procedure and we talked about some of the risks and benefits. The risks are sometimes swelling, you be a little bit more bruised for a few days, there's always like any other procedure, there's always a chance of infection, nerve damage, and all that, it's extremely rare, but because of those we take a lot of different precautions, mainly we are going to put you on antibiotics, we sterilize the area to make sure you not going to have any infection and to make sure that you are not going to have nerve damage we are going to avoid all the

areas that, you know, are closer to the chin. So you may not get a complete chin tightness, and that's because we don't want to get too close to this area where the nerve roots come out of so that's something to

Patient B.M.: Will these lines be gone?

Ourian: Most likely ya, because of the fact we gonna pull this back, these lines are going to be gone. One more thing that I normally recommend for people for who get this procedure done is to do a cool laser which is getting rid of the discoloration under the eyes and also getting rid of some of the lines around here we can fill it up with Radiance or something lasts around five to ten years.

Patient B.M.: Oh, okay.

Ourian: So those are all options. Now if you're ready, we're gonna get started.

Patient B.M.: Okay.

Ourian: Okay.

(At approximately 2:52 of the tape Ourian is shown with a glove on his right hand putting something on Patient B.M.'s face, who is laying down).

Patient B.M.: My I feel happy that you give such a nice shot.

Ourian: It's gonna feel even better (Unintelligible).

(At approximately 3:15 of the tape, Dr. Ourian is shown with both hands gloved and giving an injection into Patient B.M.'s face).

Ourian: (Unintelligible) yet?

Patient B.M.: A little bit.

Ourian: It's getting better.

Ourian: Daniel, do you wanna, do you want me to mark the nerves just for the mandibular nerves just

Serrano: (Talking over Ourian) Okay, just a little for the nerves ya. If your going to mark it.

Ourian: Ya, just because if do we stretch the skin I think before I stretch it I want to make sure it's all

Serrano: What's your name?

Roxanna: Roxanna.

Serrano: Roxanna. You gonna help me Roxanna also, okay?

Roxanna: Sure of course.

Serrano: So, can you open one of this so you have to open the outside without touching the inside.

Ourian: How are we doing?

Patient B.M.: I'm doing great. Are you still giving me shots?

Ourian: Ya.

Patient B.M.: Wow. (Unintelligible).

Ourian: It's mostly for the anxiety, not for the pain cause (unintelligible) sometimes.

Patient B.M.: Ya, well I meditate and teach people how do guided imagery. I taught at UCLA.

Ourian: Okay, now you have to move a little bit.

Roxanna: Okay.

Serrano: Just stop with it.

At approximately 5:03 into the tape someone is manipulating a flap of Patient B.M.'s skin by her ear.

Serrano: Okay.

Ourian: Good. So now what you can see here is that we are we're underlying the skin here (unintelligible) come to this other side.

Serrano: You can come here.

Female voice: I'm coming, I'm coming.

Serrano: You can show here, this side.

Serrano: How are you doing[Patient B.M.]?

Patient B.M.: I'm doing great.

Serrano: Do you feel something?

Patient B.M.: No.

Serrano: Okay. What we are doing is that we are just with local anesthesia we just underlying the skin here and we're just releasing the skin tissue and then later on we going to get the muscle and put it right back up.

Serrano: All with local. She doesn't feel anything. When the surgery is finished it (unintelligible) house walking like nothing happened.

Serrano: Okay?

The tape is stopped and started again at approximately 6:25 into the tape.

Ourian: (Unintelligible) what we going to be doing. Underlying of skin has been done and literally took us less than ten minutes to do. This is one plane of the tissue which is what we are going to be pulling. We are going to pull the skin up and the second layer is what we are going to do with the muscle. We are going to grab the muscle from here, from underneath. Come to the other side. Come to the other side.

Ourian or Serrano: Okay, okay.

Female voice: There, okay.

Ourian: Okay, what we are looking at here is the underlying muscle which is the cheek muscle which we are pulling up. If you look in the face right now as I pulling it from the bottom you see how it's pulling

(Serrano talking over Ourian)

Serrano: Yes, relax and pull it again so that you show the (unintelligible)

Ourian: (Unintelligible) pulling the whole thing up.

Serrano: Just in the last one not the (unintelligible).

Ourian: And this is just the muscle so we have to do two things, pull the muscle up from up one side and then the skin up from the top. Now the difference between this procedure and what people call a minimal facelift is that a minimal facelift people just pull the skin and that goes down, goes away after a year or so. As you pull the muscle up as well, which is the trick to this whole surgery is that you cause the whole muscle to tighten up which tightens up the muscles of the neck as well. So, which is in most cases people start to lose the muscles in the neck and the sagginess. So.

Serrano: Now show that your patient is completely awake.

Ourian: Okay, go ahead and talk to us [Patient B.M.].

Patient B.M.: Oh, I'm doing great. No pain at all.

Ourian: This is very similar to a surgical procedure although looking at it makes it look like you are doing some kind of (unintelligible) but the truth is that you are not feeling anything in this area.

Patient B.M.: No, I'm feeling nothing.

Ourian: Great. Now we going, we're almost done with this side. As we tighten the whole procedure and make you look as nice and as natural as possible and then we move on to the other side. We're going to get you probably another, probably can get you another

Serrano: Okay. That's it perfect.

At approximately 8:36 into the tape the tape starts and stops.

Female talking: Tell us how you feel [Patient B.M.].

Patient B.M.: I feel great. I, I, I really feel, felt the confidence of Dr. Daniel. I could feel it in his hands, in the way he was deftly working and also Dr. Ourian is completely painless and that, that means a lot. (Unintelligible)

Serrano: The secret, to be numb.

Patient B.M.: Ya. (Unintelligible).

Approximately 9:47 the tape stops.
A new tape clip starts.

Serrano: Ok, hi [Patient B.M.].

Patient B.M.: Hi.

Serrano: How do you feel?

Patient B.M.: I feel great.

Serrano: Ok. We just finished surgery. I don't know if the doctor want to explain something.

Ourian: We want to go ahead, go ahead and zoom in the areas that are

Serrano: Just a little bruise.

Ourian: bruising

Serrano: Okay.

Ourian: And the swelling and

Serrano: Everything was with local anesthesia so

Ourian: awake and can drive home no problem and without any

Serrano: Okay tell us how do you feel with local anesthesia and everything.

Patient B.M.: The injections were absolutely painless. I felt nothing during the entire procedure and it's amazing, it's amazing. I don't believe there was much blood loss either, I never saw any blood, right? Or anything like that.

Ourian: No, it was just that one cc.

Serrano: Now you are gonna see how do you look.

Patient B.M.: I love it.

Ourian:	(Unintelligible) the neck area. The sutures are absorbable sutures. They are going to come out very quickly after the procedure and you going to have great results.
Serrano:	Okay, you have the
Patient B.M.:	Very happy.
Serrano:	facelift done.
Patient B.M.:	Very happy.
Serrano:	You can go home.
Patient B.M.:	I love it. These doctors are great. I'm really happy.
Male voice:	Bye (unintelligible).
Patient B.M.:	It's exactly what I wanted, more than what I expected.
Serrano:	Good.

151. On March 28, 2007, Investigator Genens interviewed Patient F.L., an adult female, by telephone, because she lives out of state. Patient F.L. indicated, *inter alia*, the following:

A. She met Dr. Simon Ourian through her daughter. She thinks she met Dr. Ourian approximately four years ago. She met Dr. Daniel (Serrano) when he went to her daughter's home and injected them both. She does not know what product they were injected with but they were injected in the facial area and it was for wrinkles.

B. She went to Dr. Ourian's office to have a lower lift procedure done. A lower lift is where they pull the skin up to the ears. She learned about the procedure the day she had it done.

C. There were no other patients at Dr. Ourian's office when she was there for her procedure. She believes it was a weekend. She did not have to pay anything for the procedure. She was told she would be a good candidate. She thought this was something new. She thought they always had to put you under but they did not have to in this case. She is unsure why the procedure was free to her. She is really unsure of the products they use or how they do it.

D. She had injections for pain at Dr. Ourian's office. She knows she was scheduled to have her procedure done with Serrano because her daughter told her. She did not know that Serrano was not a licensed physician in California. She did not know if Serrano was part of Dr. Ourian's office or not part of Dr. Ourian's office.

Acts or Omissions re Patient F.L.

152. Respondent Ourian committed the following acts or omissions in connection with his treatment of Patient F.L.:

A. Respondent failed to inform Patient F.L. that Serrano was not a licensed physician and surgeon in California; and/or

B. Respondent, in fact, via his words and/or actions, caused Patient F.L. to believe that Serrano was a licensed physician and surgeon in California; and/or

C. Respondent forbade his staff from advising patients that Serrano was not a licensed physician and surgeon in California; and/or

D. Respondent aided and/or abetted and/or assisted Serrano in performing surgical procedures on Patient F.L. even though respondent knew that Serrano was not a licensed physician and surgeon in California; and/or

E. Respondent was aware of the fact that Serrano was not a licensed physician and surgeon in California, and yet allowed Serrano to perform surgical procedures (outside the scope of a registered nurse) on Patient F.L. in respondent's office (with or without a supervising physician); and/or

F. Respondent failed to provide Patient F.L with adequate informed consent regarding the surgical procedures performed upon Patient F.L, including but not limited to, the risks and benefits of said surgery, respondent's personal lack of knowledge in performing the procedure, and Serrano's license status and qualifications: and/or

G. Respondent created a false and/or inaccurate and/or inadequate medical record for Patient F.L. which omitted details of the surgical procedure, and who performed and/or assisted during said surgical procedure; and/or

H. Respondent provided such false and/or inaccurate and/or inadequate medical record to the Medical Board; and/or

I. Respondent, via his attorney, or directly, falsely advised the Medical Board regarding his involvement with Serrano in the pre-surgical and surgical treatment of Patient F.L.; and/or

J. Respondent, via his attorney, or directly, falsely advised the Medical Board regarding a fictional supervisor for Serrano named "Dr. Michelson."

Violations re Patient F.L.

153. Respondent's conduct as set forth hereinabove in paragraphs 137 through 152 constitutes grounds for disciplinary action as follows:

A. Respondent's conduct constitutes general unprofessional conduct and is cause for disciplinary action pursuant to section 2234 of the Code.

B. Respondent's conduct constitutes gross negligence and is cause for disciplinary action pursuant to section 2234(b)of the Code.

C. Respondent's conduct constitutes repeated negligent acts and is cause for disciplinary action pursuant to section 2234(c) of the Code.

D. Respondent's conduct constitutes incompetence and is cause for disciplinary action pursuant to section 2234(d)of the Code.

E. Respondent's conduct constitutes the commission of any act(s) involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon and is cause for disciplinary action pursuant to section 2234(e)of the Code.

F. Respondent's conduct constitutes the making of a medical record which falsely represents the existence or nonexistence of a state of facts, and is cause for disciplinary action pursuant to section 2261of the Code.

G. Respondent's conduct constitutes the altering or modifying a medical record, with fraudulent intent, or creating a false medical, with fraudulent intent, and is cause for disciplinary action pursuant to section 2262 of the Code.

H. Respondent's conduct constitutes unprofessional conduct in that he failed to maintain adequate and accurate records relating to the provision of services to the patient and is cause for discipline pursuant to section 2266 of the Code.

I. Respondent's conduct constitutes unprofessional conduct in that he employed, directly or indirectly, or aided, or the abetted an unlicensed person or unlicensed practitioner to engage in the practice of medicine which required a license to practice and is cause for discipline pursuant to section 2264 of the Code.

J. Respondent's conduct constitutes unprofessional conduct in that he allowed and/or aided and/or abetted Serrano in representing or holding himself out as a physician and surgeon, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon, and is cause for discipline pursuant to section 2234(a) of the Code in conjunction with section 2054 (a) of the Code.

K. Respondent's conduct constitutes unprofessional conduct in that he allowed and/or aided and/or abetted Serrano in attempting to practice, or hold himself out as practicing, a system or mode of treating the sick or afflicted in this state, or in diagnosing, treating, operating for, or prescribing for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as a physician and surgeon, and is cause for discipline pursuant to section 2234(a) of the Code in conjunction with sections 2052 (a) and/or 2052(b) of the Code.

TWENTY-SEVENTH CAUSES FOR DISCIPLINE

(Patient B.M.)

154. Respondent is further subject to disciplinary action for unprofessional conduct pursuant to the following Business and Professions Code sections: 2234 (general unprofessional conduct) and/or 2234(b) (gross negligence); and/or 2234(c) (repeated negligent acts) and/or 2234(d) (incompetence); and/or section 2234(e) (dishonesty or corruption); and/or 2261(false representations in documents); and/or 2262 (alteration of medical records); and/or 2264 (aiding and abetting unlicensed practice of medicine); and/or 2266 (inadequate records);

and/or 2234(a) in conjunction with 2052(a) and/or 2052(b) (aiding and abetting unlicensed practice of medicine); and/or 2234(a) in conjunction with 2054(a) (aiding and abetting misrepresentation as a physician). The facts and circumstances are as hereinafter set out.

155. Paragraphs 137 through 150 herein above are referred to and incorporated by reference as though fully set forth herein.

156. On March 27, 2006, Investigator Genens interviewed Patient B.M., an adult female, at her attorney's office located at 9606 Santa Monica Boulevard in Beverly Hills, California. Her attorney Heleni Suydam was also present. Patient B.M. indicated, inter alia, the following:

A. Approximately the Spring of 2003, Patient B.M. first met Serrano because he worked for Dr. (David) Matlock. Serrano and Dr. Matlock did a liposuction procedure on her daughter.

B. At a subsequent time, Serrano called her and said he was auditioning for a job with Dr. (Simon) Ourian and that he needed to have three patients to do different procedures on and that he would do a facelift for his costs, which were $1000. Serrano asked if she would come on a Saturday.

C. Subsequently, Dr. Ourian called Patient B.M. and asked if she would be willing to come. He canceled one Saturday in October and then it was arranged for the following Saturday. There was a lady before her that had a procedure too on the same day. She saw the lady there. It was approximately six months after she met Serrano in Dr. Matlock's office that she got the call from Serrano. Dr. Ourian called within days of Serrano calling. Dr. Ourian told her Serrano was auditioning for a job, that the procedure would be $1,000, what time to come, to meet at his office, and he gave her the address. He did not give any instructions to her prior to the procedure, like do not eat anything. The telephone calls were approximately October 2004 and the surgery was done November 7, 2004 (Sunday). They were supposed to do it on October 9, 2004 but the date kept getting changed. There were only a few telephone calls with Dr. Ourian which involved trying to get the date scheduled.

D. On November 7, 2004, Patient B.M. arrived at Dr. Ourian's office at approximately 8:00 a.m. When she got there, she filled out an arbitration form. She was surprised that they did not ask her anything. She was worried after the surgery that she did not tell them she is allergic to sulfa and Codeine. A young female assistant at Dr. Ourian's office helped her with the paperwork. The assistant was in the operating room also. Patient B.M. was very upset because the assistant was in street clothes. When she arrived at Dr. Ourian's office, Patient B.M. was put in a surgical gown, her hair was put in a ponytail and she put a cap on. No one took her vital signs.

E. Neither Serrano nor Dr. Ourian asked Patient B.M. about past medical history or things she was allergic too. The operating room appeared dirty to her and that upset her. The floor did not look mopped. There was not blood on the floor but it just looked dirty to her. She saw dust on some metal thing that was on the floor.

F. Patient B.M. was told that she was getting a new procedure called Quicklift. Patient B.M. thought Serrano gave several injections around her face to numb her. The injections were from her hairline, all the way around the outside of her face to her chin. Serrano was cutting her face with scissors and there was an assistant filming it. Serrano asked the assistant if she was getting woozy and told her if she was getting woozy to back out of the room but try to keep filming. The assistant was the assistant that helped her with the paperwork. The assistant was using a little video camera to film.

G. It was just the assistant and Serrano in the operating room. One time Dr. Ourian walked in and he was eating granola. Patient B.M. remembers Serrano asking about disposing the tissue and Patient B.M. was upset because she thought this was supposed to be a Quicklift and she did not think that type of cutting would be involved. Patient B.M. started crying and said she did not realize they were going to cut her face off. He started laughing when Patient B.M. said that, and he said do not worry: the results are going to be good. Patient B.M. started bleeding really badly toward her right eye and Serrano told the assistant to get Dr. Ourian. Dr. Ourian came in the room and told Serrano to give her an injection of something. Patient B.M. got an injection of something in the

bleeding part and then there was a burning smell. Dr. Ourian was eating yogurt at that time.

H. When Patient B.M. left, she got in the car and started crying. She was completely bandaged and she said, "Oh my God, what just happened to me?" Patient B.M. was traumatized and her teeth were chattering. Serrano said the procedure was a Quicklift and that it was a new procedure that involved putting two big sutures inside the face where you pull the skin together. That was not true because Patient B.M. had lots of sutures. Serrano said it was fast healing and Patient B.M. could go back to work in three days. Patient B.M. was out for three weeks. He said there was not a lot of pain involved but there was horrible pain involved.

I. Patient B.M. was awake the whole time during the procedure. Patient B.M. could hear Dr. Ourian on the telephone a lot in the next room during the procedure. The procedure lasted approximately three hours. In that time Patient B.M. saw Dr. Ourian when he was eating granola and he walked in and walked out, and when she had a bleeding episode. The first time Dr. Ourian walked in, Dr. Ourian was just chatting with Serrano. Dr. Ourian was in the room for approximately a minute. The next time Patient B.M. saw Ourian was approximately an hour later when she was bleeding. Dr. Ourian stuck his hand in her face so he was in the room for a couple minutes until the bleeding stopped and then he walked out. The next time Patient B.M. saw Dr. Ourian is when he came to see the sutures and he told Serrano he did a good job. He was there for a couple minutes. Serrano bandaged her and then the assistant helped her get dressed.

J. The assistant said Patient B.M. had to get undressed again because they wanted to take a video of her. So she got in the gown again and they put a blue paper exam thing on her. Dr. Ourian came into the room and said they wanted her to say what it was like having the surgery and on the film he said this is the next day after surgery. Patient B.M. was in total shock.

K. After the video Dr. Ourian gave her a prescription for antibiotics. Serrano told her to come back the next day to check the bandages. On the day of the operation

Serrano said he was going to check her the next day. Serrano called to check on her after a few hours. Patient B.M.'s daughter told him Patient B.M. was in a lot of pain and was bleeding through the bandage. Serrano told Patient B.M.'s daughter to get another bandage so the daughter went to Sav-On to get another bandage. Patient B.M.'s daughter rewrapped it and Dr. Ourian ordered Vicodin.

L. On the day of the operation, as soon as her operation was done, they got Patient B.M. out of there because they had to do another surgery. Patient B.M. saw a brown haired lady about 50 years old waiting for the next surgery. Patient B.M. told Serrano she was having anxiety and she got a half a Valium. That was before the surgery actually started. He said she would give her half then and the other half if Patient B.M. needed it. Patient B.M. took the other half later. Patient B.M. took the other half, halfway through the surgery. Patient B.M. received a prescription for antibiotics on the day of the surgery as well.

M. The day after the surgery, Serrano went to Patient B.M.'s daughter's house where Patient B.M. was staying to check on her. Approximately four days after the surgery Patient B.M. went to Dr. Ourian's office to get checked by Serrano. While Patient B.M. was in the room with Serrano, Patient B.M. saw Serrano take several syringes from Dr. Ourian's office.

N. Patient B.M. was standing in Rite-Aid when she got a call from Serrano saying he was arrested. Serrano said he was arrested because he bought a drug. Patient B.M. went to Dr. Ourian's office and Dr. Ourian sent her to Dr. Baylis in Newport Beach. Dr. Ourian paid for her treatment at Dr. Baylis' office. Patient B.M. went to Dr. Baylis' office approximately three times. Dr. Baylis gave her a shot in her face and said a stitch had been left in for too long. Dr. Michael Schwartz took out the rest of her stitches.

157. On April 24, 2006, Investigator Genens met Patient B.M. at attorney Suydam's office in Beverly Hills. Genens showed Patient B.M. the film clip of her surgery. Patient B.M. confirmed that it was her on the tape. Patient B.M. can clearly be heard on the film introducing herself. Patient B.M. recognized Dr. Ourian in the blue scrubs. Dr. Ourian is the first

person who is shown talking to her. Patient B.M. believes she got shots of Radiance under her eyes during the surgery. Patient B.M. and her attorney provided Investigator Genens with two pages of medical records from a subsequent treating physician.

Acts or Omissions re Patient B.M.

158. Respondent Ourian committed the following acts or omissions in connection with his treatment of Patient B.M.:

A. Respondent failed to inform Patient B.M. that Serrano was not a licensed physician and surgeon in California; and/or

B. Respondent, in fact, via his words and/or actions, caused Patient B.M. to believe that Serrano was a licensed physician and surgeon in California; and/or

C. Respondent forbade his staff from advising patients that Serrano was not a licensed physician and surgeon in California; and/or

D. Respondent aided and/or abetted and/or assisted Serrano in performing surgical procedures on Patient B.M. even though respondent knew that Serrano was not a licensed physician and surgeon in California; and/or

E. Respondent was aware of the fact that Serrano was not a licensed physician and surgeon in California, and yet allowed Serrano to perform surgical procedures (outside the scope of a registered nurse) on Patient B.M. in respondent's office (with or without a supervising physician); and/or

F. Respondent failed to provide Patient B.M. with adequate informed consent regarding the surgical procedures performed upon Patient B.M., including but not limited to, the risks and benefits of said surgery, respondent's personal lack of knowledge in performing the procedure, and Serrano's license status and qualifications: and/or

G. Respondent created a false and/or inaccurate and/or inadequate medical record for Patient B.M. which omitted details of the surgical procedure, and who performed and/or assisted during said surgical procedure; and/or

H. Respondent provided such false and/or inaccurate and/or inadequate medical record to the Medical Board; and/or

I. Respondent, via his attorney, or directly, falsely advised the Medical Board regarding his involvement with Serrano in the pre-surgical and surgical treatment of Patient B.M.; and/or

J. Respondent failed to properly provide post-operative care and treatment for Patient B.M.; and/or

K. Respondent, via his attorney, or directly, falsely advised the Medical Board regarding a fictional supervisor for Serrano named "Dr. Michelson."

Violations re Patient B.M.

159. Respondent's conduct as set forth hereinabove in paragraphs 155 through 158 constitutes grounds for disciplinary action as follows:

A. Respondent's conduct constitutes general unprofessional conduct and is cause for disciplinary action pursuant to section 2234 of the Code.

B. Respondent's conduct constitutes gross negligence and is cause for disciplinary action pursuant to section 2234(b)of the Code.

C. Respondent's conduct constitutes repeated negligent acts and is cause for disciplinary action pursuant to section 2234(c) of the Code.

D. Respondent's conduct constitutes incompetence and is cause for disciplinary action pursuant to section 2234(d)of the Code.

E. Respondent's conduct constitutes the commission of any act(s) involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon and is cause for disciplinary action pursuant to section 2234(e)of the Code.

F. Respondent's conduct constitutes the making of a medical record which falsely represents the existence or nonexistence of a state of facts, and is cause for disciplinary action pursuant to section 2261of the Code.

G. Respondent's conduct constitutes the altering or modifying a medical record, with fraudulent intent, or creating a false medical, with fraudulent intent, and is cause for disciplinary action pursuant to section 2262 of the Code.

H. Respondent's conduct constitutes unprofessional conduct in that he failed to maintain adequate and accurate records relating to the provision of services to the patient and is cause for discipline pursuant to section 2266 of the Code.

I. Respondent's conduct constitutes unprofessional conduct in that he employed, directly or indirectly, or aided, or the abetted an unlicensed person or unlicensed practitioner to engage in the practice of medicine which required a license to practice and is cause for discipline pursuant to section 2264 of the Code.

J. Respondent's conduct constitutes unprofessional conduct in that he allowed and/or aided and/or abetted Serrano in representing or holding himself out as a physician and surgeon, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon, and is cause for discipline pursuant to section 2234(a) of the Code in conjunction with section 2054 (a) of the Code.

K. Respondent's conduct constitutes unprofessional conduct in that he allowed and/or aided and/or abetted Serrano in attempting to practice, or hold himself out as practicing, a system or mode of treating the sick or afflicted in this state, or in diagnosing, treating, operating for, or prescribing for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as a physician and surgeon, and is cause for discipline pursuant to section 2234(a) of the Code in conjunction with sections 2052 (a) and/or 2052(b) of the Code.

TWENTY-EIGHTH CAUSES FOR DISCIPLINE

(Patient A.F.)

160. Respondent is further subject to disciplinary action for unprofessional conduct pursuant to the following Business and Professions Code sections: 2234 (general unprofessional conduct) and/or 2234(b) (gross negligence); and/or 2234(c) (repeated negligent acts) and/or 2234(d) (incompetence); and/or section 2234(e) (dishonesty or corruption); and/or 2261(false representations in documents); and/or 2262 (alteration of medical records); and/or 2264 (aiding and abetting unlicensed practice of medicine); and/or 2266 (inadequate records);

and/or 2234(a) in conjunction with 2052(a) and/or 2052(b) (aiding and abetting unlicensed practice of medicine); and/or 2234(a) in conjunction with 2054(a) (aiding and abetting misrepresentation as a physician). The facts and circumstances are as hereinafter set out.

161. Paragraphs 137 through 150 herein above are referred to and incorporated by reference as though fully set forth herein.

162. On October 18, 2006, Investigator Genens interviewed Patient A.F.,by telephone. Patient A.F. indicated, *inter alia*, the following:

A. Patient A.F. heard about Dr. Ourian because somebody recommended him. She does not remember who recommended him. She knew "Dr. Daniel" (Serrano) before she went to Dr. Ourian's office. She met "Dr. Daniel" at a Botox party in Beverly Hills.

B. Patient A.F. believes she had a laser procedure on her face at Dr. Ourian's office, Epione, on November 1, 2004. She paid $1,000.00 cash. She thinks she has been to Epione about two or three times. On November 1, 2004, she does not think she was given any medication, she was awake the whole time, the procedure possibly took an hour and she drove home afterwards. She believes two or three nurses, "Dr. Daniel" and Dr. Ourian were in the room during her procedure, walking in and out. She thought the $1,000 was a good price because it is normally about $1,500 in other offices. She is not aware of the procedure being video taped.

163. As alleged elsewhere in this Accusation, however, and notwithstanding Patient A.F.'s understanding or recollection of what was done to her, Dr. Ourian and Serrano have indicated that Patient A.F. underwent a facelift on or about (Wednesday)November 10, 2004 [Paragraph 140(f)], and a Botox treatment on or about December 8, 2004 [Paragraphs 148 (u) and (v)], with both procedures being performed primarily by Serrano.

Acts or Omissions re Patient A.F

164. Respondent Ourian committed the following acts or omissions in connection with his treatment of Patient A.F.:

A. Respondent failed to inform Patient A.F. that Serrano was not a licensed physician and surgeon in California; and/or

B. Respondent, in fact, via his words and/or actions, caused Patient A.F. to believe that Serrano was a licensed physician and surgeon in California; and/or

C. Respondent forbade his staff from advising patients that Serrano was not a licensed physician and surgeon in California; and/or

D. Respondent aided and/or abetted and/or assisted Serrano in performing medical and/or surgical procedures on Patient A.F. even though respondent knew that Serrano was not a licensed physician and surgeon in California; and/or

E. Respondent was aware of the fact that Serrano was not a licensed physician and surgeon in California, and yet allowed Serrano to perform medical and/or surgical procedures on Patient A.F. in respondent's office (without a supervising physician); and/or

F. Respondent failed to provide Patient F.L with adequate informed consent regarding the medical and/or surgical procedures performed upon Patient F.L, including but not limited to, the risks and benefits of said procedures, respondent's personal lack of knowledge in performing the procedure, and Serrano's license status and qualifications: and/or

G. Respondent created a false and/or inaccurate and/or inadequate medical record for Patient A.F. which omitted details of the medical and/or surgical procedures, and who performed and/or assisted during said surgical procedure; and/or

H. Respondent provided such false and/or inaccurate and/or inadequate medical record to the Medical Board; and/or

I. Respondent, via his attorney, or directly, falsely advised the Medical Board regarding his involvement with Serrano in the medical and/or surgical treatment of Patient A.F.; and/or

J. Respondent, via his attorney, or directly, falsely advised the Medical Board regarding a fictional supervisor for Serrano named "Dr. Michelson."

Violations re Patient A.F.

165. Respondent's conduct as set forth hereinabove in paragraphs 161 through 163 constitutes grounds for disciplinary action as follows:

A. Respondent's conduct constitutes general unprofessional conduct and is cause for disciplinary action pursuant to section 2234 of the Code.

B. Respondent's conduct constitutes gross negligence and is cause for disciplinary action pursuant to section 2234(b)of the Code.

C. Respondent's conduct constitutes repeated negligent acts and is cause for disciplinary action pursuant to section 2234(c) of the Code.

D. Respondent's conduct constitutes incompetence and is cause for disciplinary action pursuant to section 2234(d)of the Code.

E. Respondent's conduct constitutes the commission of any act(s) involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon and is cause for disciplinary action pursuant to section 2234(e)of the Code.

F. Respondent's conduct constitutes the making of a medical record which falsely represents the existence or nonexistence of a state of facts, and is cause for disciplinary action pursuant to section 2261of the Code.

G. Respondent's conduct constitutes the altering or modifying a medical record, with fraudulent intent, or creating a false medical, with fraudulent intent, and is cause for disciplinary action pursuant to section 2262 of the Code.

H. Respondent's conduct constitutes unprofessional conduct in that he failed to maintain adequate and accurate records relating to the provision of services to the patient and is cause for discipline pursuant to section 2266 of the Code.

I. Respondent's conduct constitutes unprofessional conduct in that he employed, directly or indirectly, or aided, or the abetted an unlicensed person or unlicensed practitioner to engage in the practice of medicine which required a license to practice and is cause for discipline pursuant to section 2264 of the Code.

J. Respondent's conduct constitutes unprofessional conduct in that he allowed and/or aided and/or abetted Serrano in representing or holding himself out as a physician and surgeon, without having at the time of so doing a valid, unrevoked, and unsuspended

certificate as a physician and surgeon, and is cause for discipline pursuant to section 2234(a) of the Code in conjunction with section 2054 (a) of the Code.

K. Respondent's conduct constitutes unprofessional conduct in that he allowed and/or aided and/or abetted Serrano in attempting to practice, or hold himself out as practicing, a system or mode of treating the sick or afflicted in this state, or in diagnosing, treating, operating for, or prescribing for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as a physician and surgeon, and is cause for discipline pursuant to section 2234(a) of the Code in conjunction with sections 2052 (a) and/or 2052(b) of the Code.

TWENTY-NINTH CAUSES FOR DISCIPLINE

(Repeated Negligent Acts)

166. Respondent's acts and/or omissions with respect to his care and treatment of Patients F.L., B.M., and A.F. constitute repeated negligent acts as follows:

A. The allegations of the Twenty-Sixth, Twenty-Seventh, and Twenty-Eighth Causes of Discipline are incorporated herein as if fully set forth.

B. Respondent's acts and/or omissions, whether proven jointly, or in any combination, thereof constitute repeated negligent acts under section 2234 (c) of the Code. Therefore, cause for discipline exists.

THIRTIETH CAUSE FOR DISCIPLINE

(Patient L.K.)

(Repeated Negligent Acts)

167. On or about August 12, 2003, patient L.K. consulted with Roxanna, a consultant at respondent's office, regarding laser treatment of a burst blood vessel on her left eyelid. During her consultation, Roxanna "pitched" a product called Radiance[3] (now called

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3. Radiance consists of small calcium hydroxylapatite (CaHA) spheres in a gel carrier. Radiesse has two main applications: bone growth and cosmetic. It is approved by the FDA for application to encourage new bone formation. Its use in cosmetic applications is an off-label use. Application in the lips is contraindicated.

Radiesse), which she described as "all natural," "just like collagen, "and added that there were "no risks" associated with it. L.K. had received collagen injections in her lips 12 years earlier with good results, and so, on the same day, she agreed to the procedure and paid Respondent's office $2,000. The patient was promised that with the procedure, her lips would retain the same shape and become fuller. She never saw, read or signed an informed consent form for the procedure. Indeed, there is absolutely no written consent form in the patient's medical record. The medical record only contains an unsigned "dermal filler financial agreement form."

168. After payment, L.K. was given a nerve block. Respondent never verbally explained the risks, benefits and side-effects of the Radiance procedure to the patient. In fact, when the patient asked several questions about the procedure prior to its commencement, Respondent ignored her. Instead, Respondent proceeded to perform the procedure by injecting Radiance into patient L.K.'s lips. Specifically, he injected 2 ccs of Radiance into four sites on the inside of the patient's mouth. Two of the injection sites were in her upper lips; the other two, in her lower lips. All of the injections were made directly into the body of her lips.

169. One week after the treatment, on August 27, 2003, L.K. saw Respondent and complained that her lips had four painful lumps where the Radiance was injected. Respondent offered to give the patient more Radiance. He opined that the lumps were only due to the needle sticks and that they would go away within six months. The patient refused to have more radiance procedures.

170. By September 1, 2003, the patient, in a letter to Respondent, described these bumps on the inside of her lips and gums to Respondent as "knobby calloused needle marks that look like bumps." She accidentally would bite on these lumps during the day, and when she smiled, the needle marks on the inside of her inner lips would look lumpy. At the same time, the patient's inner upper lip developed a gap and became asymmetrical on the right side. Respondent did nothing to address these concerns.

171. At the end of October 2003, patient L.K. again complained to Respondent about the lumps. Respondent refunded $1,000 to the patient. Throughout the following months, in visits to Respondent's office (on April 28, 2005), emails to Respondent (dated May 28, 2004,

May 30, 2004, June 24, 2004 and July 16, 2004) and telephone messages recorded by Respondent's office staff, the patient described the lumps at the injection site, asked to see Respondent for a follow-up and complained that the Respondent was not responding to her complaints. The lumps, which Respondent had told the patient would go away within six months, had in fact not receded. Respondent failed to follow-up personally with this patient. The patient eventually obtained cortisone treatments and surgical intervention to address the lumps in her mouth.

172. The standard of care for use of Radiance is that it is contraindicated for use in the lips because it is well-known among the community of cosmetic surgeons to cause lumpiness. Radiance is typically used for deeper nasolabial folds, mandibular lines, and its use in the lips is restricted primarily to the deeper clefts in the oral commissures.[4] Here, Respondent injected Radiance into the body of the patient's lips.

173. Respondent's care and treatment of constitute repeated negligent acts as follows:

A. Respondent's injected Radiance into the body of the patient's lips, rather than along the vermillion as is the standard of care. This constitutes an extreme departure from the standard of practice.

B. Respondent's failure to document in the medical record that he discussed the risks, benefits, or any other treatment alternatives with patient L.K. constitutes a simple departure from the standard of practice.

C. Respondent did not adequately follow post-operatively. Respondent failed to address the patient's development of indurated focal nodules on the lips, which caused both lip distortion and asymmetry. Radiance is known to cause delayed onset of nodules. Respondent's acts and/or omissions in this regard constitute a simple departure from the standard of practice.

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4. The oral commissures are the outer corners of the lips, where the top and bottom lips meet.

174. Respondent's acts and/or omissions as set forth in paragraphs 152 through 158, inclusive, above, whether proven jointly, or in any combination thereof constitute repeated negligent acts pursuant to section 2234(c) of the Code. Therefore, cause for discipline exists.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Patient L.K.)

(Gross Negligence)

175. Respondent's acts and/or omissions in the care and treatment of patient L.K. constitute gross negligence as follows:

176. The allegations of the Thirtieth Cause of Discipline are incorporated herein as if fully set forth.

177. Given respondent's two simple departures and one extreme departure from the standard of care, respondent's overall care and treatment of patient L.K. constitute gross negligence pursuant to section 2234(b) of the Code. Therefore, cause for discipline exists.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Patient L.K.)

(Incompetence)

178. Respondent's acts and/or omissions in the care and treatment of patient L.K. constitute incompetence as follows:

179. The allegations of the Thirtieth Cause for Discipline are incorporated herein as if fully set forth.

180. Respondent's acts and/or omissions as set forth in paragraphs 152 to 159 above, constitute incompetence pursuant to section 2234(d) of the Code. Therefore, cause for discipline exists.

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THIRTY-THIRD CAUSE FOR DISCIPLINE

(Patient L.K.)

(Inadequate Records)

181. Respondent is subject to disciplinary action under section 2266 of the Code in that respondent failed to maintain adequate records of his care and treatment of patient The circumstances are as follows:

182. The allegations of the Thirtieth Cause for Discipline are incorporated herein by reference as if fully set forth.

183. Respondent's acts and/or omissions as set forth in paragraphs 152 to 159 above, constitute the maintenance of inadequate records within the meaning of Code section 2266. Therefore, cause for discipline exists.

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 Certificate Number A 65201 issued to respondent;

2. Revoking, suspending or denying approval of respondent to supervise physician's assistants;

3. Ordering respondent to pay the to the Medical Board, if placed on probation, the costs of probation monitoring; and,

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

DATED: April 11, 2008

BARBARA JOHNSTON
Executive Director
Medical Board of California
State of California, Complainant