

**In the Matter of the Accusation
Against:**

Case No. 800-2017-037322

Respondent

IT IS SO ORDERED: January 23, 2020.

Kristen Cansen

DCU32 (Rev 01-2019)

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
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6 *Attorneys for Complainant*

7 **BEFORE THE**
8 **MEDICAL BOARD OF CALIFORNIA**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 800-2017-037322

12 **YALE SANDS POPOWICH, M.D.**
13 **1200 N.W. Naito Pkwy, Suite 310**
Portland, OR 97209-2829

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 **Physician's and Surgeon's Certificate No. A**
15 **75658**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) was the Executive Director of the Medical
22 Board of California (Board) at the time of the filing of this action and brought this action solely in
23 her official capacity. Christine J. Lally, Deputy Director of the Board, assumes responsibility as
24 Complainant solely in her official capacity and is represented in this matter by Xavier Becerra,
25 Attorney General of the State of California, by Mary Cain-Simon, Supervising Deputy Attorney
26 General.

27 2. Respondent Yale Sands Popowich, M.D. (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about July 1, 2001, the Board issued Physician's and Surgeon's Certificate No. A 75658 to Yale Sands Popowich, M.D. (Respondent). The Physician's and Surgeon's Certificate is set to expire on February 28, 2021.

JURISDICTION

4. Accusation No. 800-2017-037322 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 17, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-037322 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2017-037322. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2017-037322.

10. Respondent agrees the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.1, serves to protect the public interest.

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

CONTINGENCY

12. 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. 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.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. 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:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 75658 issued to Respondent Yale Sands Popowich, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions.

1. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of

1 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
2 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
3 Respondent shall participate in and successfully complete that program. Respondent shall
4 provide any information and documents that the program may deem pertinent. Respondent shall
5 successfully complete the classroom component of the program not later than six (6) months after
6 Respondent's initial enrollment, and the longitudinal component of the program not later than the
7 time specified by the program, but no later than one (1) year after attending the classroom
8 component. The professionalism program shall be at Respondent's expense and shall be in
9 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

10 A professionalism program taken after the acts that gave rise to the charges in the
11 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
12 or its designee, be accepted towards the fulfillment of this condition if the program would have
13 been approved by the Board or its designee had the program been taken after the effective date of
14 this Decision.

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

18 2. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the
19 effective date of this Decision, Respondent shall enroll in a professional boundaries program
20 approved in advance by the Board or its designee. Respondent, at the program's discretion, shall
21 undergo and complete the program's assessment of Respondent's competency, mental health
22 and/or neuropsychological performance, and at minimum, a 24- hour program of interactive
23 education and training in the area of boundaries, which takes into account data obtained from the
24 assessment and from the Decisions, Accusations and any other information that the Board or its
25 designee deems relevant. The program shall evaluate Respondent at the end of the training and
26 the program shall provide any data from the assessment and training as well as the results of the
27 evaluation to the Board or its designee.

28 Failure to complete the entire program not later than six (6) months after Respondent's

1 initial enrollment shall constitute a violation of probation unless the Board or its designee agrees
2 in writing to a later time for completion. Based on Respondent's performance in and evaluations
3 from the assessment, education, and training, the program shall advise the Board or its designee
4 of its recommendation(s) for additional education, training, psychotherapy and other measures
5 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with
6 program recommendations. At the completion of the program, Respondent shall submit to a final
7 evaluation. The program shall provide the results of the evaluation to the Board or its designee.
8 The professional boundaries program shall be at Respondent's expense and shall be in addition to
9 the Continuing Medical Education (CME) requirements for renewal of licensure.

10 The program has the authority to determine whether or not Respondent successfully
11 completed the program.

12 A professional boundaries course taken after the acts that gave rise to the charges in the
13 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
14 or its designee, be accepted towards the fulfillment of this condition if the course would have
15 been approved by the Board or its designee had the course been taken after the effective date of
16 this Decision.

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

20 3. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
21 Respondent shall submit to the Board or its designee for prior approval the name and
22 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
23 has a doctoral degree in psychology and at least five years of postgraduate experience in the
24 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
25 undergo and continue psychotherapy treatment, including any modifications to the frequency of
26 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

27 The psychotherapist shall consider any information provided by the Board or its designee
28 and any other information the psychotherapist deems relevant and shall furnish a written

1 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
2 psychotherapist with any information and documents that the psychotherapist may deem
3 pertinent.

4 Respondent shall have the treating psychotherapist submit quarterly status reports to the
5 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
6 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
7 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
8 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
9 period of probation shall be extended until the Board determines that Respondent is mentally fit
10 to resume the practice of medicine without restrictions.

11 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

12 4. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
13 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
14 where: 1) Respondent merely shares office space with another physician but is not affiliated for
15 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
16 location.

17 If Respondent fails to establish a practice with another physician or secure employment in
18 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
19 Respondent shall receive a notification from the Board or its designee to cease the practice of
20 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
21 practice until an appropriate practice setting is established.

22 If, during the course of the probation, the Respondent's practice setting changes and the
23 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
24 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
25 If Respondent fails to establish a practice with another physician or secure employment in an
26 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
27 shall receive a notification from the Board or its designee to cease the practice of medicine within
28 three (3) calendar days after being so notified. The Respondent shall not resume practice until an

appropriate practice setting is established.

5. THIRD PARTY CHAPERONE. During probation, Respondent shall have a third party chaperone present while consulting, examining or treating female patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval names of persons who will act as the third party chaperone.

If Respondent fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision and the Accusation, and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

Respondent is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

If the third party chaperone resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name of the person or persons who will act as the third party chaperone. If Respondent fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or unavailability of the chaperone, Respondent shall receive a notification from the

1 Board or its designee to cease the practice of medicine within three (3) calendar days after being
2 so notified. Respondent shall cease the practice of medicine until a replacement chaperone is
3 approved and assumes monitoring responsibility.

4 6. PATIENT DISCLOSURE.

5 Before a patient's first visit following the effective date of this order and while the respondent is
6 on probation, the respondent must provide all patients, or patient's guardian or health care
7 surrogate, with a separate disclosure that includes the respondent's probation status, the length of
8 the probation, the probation end date, all practice restrictions placed on the respondent by the
9 board, the board's telephone number, and an explanation of how the patient can find further
10 information on the respondent's probation on the respondent's profile page on the board's
11 website. Respondent shall obtain from the patient, or the patient's guardian or health care
12 surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to provide
13 a disclosure if any of the following applies: (1) The patient is unconscious or otherwise unable to
14 comprehend the disclosure and sign the copy of the disclosure and a guardian or health care
15 surrogate is unavailable to comprehend the disclosure and sign the copy; (2) The visit occurs in
16 an emergency room or an urgent care facility or the visit is unscheduled, including consultations
17 in inpatient facilities; (3) Respondent is not known to the patient until immediately prior to the
18 start of the visit; (4) Respondent does not have a direct treatment relationship with the patient.

19 7. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
20 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
21 advanced practice nurses.

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

25 9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
26 under penalty of perjury on forms provided by the Board, stating whether there has been
27 compliance with all the conditions of probation.

28 Respondent shall submit quarterly declarations not later than 10 calendar days after the end

1 of the preceding quarter.

2 10. GENERAL PROBATION REQUIREMENTS.

3 Compliance with Probation Unit

4 Respondent shall comply with the Board's probation unit.

5 Address Changes

6 Respondent shall, at all times, keep the Board informed of Respondent's business and
7 residence addresses, email address (if available), and telephone number. Changes of such
8 addresses shall be immediately communicated in writing to the Board or its designee. Under no
9 circumstances shall a post office box serve as an address of record, except as allowed by Business
10 and Professions Code section 2021(b).

11 Place of Practice

12 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
13 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
14 facility.

15 License Renewal

16 Respondent shall maintain a current and renewed California physician's and surgeon's
17 license.

18 Travel or Residence Outside California

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

22 In the event Respondent should leave the State of California to reside or to practice
23 ,Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
24 departure and return.

25 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
26 available in person upon request for interviews either at Respondent's place of business or at the
27 probation unit office, with or without prior notice throughout the term of probation.

28 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or

1 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
2 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
3 defined as any period of time Respondent is not practicing medicine as defined in Business and
4 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
5 patient care, clinical activity or teaching, or other activity as approved by the Board. If
6 Respondent resides in California and is considered to be in non-practice, Respondent shall
7 comply with all terms and conditions of probation. All time spent in an intensive training
8 program which has been approved by the Board or its designee shall not be considered non-
9 practice and does not relieve Respondent from complying with all the terms and conditions of
10 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
11 on probation with the medical licensing authority of that state or jurisdiction shall not be
12 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
13 period of non-practice.

14 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
15 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
16 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
17 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
18 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

19 Respondent's period of non-practice while on probation shall not exceed two (2) years.

20 Periods of non-practice will not apply to the reduction of the probationary term.

21 Periods of non-practice for a Respondent residing outside of California will relieve
22 Respondent of the responsibility to comply with the probationary terms and conditions with the
23 exception of this condition and the following terms and conditions of probation: Obey All Laws;
24 General Probation Requirements; Quarterly Declarations.

25 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
26 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
27 completion of probation. Upon successful completion of probation, Respondent's certificate shall
28 be fully restored.

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

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

16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

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

1
2 DATED: 11/8/2019

Gale Popowich
YALE SANDS POPOWICH, M.D.
Respondent

3
4
5 **ENDORSEMENT**

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

8
9 DATED: *Nov. 8, 2017*

Respectfully submitted,

10 XAVIER BECERRA
Attorney General of California

11
12 *Mary Cain-Simon*
13 MARY CAIN-SIMON
Supervising Deputy Attorney General
14 Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-037322

1 XAVIER BECERRA
2 Attorney General of California
3 MARY CAIN-SIMON
4 Supervising Deputy Attorney General
5 State Bar No. 113083
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10 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 17 2019
BY XAVIER BECERRA ANALYST

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

In the Matter of the Accusation Against:

Case No. 800-2017-037322

**Yale Sands Popowich, M.D.
1200 N.W. Naito Pkwy, Suite 310
Portland, OR 97209-2829**

ACCUSATION

**Physician's and Surgeon's Certificate
No. A 75658,**

Respondent.

PARTIES

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

2. On or about July 1, 2001, the Medical Board issued Physician's and Surgeon's Certificate Number A 75658 to Yale Sands Popowich, M.D. (Respondent). The Physician's and Surgeon's Certificate will expire on February 28, 2021. On May 20, 2019, pursuant to Business and Professions Code Section 2310(a) the Medical Board of California issued a full out of state suspension, no practice order, effective that same date.

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JURISDICTION

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

4. Section 2004 provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

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

6. Section 2234 states:

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

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

...

7. Section 141 states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

8. Section 2305 states:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

CAUSE FOR DISCIPLINE

(Discipline, Restriction or Limitation Imposed by another State)

9. On April 11, 2019, the Oregon Medical Board issued an order suspending Respondent's license for the following periods: May 14-June 13, 2019; August 15-September 15, 2019; December 27, 2019-January 22, 2020. In addition, the Oregon Board reprimanded Respondent's license, imposed a civil penalty of \$10,000.00, and placed Respondent's license on probation for 5 years. Conditions of probations include: reporting in person at all Board meetings; providing a medically-trained chaperone for all clinical encounters with all patients and documenting this in charts; no-notice audits; no social media contact with any patients, former patients or family members of patients for at least one year from date of patient's last clinical visit; a practice monitor; treatment with an approved healthcare provider, with quarterly reports; submission of a boundary protection program; reassessment after one year; polygraph compliance; and other conditions, including that Respondent is to obey all laws.

10. The Oregon Medical Board's April 11, 2019 Order is based on a stipulated settlement of the Oregon Medical Board's April 5, 2018 Complaint and Notice of Proposed Disciplinary Action, and found that Respondent committed the following acts, as set forth in that Notice:

- Respondent is a Board-certified plastic surgeon who first saw Patient A, a 31-year old woman referred to Respondent for evaluation of scar tissue, on around February 10, 2016.
- Respondent began communicating with Patient A via text and personal Instagram messages. These messages were seen by Patient A's husband, who contacted Respondent to tell him it was inappropriate for Respondent to write personal messages to patients on Instagram. Respondent ignored this warning and continued to exchange personal text and Instagram messages with Patient A.
- On March 6, 2017, Patient A went to Respondent's clinic for a medical consultation. Respondent met with Patient A in an examination room where they had consensual sexual intercourse.

- 1 • On March 27, 2017, an investigator for the Oregon Board went to Respondent's clinic and
2 requested the chart for Patient A's March 6 visit. The investigator was informed that the last
3 chart record for Patient A was February 10, 2016. When asked to check appointment
4 records, the office manager for the clinic informed the investigator that Patient A had been
5 seen by Respondent on March 6, 2017, but the chart note for the visit had not been
6 completed and Respondent was working on it. On March 30, 2017, the missing chart note
7 was provided to the Board; the note stated "complementary(sic) cosmetic visit no charge."
- 8 • Respondent later admitted that he had sexual intercourse with Patient A, in his clinic, on
9 March 6, 2017. The Oregon Board found that Respondent created a false medical record and
10 was not candid in his communications regarding the March 6, 2017 patient encounter.
- 11 • The Oregon Board's investigation further revealed that Respondent exchanged Facebook,
12 text and Instagram messages with a number of female patients in a manner that blurred
13 professional and personal boundaries.

14 11. A true and correct copy of the Oregon Complaint and Notice, dated April 5, 2018 and
15 the Stipulated Order dated April 11, 2019 are collectively attached as Exhibit A to this
16 Accusation and incorporated herein by this reference.

17
18 **PRAYER**

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

- 21 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 75658,
22 issued to Yale Sands Popowich, M.D.;
- 23 2. Revoking, suspending or denying approval of Yale Sands Popowich, M.D.'s authority
24 to supervise physician assistants and advanced practice nurses;
- 25 3. Ordering Yale Sands Popowich, M.D., if placed on probation, to pay the Board the
26 costs of probation monitoring; and

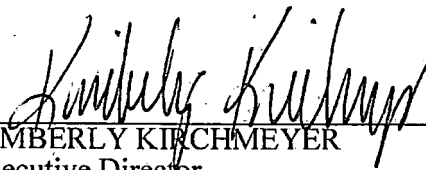
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4. Taking such other and further action as deemed necessary and proper.

DATED: July 17, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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A C C U S A T I O N

Physician's and Surgeon's Certificate
No. A 75658,

Respondent.

PARTIES

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

2. On or about July 1, 2001, the Medical Board issued Physician's and Surgeon's Certificate Number A 75658 to Yale Sands Popowich, M.D. (Respondent). The Physician's and Surgeon's Certificate will expire on February 28, 2021. On May 20, 2019, pursuant to Business and Professions Code Section 2310(a) the Medical Board of California issued a full out of state suspension, no practice order, effective that same date.

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JURISDICTION

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

4. Section 2004 provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

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

6. Section 2234 states:

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

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

...

7. Section 141 states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

8. Section 2305 states:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

CAUSE FOR DISCIPLINE

(Discipline, Restriction or Limitation Imposed by another State)

9. On April 11, 2019, the Oregon Medical Board issued an order suspending Respondent's license for the following periods: May 14-June 13, 2019; August 15-September 15, 2019; December 27, 2019-January 22, 2020. In addition, the Oregon Board reprimanded Respondent's license, imposed a civil penalty of \$10,000.00, and placed Respondent's license on probation for 5 years. Conditions of probations include: reporting in person at all Board meetings; providing a medically-trained chaperone for all clinical encounters with all patients and documenting this in charts; no-notice audits; no social media contact with any patients, former patients or family members of patients for at least one year from date of patient's last clinical visit; a practice monitor; treatment with an approved healthcare provider, with quarterly reports; submission of a boundary protection program; reassessment after one year; polygraph compliance; and other conditions, including that Respondent is to obey all laws.

10. The Oregon Medical Board's April 11, 2019 Order is based on a stipulated settlement of the Oregon Medical Board's April 5, 2018 Complaint and Notice of Proposed Disciplinary Action, and found that Respondent committed the following acts, as set forth in that Notice:

- Respondent is a Board-certified plastic surgeon who first saw Patient A, a 31-year old woman referred to Respondent for evaluation of scar tissue, on around February 10, 2016.
- Respondent began communicating with Patient A via text and personal Instagram messages. These messages were seen by Patient A's husband, who contacted Respondent to tell him it was inappropriate for Respondent to write personal messages to patients on Instagram. Respondent ignored this warning and continued to exchange personal text and Instagram messages with Patient A.
- On March 6, 2017, Patient A went to Respondent's clinic for a medical consultation. Respondent met with Patient A in an examination room where they had consensual sexual intercourse.

- 1 • On March 27, 2017, an investigator for the Oregon Board went to Respondent's clinic and
2 requested the chart for Patient A's March 6 visit. The investigator was informed that the last
3 chart record for Patient A was February 10, 2016. When asked to check appointment
4 records, the office manager for the clinic informed the investigator that Patient A had been
5 seen by Respondent on March 6, 2017, but the chart note for the visit had not been
6 completed and Respondent was working on it. On March 30, 2017, the missing chart note
7 was provided to the Board; the note stated "complementary(sic) cosmetic visit no charge."
- 8 • Respondent later admitted that he had sexual intercourse with Patient A, in his clinic, on
9 March 6, 2017. The Oregon Board found that Respondent created a false medical record and
10 was not candid in his communications regarding the March 6, 2017 patient encounter.
- 11 • The Oregon Board's investigation further revealed that Respondent exchanged Facebook,
12 text and Instagram messages with a number of female patients in a manner that blurred
13 professional and personal boundaries.

14 11. A true and correct copy of the Oregon Complaint and Notice, dated April 5, 2018 and
15 the Stipulated Order dated April 11, 2019 are collectively attached as Exhibit A to this
16 Accusation and incorporated herein by this reference.

17 PRAYER

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

- 20 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 75658,
21 issued to Yale Sands Popowich, M.D.;
- 22 2. Revoking, suspending or denying approval of Yale Sands Popowich, M.D.'s authority
23 to supervise physician assistants and advanced practice nurses;
- 24 3. Ordering Yale Sands Popowich, M.D., if placed on probation, to pay the Board the
25 costs of probation monitoring; and
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4. Taking such other and further action as deemed necessary and proper.

DATED: July 17, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

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BEFORE THE
OREGON MEDICAL BOARD
STATE OF OREGON

In the Matter of

YALE SANDS POPOWICH, MD
LICENSE NO. MD26661

)
)
) COMPLAINT & NOTICE OF
) PROPOSED DISCIPLINARY ACTION
)

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the State of Oregon. Yale Sands Popowich, (Licensee), is a licensed physician in the State of Oregon.

2.

The Board proposes to take disciplinary action by imposing up to the maximum range of potential sanctions identified in ORS 677.205(2), to include the revocation of license, a \$10,000 civil penalty, and assessment of costs, pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); ORS 677.190(13) gross negligence in the practice of medicine; ORS 677.190(17) willful violation of a Board rule or failing to comply with a board request pursuant to ORS 677.320; and OAR 847-001-0024 compliance with a Board investigation.

3.

The acts and conduct alleged to violate the Medical Practice Act follow:

3.1 Licensee is a board certified plastic and general surgeon with a practice in Portland, Oregon. Patient A, a 31-year-old female, initially presented to Licensee on February 10, 2016, by referral from her Obstetrician/Gynecologist for an evaluation of scar tissue related to her left breast implant. Licensee and Patient A subsequently kept in contact by exchanging a number of personal Instagram messages. Patient A's husband read some of these personal messages and sent a message to Licensee telling him it was inappropriate for Licensee

1 to write personal messages to patients on Instagram. Licensee ignored the warning and
2 continued to exchange personal text and Instagram messages with Patient A. On March 6, 2017,
3 Patient A returned to the clinic for a consultation with Licensee about removing her breast
4 implants. Licensee and Patient A met in the privacy of a clinic examination room and engaged
5 in consensual sexual intercourse. On March 27, 2017, a Board investigator visited Licensee's
6 office and obtained the medical records of Patient A. The records did not contain a chart note for
7 the March 6, 2017, office visit. The investigator was advised by the clinic office manager that
8 the only record of an office visit with Patient A was February 10, 2016. When asked to check
9 patient appointment records, the office manager later informed the investigator via email that
10 Patient A had been seen by Licensee March 6, 2017, and that a chart note had not yet been
11 completed, but the Licensee was working on the note that day. On March 30, 2017, the missing
12 chart note was received by the Board for that clinic visit stating: "complementary cosmetic visit
13 no charge." Licensee's sexual conduct with Patient A constitutes sexual misconduct in the
14 practice of medicine, which breached well recognized standards of medical ethics and practice,
15 to include AMA Medical Ethics Opinion 9.1.2, Romantic or Sexual Relationships with Patients,
16 and his apparent effort to deceive the Board with a false chart note are in violation of OAR 847-
17 001-0024, as well as ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in
18 ORS 677.188(4)(a); ORS 677.190(13); and ORS 677.190(17).

19 3.2 A notice of investigation was sent to Licensee on March 29, 2017. In a letter of
20 response, dated April 17, 2017, Licensee denied any sexual or romantic relationship with Patient
21 A. In a letter dated July 11, 2017, Licensee acknowledged that he did engage in sexual
22 intercourse with Patient A on March 6, 2017. Licensee's lack of candor to the Board in his letter
23 of April 17, 2017, violated OAR 847-001-0024, as well as ORS 677.190(1)(a), as defined in
24 ORS 677.188(4)(a); and ORS 677.190(17).

25 3.3 The Board's investigation revealed that Licensee exchanged Facebook, text and
26 Instagram messages with a number of adult female patients in a manner that blurred professional
27 and personal boundaries. Licensee's failure to maintain appropriate boundaries with patients via

1 social media breached well recognized standards of medical ethics and practice, to include AMA
2 Medical Ethics Opinion 2.3.2, Professionalism in the Use of Social Media, in violation of ORS
3 677.190(1)(a), as defined in ORS 677.188(4)(a); and ORS 677.190(17).

4 4.

5 Licensee is entitled to a hearing as provided by the Administrative Procedures Act
6 (chapter 183), Oregon Revised Statutes. Licensee may be represented by counsel at the hearing.
7 If Licensee desires a hearing, the Board must receive Licensee's written request for hearing
8 within twenty-one (21) days of the mailing of this Notice to Licensee. Upon receipt of a request
9 for a hearing, the Board will notify Licensee of the time and place of the hearing.

10 5.

11 If Licensee requests a hearing, Licensee will be given information on the procedures,
12 right of representation, and other rights of parties relating to the conduct of the hearing as
13 required under ORS 183.413(2) before commencement of the hearing.

14 6.

15 **NOTICE TO ACTIVE DUTY SERVICEMEMBERS:** Active duty servicemembers
16 have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For
17 more information contact the Oregon State Bar at 800-452-8260, the Oregon Military
18 Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office
19 through <http://legalassistance.law.af.mil>.

20 7.

21 Failure by Licensee to request a hearing or failure to appear at any hearing scheduled by
22 the Board will constitute waiver of the right to a contested case hearing and will result in a
23 default order by the Board, including the assessment of such penalty and costs as the Board
24 deems appropriate under ORS 677.205. If a default order is issued, the record of proceeding to
25 date, including Licensee's file with the Board and any information on the subject of the contested

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1 case automatically becomes a part of the contested case record for the purpose of proving a
2 prima facie case per ORS 183.417(4).
3

4 DATED this 5th day of April, 2018.

5 OREGON MEDICAL BOARD
6 State of Oregon

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8 KATHLEEN HALEY, JD
9 EXECUTIVE DIRECTOR
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3 **CERTIFICATE OF MAILING**
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5 On April 19, 2018, I mailed the foregoing Complaint & Notice of Proposed Disciplinary Action
6 regarding Yale Sands Popowich, MD, to the following parties:

7
8 **By: First Class Certified/Return Receipt U.S. Mail**
9 **Certified Mail Receipt # 7017.3040 0000 9954 7798**
10 **Yale Sands Popowich, MD**
11 **1200 NW Naito Parkway, Suite 310**
12 **Portland, OR 97209**

13 **By: First Class Certified/Return Receipt U.S. Mail**
14 **Certified Mail Receipt # 7017 3040 0000 9954 7811**
15 **Connie E. McKelvey JD**
16 **Lindsay Hart**
17 **1300 SW Fifth, Suite 3400**
18 **Portland, OR 97201**

19 **By: UPS GROUND**

20 **Warren Foote**
21 **Department of Justice**
22 **1162 Court St NE**
23 **Salem OR 97301**

24 **Michele Sherwood**
25 **Michele Sherwood**
26 **Investigations Coordinator**
27 **Oregon Medical Board**

BEFORE THE
OREGON MEDICAL BOARD
STATE OF OREGON

In the Matter of:

YALE SANDS POPOWICH, MD
LICENSE NO. MD26661

)
)
) STIPULATED ORDER
)
)

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the State of Oregon. Yale Sands Popowich, MD (Licensee), is a licensed physician in the State of Oregon.

2.

On April 5, 2018, the Board issued a Complaint and Notice of Proposed Disciplinary Action (Notice) in which the Board proposed taking disciplinary action by imposing up to the maximum range of potential sanctions identified in ORS 677.205(2), to include the revocation of license, a \$10,000 civil penalty, and assessment of costs, pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); ORS 677.190(13) gross negligence in the practice of medicine; and ORS 677.190(17) willful violation of a Board rule or failing to comply with a board request pursuant to ORS 677.320; and OAR 847-001-0024 compliance with a Board investigation. Prior to the issuance of the Notice, Licensee voluntarily entered into an Interim Stipulated Order with the Board in which he agreed to conduct all examinations of or procedures on female patients, aged 18 or older, in the presence of a medically trained chaperone, and to avoid social media contact with patients pending the completion of the Board's investigation.

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3.

Licensee and the Board desire to settle this matter by entry of this Stipulated Order.

Licensee understands that he has the right to a contested case hearing under the Administrative Procedures Act (chapter 183), Oregon Revised Statutes. Licensee fully and finally waives the right to a contested case hearing and any appeal therefrom by the signing of and entry of this Order in the Board's records. Licensee neither admits nor denies, but the Board finds that he engaged in the conduct described in the April 5, 2018, Notice and that this conduct violated ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a); ORS 677.190(13) gross negligence in the practice of medicine; and ORS 677.190(17) willful violation of a Board rule or failing to comply with a board request pursuant to ORS 677.320; and OAR 847-001-0024 compliance with a Board investigation. Licensee understands that this Order is a public record and is a disciplinary action that is reportable to the National Practitioner Data Bank and the Federation of State Medical Boards.

4.

Licensee and the Board agree to resolve this matter by the entry of this Stipulated Order subject to the following terms and conditions:

4.1 Licensee is reprimanded.

4.2 The medical license of Licensee is suspended for a total of 90 days. The dates of suspension are from May 14, 2019 through June 13, 2019; from August 15 through September 15, 2019; and from December 27, 2019 through January 22, 2020.

4.3 Licensee must pay a civil penalty of \$10,000 no later than 180 days from the date the Board Chair signs this Order.

4.4 Licensee is placed on probation for five years. Licensee must report in person to the Board at each of its quarterly meetings at the scheduled times for a probation interview, unless otherwise directed by the Board's Compliance Officer or its Investigative Committee. Interviews may be held electronically, at the Board's discretion, between Licensee and the Board's Compliance Officer (or its designee) using Board established protocols for the location

1 and electronic transmission of the meeting. Licensee is responsible for supplying and
2 maintaining the equipment and technology necessary for him to participate in the electronic
3 meetings. Licensee will be notified if and when such meetings are scheduled in lieu of an in-
4 person appearance.

5 4.5 Licensee must provide a medically trained chaperone for all clinical encounters
6 with all patients, which must be promptly documented in the chart.

7 4.6 Licensee and his practice are subject to no notice office visits and chart audits
8 conducted by the Board's designee.

9 4.7 Licensee must not schedule his own patient appointments.

10 4.8 Licensee must not have any form of social media contact or electronic
11 communication for personal purposes, in whole or in part, with any patient, former patient, or
12 family members of patients for at least one year from the date of the patient's last clinical visit.

13 4.9 Licensee must designate another licensed healthcare worker that is pre-approved
14 by the Board's Medical Director to serve as his practice monitor. In the event that the approved
15 practice monitor becomes unavailable for a period that is anticipated to exceed 30 days, the
16 Licensee must notify the Board of this fact and propose an alternate or new practice monitor for
17 approval by the Board's Medical Director. Licensee must ensure that releases are in place to
18 allow the practice monitor to communicate freely with the Board, or its representatives, and the
19 approved healthcare provider.

20 4.10 Licensee must enter into treatment with a healthcare provider that is pre-approved
21 by the Board's Medical Director. Approval, or a retraction of a prior approval, of this healthcare
22 provider is within the sole discretion of the Board. Licensee will ensure that releases are in place
23 to allow the healthcare provider to communicate freely with the Board, or its representatives, and
24 the practice monitor. Any and all expenses are to be borne by Licensee. Licensee must provide
25 a complete, unedited and without redaction, copy of the Acumen Assessments Final Report dated
26 January 2, 2018, to the approved healthcare provider prior to, or at the beginning of, their first
27 office visit that is conducted after approval of this Order by the Board. Licensee and the

1 approved healthcare provider should structure their interactions within the treatment goals that
2 have been identified within the Acumen Final Report. Licensee must ensure that the approved
3 healthcare provider submits quarterly reports to the Board with information regarding treatment
4 updates, the nature of therapy being undertaken, compliance with the Boundary Protection Plan
5 (see term 4.11) and noting what components of the Acumen Final Report are being addressed.

6 4.11 Within three (3) months of the effective date of this Order Licensee must submit
7 to the Board, for approval by the Board's Medical Director, a Boundary Protection Plan detailing
8 what steps or protocols Licensee has or will put into place for the maintenance of appropriate
9 boundaries and professionalism. Copies of the completed and approved Boundary Protection
10 Plan must be provided to Licensee's practice monitor described in term 4.9 and the approved
11 healthcare provider described in term 4.10.

12 4.12 Within one year of the effective date of this Order, but not prior to six months of
13 the effective date of this Order, Licensee must return to Acumen Assessments at his own expense
14 for a reassessment. Licensee must sign any releases required to allow Acumen to freely
15 communicate with the Board, his healthcare provider, practice monitor and any other collateral
16 sources Acumen may request. Any materials forwarded to Acumen must be copied to the Board
17 contemporaneously. Licensee must provide to Acumen a copy of this Order and the approved
18 Boundary Protection Plan upon his enrollment for the reassessment. Licensee must ensure that a
19 copy of the Final Report of the reassessment will be sent directly to the Board by Acumen.
20 Licensee agrees to comply with any recommendations in the Final Report of the reassessment,
21 excepting any that would be contrary to a term of this Order.

22 4.13 At his own expense and at the Board's discretion, Licensee must undergo
23 polygraph compliance monitoring with a polygrapher who is pre-approved by the Board, with all
24 necessary releases signed by Licensee to provide for reports to be submitted to the Board.

25 4.14 Licensee must notify the Board's Compliance Section of all practice locations. In
26 the event of any change of practice location the Licensee must notify the Compliance section
27 within ten days of the change.

1 4.15 The Interim Stipulated Order of September 14, 2017, terminates effective the date
2 this Stipulated Order is signed by the Board Chair.

3 4.16 Licensee stipulates and agrees that this Order becomes effective the date it is
4 signed by the Board Chair.

5 4.17 Licensee must obey all federal and Oregon state laws and regulations pertaining
6 to the practice of medicine.

7 4.18 Licensee stipulates and agrees that any violation of the terms of this Order shall
8 be grounds for further disciplinary action under ORS 677.190(17).

9
10 IT IS SO STIPULATED THIS 5th day of April, 2018. 9

11 
12 YALE SANDS POPOWICH, MD

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14 IT IS SO ORDERED THIS 11th day of April, 2019.

15 OREGON MEDICAL BOARD
16 State of Oregon

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18 K. DEAN GUBLER, DO
19 BOARD CHAIR

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