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

In the Matter of the Accusation Against: Andrew Ellis Gewirtz, M.D. Physician's & Surgeon's Certificate No G63048 Respondent.	Case No. 800-2016-021063

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 September 17, 2020.

IT IS SO ORDERED August 18, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H Lewis, MD

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **ANDREW ELLIS GEWIRTZ, M.D.** **524 E. 20th St. #4H,** **New York, NY 10009-1304** **Physician's and Surgeon's Certificate No. G 63048** Respondent.	Case No. 800-2016-021063 OAH No. 2019080396 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this

matter by Xavier Becerra, Attorney General of the State of California, by Jannsen Tan, Deputy Attorney General.

2. Respondent Andrew Ellis Gewirtz, M.D. (Respondent) is represented in this proceeding by attorney David M. Balfour Esq., whose address is: 1925 Palomar Oaks Way, Suite 220 Carlsbad, CA 92008.

3. On or about June 13, 1988, the Board issued Physician's and Surgeon's Certificate No. G 63048 to Andrew Ellis Gewirtz, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-021063, and will expire on April 30, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-021063 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 May 6, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-021063 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-021063. Respondent has also carefully read, fully discussed with his counsel, 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 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 understands and agrees that the charges and allegations in Accusation No. 800-2016-021063, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate No. G 63048.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate No. G 63048 is subject to discipline and he agrees to be bound by the Board's terms as set forth in the Disciplinary Order below. Respondent further understands and acknowledges that failure to complete the Board's terms as set forth below may lead to additional charges alleging unprofessional conduct and the imposition of additional discipline.

12. Respondent agrees that if an Accusation in the future is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2016-021063, shall be deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

13. 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.

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

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

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 63048, issued to Respondent Andrew Ellis Gewirtz, M.D. shall be and is hereby publicly reprimanded pursuant to California Business and Professions Code, section 2227, subdivision (a) (4.) This public reprimand, which is issued in connection Respondent's care and treatment of Patient A and B, as set forth in Accusation No. 800-2016-021063, is as follows:

""You failed to provide onsite supervision of the certified ophthalmic technicians for telemedicine examinations in the care and treatment of patients A and B."

B. EDUCATION COURSE Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval, educational program(s) or course(s) which shall not be less than 40 hours, in addition to the 25 hours required for license renewal. 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. 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. Within 12 months of the effective date of this Decision, Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in

satisfaction of this condition.

Failure to successfully complete and provide proof of attendance to the Board or its designee of the educational program(s) or course(s) within 12 months of the effective date of this Decision, unless the Board or its designee agrees in writing to an extension of time, shall constitute general unprofessional conduct and may serve as the grounds for further disciplinary action.

C. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure and the coursework requirements as set forth in Condition B of this stipulated settlement.

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

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.

Failure to provide proof of successful completion to the Board or its designee within twelve (12) months of the effective date of this Decision, unless the Board or its designee agrees in writing to an extension of that time, shall constitute general unprofessional conduct and may serve as the grounds for further disciplinary action.

D. PROFESSIONALISM COURSE (ETHICS COURSE) Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete the program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six 6) months after Respondent's initial enrolment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at the Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirement for renewal of licensure.

Failure to provide proof of successful completion to the Board or its designee within twelve (12) months of the effective date of this Decision, unless the Board or its designee agrees in writing to an extension of that time, shall constitute general unprofessional conduct and may serve as the grounds for further disciplinary action.

E. PROHIBITED PRACTICE Respondent shall not engage in the corporate practice of medicine in California pursuant to California law (Bus. & Prof. Code section 2400.) Any violation thereof shall constitute general unprofessional conduct and may serve as the ground for further disciplinary action.

ACCEPTANCE

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

DATED: 01/25/2023

ANDREW ELLIS GEWIRTZ, M.D.
Respondent

I have read and fully discussed with Respondent Andrew Ellis Gewirtz, 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: 6/30/2020

DAVID M. BALFOUR ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 6/30/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General

JANNSEN TAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-021063

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 16 2019
BY: ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2016-021063
ANDREW ELLIS GEWIRTZ, M.D. **524 E. 20th St. #4H** **New York, NY 10009** **Physician's and Surgeon's Certificate No. G 63048,** Respondent.	**ACCUSATION**

Complainant alleges:

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 June 13, 1988, the Medical Board issued Physician's and Surgeon's Certificate No. G 63048 to Andrew Ellis Gewirtz, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2020, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code states:

"(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 board, may, in accordance with the provisions of this chapter:

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

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

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

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board 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 board 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 803.1."

5. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

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

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

"(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 and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. Section 2052 of the Code states:

"(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 [Chapter 5, the Medical Practice Act], 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 pursuant to subdivision (h) of Section 1170 of the Penal Code, 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."

7. Section 2289 of the Code states: "The impersonation of another licensed practitioner or permitting or allowing another person to use his or her certificate to engage in the practice of medicine or podiatric medicine constitutes unprofessional conduct."

8. Section 2290.5 of the Code states:

"(a) For purposes of this division, the following definitions shall apply:

"(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

"(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

"(3) "Health care provider" means either of the following:

"(A) A person who is licensed under this division.

"(B) A marriage and family therapist intern or trainee functioning pursuant to Section 4980.43.

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"(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

"(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

"(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

"(b) Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

"(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

"(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

"(e) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

"(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

"(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

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"(h) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

"(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

"(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations."

9. Section 2541 of the Code states:

"A prescription ophthalmic device includes each of the following:

"(a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.

"(b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).

"(c) Any plano contact lens that is marketed or offered for sale in this state. "Plano contact lens" means a zero-power or noncorrective contact lens intended to change the appearance of the normal eye in a decorative fashion."

10. Section 2540 of the Code states:

"No person other than a physician and surgeon or optometrist may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic devices."

11. Section 2400 of the Code states:

"Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. However, the Division of Licensing may in its discretion, after such investigation and

review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic."

12. Section 2285 of the Code states:

"The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

"(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

"(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

"(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

"(d) Any medical school approved by the division or a faculty practice plan connected with the medical school."

13. Section 2410 of the Code states:

"A medical or podiatry corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a licensee under this chapter."

14. 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."

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FIRST CAUSE FOR DISCIPLINE
(Gross Negligence - Patient A)

15. Respondent has subjected his Physician's and Surgeon's Certificate No. G 63048 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of Patient A[1], as more particularly alleged hereinafter:

16. Respondent is a physician and surgeon who practices under a professional corporation dba 20/20 Ophthalmology Services, PLLC., and undertook to provide professional services such as telemedicine patient evaluation and screening evaluation for 20/20 NOW. Respondent received a salary. 20/20 NOW is a Limited Liability Corporation advertised as a system in which certified ophthalmic technicians perform refractions. Prescriptions are obtained by the consumer by telemedicine. 20/20 NOW operates in California and hires, and trains technicians who see patients.

17. Patient A was an undercover investigator for the Board of Optometry. On or about May 19, 2016, at approximately 1230 hours, she visited Jin's Eyewear in San Francisco, CA. She was greeted by a Jin's Associate. She told the associate that she wanted an eye examination and that she did not have an appointment. The associate pointed to the back of the store. Patient proceeded to the back and observed a large sign that read "20/20 NOW." Respondent's Medical Board of California Physician's and Surgeon's Certificate hung on the wall.

18. Patient A was seen by NH, who represented herself as a certified ophthalmic technician. NH explained to Patient A that Respondent is available through "chat" software. NH used a machine to perform autorefraction. The machine used infrared to measure the length of the eye. NH compared lenses and showed several series of letters. NH asked Patient A which letter looked sharper. NH proceeded to perform a retinal scan, a "puff-of-air" (air puff tonometry) test, and another test which involved a green X moving from left to right. Patient A asked NH if she had any eye diseases. NH replied in the negative. NH told Patient A that she

[1] To protect the privacy of the patient involved, the patient's name has not been included in this pleading. Respondent is aware of the identity of the patient referred to herein.

sent all her findings for review and that the doctor would review it, sign off on it, and send it back, in about 15-20 minutes. NH subsequently returned with a prescription signed by Respondent.

19. Respondent committed unprofessional conduct and/or gross negligence in his care and treatment of Patient A, which included, but was not limited to, the following:

A. Respondent aided and abetted NH in providing ophthalmic testing without medical indication.

B. Respondent aided and abetted NH in the unlicensed practice of medicine by informing Patient A that she had no eye disease.

C. Respondent aided and abetted NH in performing refractions without onsite physician supervision.

SECOND CAUSE FOR DISCIPLINE
(Gross Negligence - Patient B)

20. Respondent has subjected his Physician's and Surgeon's Certificate No. G 63048 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of Patient B, as more particularly alleged hereinafter:

21. On or about March 1, 2017, Patient B went to a 20/20 NOW branch at J.C. Penney's in Sacramento, CA. Patient B saw AZ, a certified ophthalmic technician. Patient B complained of blurry vision. AZ performed a slit lamp examination, retinal examination, both with photos, color vision test, and air puff tonometry without direct physician supervision. A referral was recommended based on AZ's appraisal of ocular hypertension and optic nerve drusen. The request letter was dated March 1, 2017, and documented Respondent as the "Requestor." The letter documented elevated pressures and possible optic nerve head drusen was reported in Patient B's workup. In a subsequent interview with the Board, Respondent denied seeing Patient B and making the March 1, 2017 referral.

22. On or about July 12, 2017, Patient B was seen again at a 20/20 NOW branch in Jin's San Francisco, CA. Patient B reported a complaint of changes in distance vision and a family

history of glaucoma. Patient B filled out an eye health questionnaire. AZ was the technician who reviewed questionnaire with her. Patient B asked AZ about floaters, flashes, watering and red eyes. The form stated that the examination was not an eye health examination. AZ performed an auto-refraction, then took a picture of her optic nerve, and macula, and performed puff tonometry. Patient B never had any communication with Respondent. AZ informed Patient B that she will consult with Respondent and advised Patient B to return in 30 minutes. Patient B returned and received her prescription.

23. Respondent committed unprofessional conduct and/or gross negligence in his care and treatment of Patient B, which included, but was not limited to, the following:

A. Respondent aided and abetted AZ in providing ophthalmic testing without medical supervision.

B. Respondent failed to adequately document his examination, if any. Respondent also failed to supervise and check on the letter dated March 1, 2017 was purportedly written under his direction. Respondent also failed to document and/or determine the extent of follow-up care.

C. Respondent aided and abetted AZ in performing refractions without onsite physician supervision.

THIRD CAUSE FOR DISCIPLINE
(Aiding and Abetting / Corporate Practice of Medicine)

24. Respondent is further subject to disciplinary action under sections 2227 and 2234(a), as defined by section 2052, 2285, 2400, and 2410 of the Code, in that Respondent allowed 20/20 NOW to use his license to practice medicine and/or Respondent practiced medicine using a fictitious name without a fictitious name permit. Paragraphs 16 through 21, above, are hereby incorporated by reference and realleged as if fully set forth herein;

25. On or about December 7, 2018, in an interview with the Board, Respondent stated that he was given a salary by 20/20 NOW for professional services rendered to patients. Respondent stated that he does not supervise the 20/20 NOW technicians that see the patients. The technicians are hired and trained by 20/20 NOW. Respondent stated that the 20/20 NOW

technicians perform objective and subjective refractions. 20/20 NOW retained control of the medical records. Respondent does not own shares of stock in 20/20 NOW.

FOURTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

26. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patient A and B, as more particularly alleged hereinafter: Paragraphs 16 through 25, above, are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Medical Records)

27. Respondent is further subject to discipline under sections 2227 and 2334, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate medical records in the care and treatment of Patients A and B, as more particularly alleged hereinafter: Paragraphs 16 through 25, above, are hereby incorporated by reference and realleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE
(General Unprofessional Conduct)

28. Respondent is further subject to discipline under sections 2227 and 2234, as defined by section 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged hereinafter: Paragraphs 16 through 25, above, are hereby incorporated by reference and realleged as if fully set forth herein.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 63048, issued to Andrew Ellis Gewirtz, M.D.;

2. Revoking, suspending or denying approval of Andrew Ellis Gewirtz, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Andrew Ellis Gewirtz, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED:
May 6, 2019

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

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