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

In the Matter of the Accusation Against: Gilbert Simon, M.D. Physician's and Surgeon's License No. G 49551 Respondent.	Case No. 800-2017-034059

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 November 5, 2020.

IT IS SO ORDERED: October 6, 2020.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
MEGAN R. O'CARROLL
Deputy Attorney General
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1300 I Street, Suite 125
P.O. Box 944255
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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: **GILBERT SIMON, M.D.** **4540 Shady Oak Way** **Fair Oaks, CA 95628-5728** **Physician's and Surgeon's Certificate No. G 49551** Respondent.	Case No. 800-2017-034059 OAH No. 2019051002 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Megan R. O'Carroll, Deputy Attorney General.

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2. Respondent Gilbert Simon, M.D. (Respondent) is represented in this proceeding by attorney Robert B. Zaro, Esq., whose address is: 1315 "I" Street, Suite 200, Sacramento, CA 95814-2915.

3. On or about January 31, 1983, the Board issued Physician's and Surgeon's Certificate No. G 49551 to Gilbert Simon, 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. 800-2017-034059, and will expire on April 30, 2020, unless renewed.

JURISDICTION

Accusation No. 800-2017-034059 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 March 26, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

4. A copy of Accusation No. 800-2017-034059 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-034059. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2017-034059, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. 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 Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him, before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2017-034059 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

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 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.

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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. G 49551 issued to Respondent Gilbert Simon, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices 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 prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices 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.

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Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act until he has successfully completed this course and has received written confirmation of receipt of certification of successful completion from the Board or its designee.

2. 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.

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.

3. PROFESSIONALISM PROGRAM (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 1358.1. Respondent shall participate in and successfully complete that 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 enrollment, 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 Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program 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 program would have been approved by the Board or its designee had the program 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 program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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

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

7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been

compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

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

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or

Controlled Substances; and Biological Fluid Testing.

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

12. 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.

13. 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 or her 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.

14. 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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert B. Zaro, 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: MAR 9 2020

GILBERT SIMON, M.D.
Respondent

I have read and fully discussed with Respondent Gilbert Simon, 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: _____

ROBERT B. ZARO, 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: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

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DATED: _____

GILBERT SIMON, M.D.
Respondent

I have read and fully discussed with Respondent Gilbert Simon, 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: 3/7/20 Robert B. Zaro

ROBERT B. ZARO, 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: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

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DATED: _____

GILBERT SIMON, M.D.
Respondent

I have read and fully discussed with Respondent Gilbert Simon, 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: _____

ROBERT B. ZARO, 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: 3-10-2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

Megan R. O'Carroll

MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-034059

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 26 2019
BY [illegible] ANALYST

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

In the Matter of the Accusation Against: **Gilbert Simon, M.D.** **4540 Shady Oak Way** **Fair Oaks, CA 95628-5728** **Physician's and Surgeon's Certificate No. G 49551,** Respondent.	Case No. 800-2017-034059 **A C C U S A T I O N**

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 January 31, 1983, the Medical Board issued Physician's and Surgeon's Certificate Number G 49551 to Gilbert Simon, 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 unless otherwise indicated.

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

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. Unprofessional conduct under section 2234 of the Code is 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. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

7. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

7. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

8. Health and Safety Code Section 11164 states in relevant part that "No person shall prescribe a controlled substance ... unless it complies with the requirements of this section. (a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V... shall be made on a controlled prescription form ... and shall meet the following requirement: (1) The prescription shall be signed and dated by the prescriber in ink and shall contain the name of the ultimate user... refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed."

9. Health and Safety Code Section 11171 states that "No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by the division."

10. Health and Safety Code Section 11173, subdivision (a) states:

"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent is subject to disciplinary action under section 2234, subdivision (b) of the Code, in that he was grossly negligent in his care and treatment of three patients. The circumstances are as follows:

9. On or about April 9, 2015, in a separate administrative matter, two physicians who were married to each other were disciplined by the Board. The wife of the couple, Dr. Y.C., was placed on Medical Board probation. One of the terms of Dr. Y.C.'s probation was that she be prohibited from prescribing controlled substances. On or about August 17, 2015, Respondent became the practice monitor for Dr. Y.C. As part of his practice monitor agreement, he acknowledged having read the Decision of the Board placing Dr. Y.C. on probation.

10. On or about April 27, 2016, the Placer County Probation Department and Medical Board Investigators conducted a probation search of Dr. Y.C.'s husband, with whom Dr. Y.C. shared a home. During the search of the physician's home, Board investigators located a stack of blank, pre-signed prescriptions. Four of the prescriptions were pre-signed by Respondent. Dr. Y.C. explained that the blank and pre-signed prescriptions belonged to her, and had been given to her by Respondent when she worked for him at the Sacramento Family Medical Clinics. The four pre-signed prescriptions bore the pre-printed clinic name on them and were numbered 00399, 00400, 00813 and 00814. Dr. Y.C. stated that Respondent had been her supervisor and practice monitor at the Sacramento Family Medical Clinic until approximately March 31, 2016.

11. Respondent is the founder of the Sacramento Family Medical Clinics. He has served in various capacities in the Clinics, including as the Medical Director and an administrator. Respondent stopped performing primary care duties and carrying his own patient case-load approximately ten years earlier, when he changed to mostly administrative work. Approximately ten years earlier he stopped regularly prescribing medications to patients. Respondent admitted to investigators that he hired Dr. Y.C., in August 2015, to work at the two Sacramento Family

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Medical Clinics (which were located on Watt Avenue and on Marysville Blvd.) in order to treat children with behavioral and attention deficit disorders. Dr. Y.C. had previously worked for Respondent many years ago.

12. During 2015 and 2016, when Dr. Y.C. worked for Respondent, she treated pediatric patients on a regular basis, who required controlled medications as part of their treatment plan. Initially, Respondent directed two other physicians and a physician assistant who worked at the Sacramento Family Medical Clinic to write prescriptions for controlled substances for those patients Dr. Y.C. saw and to determine required controlled medications. These practitioners did not personally examine or treat the pediatric patients, they merely signed prescriptions based on Dr. Y.C.'s request. Ultimately, however, these physicians and the physician assistant learned that Dr. Y.C. was prohibited from prescribing controlled substances and refused to continue signing prescriptions for her patients.

13. At the point, from approximately August 2015 through March 31, 2016, Respondent pre-signed a number of blank prescriptions and provided them to Y.C., on a regular basis, with no information filled out as to the patient, medication, or dose, which Dr. Y.C. would use to provide controlled substances to her patients. Respondent did not personally examine or treat the pediatric patients that Dr. Y.C. would provide with prescriptions for controlled substances signed by him. During his interview with Board Investigators Respondent also admitted that he would often arrive at the Sacramento Family Medical Clinic after Dr. Y.C. was already present and seeing patients who received the pre-signed prescriptions for controlled substances. Respondent stated that on a daily basis he would review Dr. Y.C.'s chart notes for her ADD patients, but did not actually view the prescriptions that she filled out, as the prescriptions left the clinics with the patients.

14. Dr. Y.C. admitted at her physician interview with Board investigators on August 29, 2017 that she used the pre-signed, blank prescriptions from Respondent to prescribe several Schedule II controlled substance medications to her pediatric patients who suffered from ADD, including the drugs Adderall, Cymbalta, Vyvanse, and Ritalin, which are Schedule II controlled

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substances. During this time, Dr. Y.C. treated Patient A[1], a fourteen-year old female suffering from ADD, from approximately October 2015 through March 2016. Dr. Y.C. prescribed Adderall XR 20 mg. #30 to Patient A on January 14, 2016, February 18, 2016 and March 29, 2016, using prescriptions signed by Respondent. Dr. Y.C. treated Patient B, a nine-year-old female suffering from ADD, from approximately February through March of 2016. Dr. Y.C. prescribed Patient B Adderall 5 mg., #30 on February 11, 2016 and March 14, 2016, using prescriptions signed by Respondent. Respondent prescribed Patient C, a fourteen-year-old male suffering from ADD, prescribed Vyvanse 50 mg on September 7, 2016. The parents of each of these three pediatric patients identified the person who treated their children to be Dr. Y.C. There is no documentation in any of these three patients' records to indicate that Respondent ever saw or examined them.

15. Respondent was grossly negligent in his care and treatment of patients, including Patients A, B, and C, for his act of providing pre-signed, blank prescription forms to Dr. Y.C. to enable her to prescribe Schedule II controlled substances when she lacked the legal authority to do so.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

16. Respondent is subject to disciplinary action under section 2234, subdivision (c), in that he was repeatedly negligent. The circumstances are as follows:

17. Paragraphs, 8 through 15, above, are repeated here as if fully set forth and incorporated by reference.

18. Respondent was repeatedly negligent in his care and treatment of patients, including Patients A, B, and C, for his acts, including but not limited to:

a. Providing pre-signed, blank prescription forms to Dr. Y.C. to enable her to prescribe Schedule II controlled substances when she lacked the legal authority to do so; and

b. prescribing medications without a physician-patient relationship or taking a prior history or physical examination of the patient.

[1] This alphabetical patient identifier is used to protect patient confidentiality and the patient's name will be disclosed in discovery.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

19. Respondent is subject to disciplinary action under section 2234 in that he engaged in conduct which breaches the rules or ethical code of the medical profession, and which demonstrates and unfitness to practice medicine.

20. Paragraphs 8 through 15, above, are repeated here as if fully set forth and incorporated by reference.

21. Respondent's conduct, as described above, constitutes general unprofessional conduct in that he provided blank controlled substance prescriptions to a physician with a known restriction from prescribing such medications, and he allowed the physician to use the blank prescriptions to prescribe to patients that he did not have a physician-patient relationship with or conduct a history and examination on, thus subjecting his medical license to discipline.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Drug Statutes)

22. Respondent Gilbert Simon, M.D. is subject to disciplinary action under section 2238, making it an act of unprofessional conduct to violate state law regulating dangerous drugs or controlled substances in that he violated Health and Safety Code sections 11164 and 11173.

23. Paragraphs 8 through 15, above, are repeated here as if fully set forth and incorporated by reference.

24. Respondent's act of procuring the prescriptions of controlled substances by fraud, deceit, misrepresentation, or subterfuge violates Health and Safety Code section 11173, and is unprofessional conduct under section 2238. Respondent's act of issuing a prescription without including the patient's name, the medication, strength and refill information violates section 11164, and is unprofessional conduct under section 2238.

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:

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1. Revoking or suspending Physician's and Surgeon's Certificate Number G 49551, issued to Gilbert Simon, M.D.;

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

3. Ordering Gilbert Simon, 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: March 26, 2019

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

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