

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

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIBHL
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
Deputy Attorney General
4 State Bar No. 215479
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7543
Facsimile: (916) 327-2247
7 Attorneys for Complainant

8
9
10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
12 DEPARTMENT OF CONSUMER AFFAIRS
13 STATE OF CALIFORNIA

14 In the Matter of the Accusation Against:
15 GILBERT SIMON, M.D.
4540 Shady Oak Way
16 Fair Oaks, CA 95628-5728
17 Physician's and Surgeon's Certificate No. G
49551
18 Respondent.

Case No. 800-2017-034059
OAH No. 2019051002
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19
20
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

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

28 ///

1 2. Respondent Gilbert Simon, M.D. (Respondent) is represented in this proceeding by
2 attorney Robert B. Zaro, Esq., whose address is: 1315 "T" Street, Suite 200, Sacramento, CA
3 95814-2915.

4 3. On or about January 31, 1983, the Board issued Physician's and Surgeon's Certificate
5 No. G 49551 to Gilbert Simon, M.D. (Respondent). The Physician's and Surgeon's Certificate
6 was in full force and effect at all times relevant to the charges brought in Accusation No. 800-
7 2017-034059, and will expire on April 30, 2020, unless renewed.

8 JURISDICTION

9 Accusation No. 800-2017-034059 was filed before the Board, and is currently pending
10 against Respondent. The Accusation and all other statutorily required documents were properly
11 served on Respondent on March 26, 2019. Respondent timely filed his Notice of Defense
12 contesting the Accusation.

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

15 ADVISEMENT AND WAIVERS

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

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

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

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

///

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

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 49551 issued
9 to Respondent Gilbert Simon, M.D. is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for three (3) years on the following terms and conditions.

11 1. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective
12 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
13 advance by the Board or its designee. Respondent shall provide the approved course provider
14 with any information and documents that the approved course provider may deem pertinent.
15 Respondent shall participate in and successfully complete the classroom component of the course
16 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
17 complete any other component of the course within one (1) year of enrollment. The prescribing
18 practices course shall be at Respondent's expense and shall be in addition to the Continuing
19 Medical Education (CME) requirements for renewal of licensure.

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

25 Respondent shall submit a certification of successful completion to the Board or its
26 designee not later than 15 calendar days after successfully completing the course, or not later than
27 15 calendar days after the effective date of the Decision, whichever is later,

28 ///

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

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

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

19 Respondent shall submit a certification of successful completion to the Board or its
20 designee not later than 15 calendar days after successfully completing the course, or not later than
21 15 calendar days after the effective date of the Decision, whichever is later.

22 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
23 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
24 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
25 Respondent shall participate in and successfully complete that program. Respondent shall
26 provide any information and documents that the program may deem pertinent. Respondent shall
27 successfully complete the classroom component of the program not later than six (6) months after
28 Respondent's initial enrollment, and the longitudinal component of the program not later than the

1 time specified by the program, but no later than one (1) year after attending the classroom
2 component. The professionalism program shall be at Respondent's expense and shall be in
3 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

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

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

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

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

1 compliance with all the conditions of probation.

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

4 8. GENERAL PROBATION REQUIREMENTS.

5 Compliance with Probation Unit

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

7 Address Changes

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

13 Place of Practice

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

17 License Renewal

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

20 Travel or Residence Outside California

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

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

27 ///

28 ///

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

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

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

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

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

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

1 Controlled Substances; and Biological Fluid Testing.

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

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

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

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

28 ///

1 ACCEPTANCE

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

7
8 DATED: MAR 9 2020 *Gilbert Simon, M.D.*
9 GILBERT SIMON, M.D.
Respondent

10 I have read and fully discussed with Respondent Gilbert Simon, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: _____
14 ROBERT B. ZARO, ESQ.
Attorney for Respondent

15
16 ENDORSEMENT

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

19
20 DATED: _____ Respectfully submitted,
21 XAVIER BOCERRA
22 Attorney General of California
23 STEVE DIEHL
24 Supervising Deputy Attorney General

25 MEGAN R. O'CARROLL
26 Deputy Attorney General
27 *Attorneys for Complainant*

28 SA2018303588
14502042.docx

1 ACCEPTANCE


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

7
8 DATED: _____

9 GILBERT SIMON, M.D.
Respondent

10 I have read and fully discussed with Respondent Gilbert Simon, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: 3/7/20


14 ROBERT B. ZARO, ESQ.
Attorney for Respondent

15
16 ENDORSEMENT

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

19
20 DATED: _____

Respectfully submitted,

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

23
24 MEGAN R. O'CARROLL
25 Deputy Attorney General
26 *Attorneys for Complainant*

27 SA2018303588
28 14502042.docx

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: _____

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
Deputy Attorney General
Attorneys for Complainant

SA2018303588
14502042.docx

Exhibit A

Accusation No. 800-2017-034059

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
Deputy Attorney General
4 State Bar No. 215479
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7543
Facsimile: (916) 327-2247
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *March 26 2019*
BY *SAVA [signature]* ANALYST

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

13
14 In the Matter of the Accusation Against:

Case No. 800-2017-034059

15 **Gilbert Simon, M.D.**
16 **4540 Shady Oak Way**
Fair Oaks, CA 95628-5728

A C C U S A T I O N

17 **Physician's and Surgeon's Certificate**
18 **No. G 49551,**

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about January 31, 1983, the Medical Board issued Physician's and Surgeon's
26 Certificate Number G 49551 to Gilbert Simon, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on April 30, 2020, unless renewed.

1 JURISDICTION

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

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

8 5. Section 2234 of the Code, states:

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

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

14 "(b) Gross negligence.

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

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

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

25 "(d) Incompetence.

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

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

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

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

8 6. Unprofessional conduct under section 2234 of the Code is conduct which breaches
9 the rules or ethical code of the medical profession, or conduct which is unbecoming a member in
10 good standing of the medical profession, and which demonstrates an unfitness to practice
11 medicine. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

12 7. Section 2242 of the Code states:

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

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

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

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

25 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
26 who had reviewed the patient’s records.

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

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

5 “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
6 Code.”

7 7. Section 2238 of the Code states:

8 “A violation of any federal statute or federal regulation or any of the statutes or regulations
9 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
10 conduct.”

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

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

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

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

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

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

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

12 10. On or about April 27, 2016, the Placer County Probation Department and Medical
13 Board Investigators conducted a probation search of Dr. Y.C.'s husband, with whom Dr. Y.C.
14 shared a home. During the search of the physician's home, Board investigators located a stack of
15 blank, pre-signed prescriptions. Four of the prescriptions were pre-signed by Respondent. Dr.
16 Y.C. explained that the blank and pre-signed prescriptions belonged to her, and had been given to
17 her by Respondent when she worked for him at the Sacramento Family Medical Clinics. The four
18 pre-signed prescriptions bore the pre-printed clinic name on them and were numbered 00399,
19 00400, 00813 and 00814. Dr. Y.C. stated that Respondent had been her supervisor and practice
20 monitor at the Sacramento Family Medical Clinic until approximately March 31, 2016.

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

27 ///

28 ///

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

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

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

24 14. Dr. Y.C. admitted at her physician interview with Board investigators on August 29,
25 2017 that she used the pre-signed, blank prescriptions from Respondent to prescribe several
26 Schedule II controlled substance medications to her pediatric patients who suffered from ADD,
27 including the drugs Adderall, Cymbalta, Vyvanse, and Ritalin, which are Schedule II controlled

28 ///

1 substances. During this time, Dr. Y.C. treated Patient A¹, a fourteen-year old female suffering
2 from ADD, from approximately October 2015 through March 2016. Dr. Y.C. prescribed Adderall
3 XR 20 mg. #30 to Patient A on January 14, 2016, February 18, 2016 and March 29, 2016, using
4 prescriptions signed by Respondent. Dr. Y.C. treated Patient B, a nine-year-old female suffering
5 from ADD, from approximately February through March of 2016. Dr. Y.C. prescribed Patient B
6 Adderall 5 mg., #30 on February 11, 2016 and March 14, 2016, using prescriptions signed by
7 Respondent. Respondent prescribed Patient C, a fourteen-year-old male suffering from ADD,
8 prescribed Vyvanse 50 mg on September 7, 2016. The parents of each of these three pediatric
9 patients identified the person who treated their children to be Dr. Y.C. There is no documentation
10 in any of these three patients' records to indicate that Respondent ever saw or examined them.

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

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Repeated Negligent Acts)**

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

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

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

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

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

27
28 ¹This alphabetical patient identifier is used to protect patient confidentiality and the patient's name will be disclosed in discovery.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

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

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

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

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Violation of Drug Statutes)**

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

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

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


25 **PRAYER**

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

28 ///

- 1 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 49551,
2 issued to Gilbert Simon, M.D.;
- 3 2. Revoking, suspending or denying approval of Gilbert Simon, M.D.'s authority to
4 supervise physician assistants and advanced practice nurses;
- 5 3. Ordering Gilbert Simon, M.D., if placed on probation, to pay the Board the costs of
6 probation monitoring; and
- 7 4. Taking such other and further action as deemed necessary and proper.

8
9 DATED: March 26, 2019


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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 SA2018303588
 33719051.docx