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

In the Matter of the Accusation Against: Robert Brant Fenton, M.D. Physician's and Surgeon's Certificate No. G 32805 Respondent.	Case No. 800-2017-032143

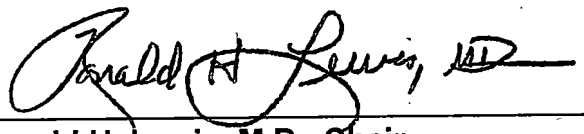
DECISION

The attached Proposed Decision 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 January 8, 2021.

IT IS SO ORDERED: December 10, 2020.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the Accusation Against:

ROBERT BRANT FENTON, M.D.

Case No. 800-2017-032143

OAH No. 2020040233

PROPOSED DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 6, 2020. The hearing was conducted telephonically.

LeAnna E. Shields, Deputy Attorney General, represented complainant, William J. Prasifka, Executive Director, Medical Board of California.[1]

Kevin D. Cauley, Attorney at Law, represented respondent, Robert Brant Fenton.

The record was closed and the matter was submitted for decision on October 6, 2020.

FACTUAL FINDINGS

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[1] Mr. Prasifka was appointed executive director after the accusation was filed.

1. On August 24, 1976, the Medical Board issued Physician's and Surgeon's Certificate No. G 32805 to Robert Brant Fenton, M.D.

2. Respondent is an orthopedic surgeon, who no longer practices medicine. Approximately 70 percent of his patients were workers' compensation claimants.

Criminal Charges Against Respondent

3. In a felony complaint dated April 3, 2017, the district attorney of Orange County charged respondent with 12 felony counts.

4. Respondent entered into an agreement with Tanya King, Christopher King, and King Medial Management, Inc. (King Medical). Respondent testified about King Medical and "sub-entities" of King Medical, and he explained his understanding of the relationships among the entities. Respondent acknowledged that the criminal complaint summarizes respondent's involvement with those entities. And in respondent's testimony he elaborated on the contents of the criminal complaint.

5. Between approximately July 11, 2011, and September 1, 2015, respondent entered into an agreement with King Medical. Pursuant to the agreement, King Medical formulated transdermal creams (creams) and had Stevens's Pharmacy manufacture them. King Medical purchased the creams from Steven's Pharmacy and arranged for the pharmacy to ship them to respondent. Pursuant to the agreement, respondent prescribed the creams for workers' compensation patients, dispensed the creams, wrote prescriptions for additional 30-day supplies of the creams, and provided King Medical with the patients' billing information so that King Medical could bill workers' compensation insurance carriers for the creams. King Medical then paid respondent $50 for each patient for whom he had provided billing information.

6. On approximately February 11, 2014, respondent entered into an agreement with Monarch Medical Group, Inc. (Monarch) and One Source Labs, Inc. (One Source) pursuant to which respondent agreed to prescribe urine toxicology drug testing kits (urine testing kits) for his workers' compensation patients in return for a financial consideration. Monarch Medical purchased urine toxicology drug testing kits from NuCare Pharmaceuticals. The kits were shipped to respondent. Respondent administered the tests to his workers' compensation patients and, pursuant to his agreement, sent the tests to One Source for quantitative testing. Monarch then billed workers' compensation insurance carriers for the tests, and pursuant to the agreement, sent a percentage of the profits to respondent.

7. On or between February 13, 2015, and August 27, 2015, respondent agreed to distribute medications that Monarch purchased from A.S. Medication Solutions in return for a percentage of the profits obtained on collections from workers' compensation carriers.

8. According to the calculation of restitution that the court ordered respondent to pay as a condition of his criminal probation, King Medical and Monarch paid respondent a total of $38,222.04.

9. In the criminal complaint, one count was for a violation of Penal Code section 550, subdivision (a)(6), conspiracy to commit medial insurance fraud. Two counts were for violations of Penal Code section 549, false and fraudulent claims. Three counts were for violations of Business and Professions Code section 650, rebate for patient referrals. And six counts were for violations of Penal Code section 550, subdivision (b)(3), insurance fraud.

10. Ultimately, respondent pled guilty to a single, misdemeanor charge regarding record keeping. The events that gave rise to the original charges, however, constitute the circumstances surrounding respondent's commission of the lesser offense, and Business and Professions Code section 2236, subdivision (c), provides, in part: "The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline . . . ."

Respondent's Plea Agreement and Criminal Probation

11. On October 31, 2018, respondent entered into a negotiated plea agreement in which he agreed to plead guilty to a misdemeanor violation of Business and Professions Code section 2266, failure to maintain adequate and accurate records relating to the provision of services to patients. The plea form contained a statement of the factual basis for the plea, as follows:

> I failed to maintain adequate and accurate records relating to the provision of services to my patients, as required by the Medical Board of California. This plea is limited to services with reference to King Medical Management, Inc., and One Source Labs, Inc.

12. A handwritten note on the plea form says, [Defendant] "understands that the Medial Board may take independent Action."

13. On October 31, 2018, the court added count 13 to the criminal complaint, charging a misdemeanor violation of Business and Professions Code section 2266, a record keeping violation. On respondent's guilty plea, he was convicted of the charges in count 13, and the court dismissed the 12 fraud-related felony counts. The court placed respondent on three years informal probation. As conditions of

probation, the court required respondent to pay restitution of $38,222.04 and pay $4,205 in fines and fees. The court imposed other standard conditions of probation. Further the court granted a motion to restrict respondent's practice; the court ordered that respondent shall not work in the workers' compensation field or see workers' compensation patients for three years. Respondent's probation is scheduled to terminate on October 31, 2021.

14. A court order dated September 22, 2017, continues in effect as an additional condition of probation. Respondent and the medical board entered into a stipulation that, as a condition of the court's permitting respondent to be released on bail or on his own cognizance, respondent agreed that, until the completion of the criminal proceeding, up to and including probation, respondent shall be prohibited from engaging in any conduct that falls within any of the provisions of Labor Code section 139.3. On September 22, 2017, the court accepted the stipulation and ordered that, until the completion of the criminal proceeding, up to and including probation, respondent shall be prohibited from engaging in any conduct that violates Labor Code section 139.3. Thus, this is an additional condition of the criminal probation.

15. Labor Code section 139.3 became effective January 1, 2012, which was six months after respondent first entered into a contract with King Medical. Labor Code section 139.3, subdivision (a), provides that, to the extent services are paid for pursuant to the workers' compensation law, it is unlawful for a physician to refer a person for certain, specified medical treatments or services, including clinical laboratory and pharmacy goods, if the physician has a financial interest with the entity that receives the referral. Labor Code section 139.3, subdivision (b)(4), provides that "financial Interest" includes any type of compensation, remuneration, rebate, dividend, or other form of direct or indirect payment. Labor Code section 139.3, subdivision

(c)(2), provides that it shall be unlawful for a physician to receive or accept any rebate, refund, commission, or other consideration as compensation for a referred evaluation or consultation. While Labor Code section 139.3, subdivision (a), concerns only certain, specified medical treatments or services, Labor Code section 139.3, subdivision (e), applies to all referrals and provides that, when a physician makes a referral to an organization in which the physician has a financial interest, the physician shall disclose his or her interest to the patient.

Respondent's Testimony

TESTIMONY CONCERNING THE CONVICTION AND THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE RECORD KEEPING MISDEMEANOR

16. Respondent testified that he had a contract with King Medical and Monarch, and they paid him.

17. Respondent emphasized the fact that the only criminal charge he agreed to in his plea agreement was the failure to maintain adequate and accurate records relating to the provision of services to patients. He said the problem was with records regarding billing for services related to King Medical and others. He said there was no injury to patients, and he has had no criminal probation violations.

18. Respondent testified that he is not happy with his conduct relating to the billing deficiencies. He said he should have spent more time involving his own office in billing matters. He no longer practices medicine, but he assures the board that, if he were still practicing, he would be more cautious.

19. Respondent said he has never ordered a test that was not medically necessary. Respondent said he has never prescribed a medication that was not medically necessary.

20. Respondent said he agreed to use "their" pharmacy and "their" billing services. He agreed that, if he prescribed creams, it would be through this pharmacy. He did not purchase the creams he dispensed. He testified that he dispensed samples. He dispensed samples of creams for approximately four to 12 months.

21. Respondent said he paid the restitution of $38,222.04 before he entered into the plea agreement, so at the time the court made the payment of restitution a condition of probation, respondent had already paid it.

22. Respondent self-reported the misdemeanor conviction to the board.

23. Respondent said the Kings were a married couple, and they oversaw multiple subgroups. The pharmacy was a separate entity.

24. Eric Hood, a detective with the Fraud Division of the California Department of Insurance, conducted an investigation and wrote a report dated March 30, 2017. An excerpt from his report is in evidence as administrative hearsay. He wrote:

> Robert Fenton, M.D., received payments in excess of $38,000 from Monarch Medical Group and King Medical Management for the time period 12-12-12 to 08-12-15 for urine toxicology tests, oral medications, and compound creams he dispensed to his workers' compensation patients. In return for these payments, during this same period, Fenton referred One Source Laboratories patients for

> quantitative urine drug testing. Additionally, Fenton prescribed compound creams filled by Steven's Pharmacy to be shipped to his patients. In addition to the payments, *Fenton did not incur any out of pocket expenses for the compound creams and oral medications he dispensed or the active medication specimen kits, because these were all purchased by Monarch and provided to him.* (Italics added.)

25. Respondent testified that Mr. Hood interviewed him. Respondent said the dates in the excerpt are roughly correct. Respondent said he did not agree with Mr. Hood's "summary," i.e., that part of the excerpt that says:

> Fenton did not incur any out-of-pocket expenses for the compound creams and oral medications he dispensed or the active medication specimen kits, because these were all purchased by Monarch and provided to him.

26. Respondent testified that he disagreed with that statement because there always was the possibility of his having to incur out-of-pocket expenses. He always anticipated that, if a workers' compensation insurance carrier declined to pay a claim, King Medical or Monarch would ask him to pay it. Respondent said he had no up-front costs but that he was always at risk of being held responsible if an insurance company refused to pay for medications, testing, creams, or kits. He said neither King Medical nor Monarch ever came back on him for payment for anything. But because respondent anticipated that it could happen, he considers part of Mr. Hood's statement to be incorrect.

27. Respondent did not say he disagreed with Mr. Hood's statement in any other respect.

28. Respondent said he did send urine samples for quantitative testing. He prescribed compounded creams that he understood were compounded by Steven's Pharmacy.

RESPONDENT'S TESTIMONY REGARDING HIS BACKGROUND, EDUCATION, PRACTICE, AND PUBLIC SERVICE

29. Respondent was born in Los Angeles and grew up there.

30. Respondent attended Santa Monica College and the University of Southern California. In 1971, he graduated from the University of Southern California, *cum laude*, with a bachelor's degree in psychology. In 1975, he graduated from the University of Southern California School of Medicine with an M.D, degree. From 1975 to 1976, respondent did an internship in surgery at the Wadsworth Veterans Administration Hospital in Los Angeles. From 1976 to 1977, he did a residency in general surgery at the University of California Los Angeles Hospital and Clinics. From 1977 to 1981, respondent did a residency in orthopedic surgery at Harbor UCLA Medical Center in Torrance. The Medical Board of California issued a license to respondent in 1976, and the Nevada State Board of Medical Examiners issued a license to him in 1981.

31. Respondent has been Chairman of the Department of Orthopedic Surgery, Little Company of Mary Hospital in Torrance and Chairman of the Department of Orthopedic Surgery, Torrance Memorial Hospital. From July 1983 to the present, respondent has been board certified by the American Academy of Orthopedic Surgery

(AAOS). He is an AAOS Diplomat. Also, he has been re-certified annually by the San Diego Arthroscopic Shoulder Surgery Conference.

32. From 1989 through 1991, respondent was a Commissioner, Board of Medical Quality Assurance, Division of Licensing, State of California. In 1981 respondent was a clinical professor of orthopedic surgery at Harbor UCLA Medical Center in Torrance. In 1984, he became an Independent Medical Evaluator; in 1985, he became an Agreed Medical Evaluator, and in 1996, he became a Qualified Medical Evaluator.

33. Respondent has had hospital staff affiliations at Little Company of Mary Hospital in Torrance, Torrance Memorial Medical Center, South Bay Medical Center in Redondo Beach, Surgery Center of South Bay in Torrance, and Torrance Outpatient Surgery Center.

34. Respondent was in private practices in the Redondo Beach and Torrance areas from 1981 through October 2018. Respondent stopped practicing medicine in October 2018.

35. Respondent has volunteered his time for various community projects. Respondent speaks Spanish, and years ago, went to small villages in Mexico and provided free medical care. For four years respondent served as team physician to Bishop Montgomery High School and Torrance High School. In that capacity, he gave advice concerning medical care. He volunteered as a clinical professor at Harbor UCLA Medical Center. Respondent has been a licensed pilot since 1976. He is a second lieutenant in the Civil Air Patrol, an auxiliary of the US Air Force, and has done volunteer work with the Civil Air Patrol. The work has included aerospace education, emergency services, and drug interdiction reconnaissance.

36. He has served on the board of his temple, Temple Beth El in San Pedro, and has made substantial contributions to the temple. He served as chairman of a committee to evaluate temple security.

37. Respondent has never before been disciplined by the Medical board of California or the Nevada State Board of Medical Examiners. His hospital privileges have never been disciplined. Respondent testified that, in over 30 years of practice, he had only three malpractice claims filed against him, and the most recent one was 20 years ago. Two were settled for amounts below reporting requirements. One went to trial and resulted in a jury verdict in respondent's favor.

38. Respondent presently has no intention of returning to the practice of medicine. He wants to keep his license because it has been part of his identity for so many years.

RESPONDENT'S TESTIMONY REGARDING MITIGATION

39. Respondent testified that he learned of King Medical at a state-wide meeting of the California Orthopedic Association (COA). It is a state-wide professional organization. Respondent has been active in COA and regularly attended the state-wide meetings. One year, King Medical had a display among the vendors at the COA meeting. Respondent assumed they were legitimate. Someone from King Medical came to his office, made a presentation, and offered their services.

40. Respondent testified that he was drawn to the King Medical program because the existing program, utilization review, was a terrible system. Often patients would have to wait weeks to get a workers' compensation carrier's approval for a medication or device. With the King Medial system, respondent could prescribe

whatever he concluded a patient needed, and the patient would get those medications or devices without waiting for insurance carrier approval.

Continuing Education Courses Completed in 2017 and 2018

41. Respondent submitted certificates showing that, in 2017 and 2018, he completed five continuing education courses.

42. On May 18, 2017, respondent completed the COA's 2017 qualified medical examiner course. The course was approved for 6 Qualified Medical Evaluator, Continuing Medical Education hours.

43. On May 19 through 21, 2017, respondent attended the COA's annual meeting. Attendance was approved for 17 American Medical Association, Physician's Recognition Award (AMA, PRA) category 1 credits.

44. On June 14 through 17, 2017, respondent completed the San Diego Shoulder Institute's 34th annual course in arthroscopy, arthroplasty, and fractures. The course was approved for 17 AMA, PRA category 1 credits.

45. On November 22, 2017, respondent completed a one-hour course for qualified medical evaluators in evaluating California injured workers. The course was presented by the Center for Occupational and Environmental Health, University of California, Berkeley.

46. On June 1 through 3, 2018, respondent attended the COA's annual meeting. Attendance was approved for 17 AMA, PRA category 1 credits.

Dr. Gleiberman's Letter and Testimony

47. Peter Gleiberman, M.D., wrote a letter and testified. The following is a summary of his letter and testimony.

48. Dr. Gleiberman is Assistant Professor of Orthopedic Surgery, Charles Drew University of Medicine and Science; Assistant Professor of Orthopedic Surgery, David Geffen School of Medicine at UCLA; and Assistant Clinical Professor, UCLA Department of Orthopedic Surgery.

49. Dr. Gleiberman and respondent met sometime between 1983 and 1986. By 1988, they routinely performed surgeries together. From 1994 to 2018 they shared office space and staff. Dr. Gleiberman has the utmost confidence in respondent's surgical skills. Respondent performed arthroscopic knee surgery on Dr. Gleiberman's wife, and she did very well.

50. Dr. Gleiberman testified that respondent is dedicated to the orthopedic field. He is highly ethical. Respondent has an excellent reputation in the orthopedic community and has been the chairman of the orthopedic committees at a few local hospitals. Respondent is an outstanding orthopedic surgeon and an excellent teacher. Dr. Gleiberman said he would be happy to refer patients to respondent and happy to have respondent treat members of Dr. Gleiberman's family. "Suggesting that respondent poses a threat to the community is fantasy."

Dr. LaGrelius's Letter and Testimony

51. Thomas W. LaGrelius, M.D., wrote a letter and testified. The following is a summary of his letter and testimony.

52. Dr. LaGrelius is a family physician and geriatrician, who has been in practice in and around Torrance since 1974. He also is president of South Bay Independent Physicians Medical Group, Inc., which manages insurance contracts for hundreds of local doctors. Dr. LaGrelius has known respondent since the late 1970s, when respondent joined a thirty-physician medical group for which Dr. LaGrelius served as a member of the board of directors. In 1983 they left the group and shared office space for a few years.

53. Respondent and Dr. LaGrelius have taken care of each other and each other's families. Dr. LaGrelius is respondent's personal physician. Respondent performed major knee surgery on Dr. LaGrelius's daughter, with excellent results.

54. Dr. LaGrelius testified that respondent's character is exemplary. For the forty years Dr. LaGrelius has known respondent, respondent has followed the highest degree of professional ethics. Dr. LaGrelius has never been aware of respondent deviating from his dedication to professionalism. Respondent is a clam, careful, capable orthopedic surgeon, who has cared for hundreds of patients with skill and compassion. Respondent has enjoyed the respect and admiration of the entire medical community.

55. Dr. LaGrelius said he has reviewed the grounds asserted for disciplining respondent's license and is of the opinion that respondent should not be censured or reprimanded. Respondent does not pose a threat to anyone or any entity in the community.

56. If respondent reestablished his practice, Dr. LaGrelius would continue to refer patients to him.

William Tappin's Letter and Testimony

57. William Tappin, Attorney at Law, wrote a letter and testified. The following is a summary of his letter and testimony.

58. Mr. Tappin specializes in workers' compensation defense. He is very familiar with the circumstances that gave rise to criminal charges being filed against respondent. Mr. Tappin is of the opinion that respondent made a mistake by becoming involved with unscrupulous people who duped respondent and many, many other physicians who did not understand the law. Respondent has been active in the COA. On a number of occasions, Mr. Tappin has been a speaker at COA state-wide meetings. Respondent regularly attended COA meetings. The problems that gave rise to charges being filed against respondent resulted from agreements respondent entered into with a vendor who had a display at one of the COA meetings. All of the doctors assume that the COA vets and prescreens vendors to be sure they are reputable. But in fact, they may not be reputable. This particular vendor lured several doctors into a situation.

59. Mr. Tappin has known respondent for over 20 years and has been involved in approximately one hundred cases in which respondent served as an evaluator. Mr. Tappin has used respondent as an agreed medical evaluator in the field of orthopedics and as a Panel Qualified Medical Evaluator. Respondent is highly experienced. He is accommodating and has a reputation for issuing fair and unbiased reports. Mr. Tappin does not know of respondent's ever having engaged in unprofessional conduct. Respondent is upright, honest, helpful, respectful, compassionate, and well qualified. Respondent is ethical and caring; he is not a threat to anyone.

60. Respondent has contributed to his community in many ways. He has served on the board of his temple. He provided medical services to sports teams in the Torrance area. He provided training for medical students and residents. As a pilot, he did search and rescue work with the Civil Air Patrol. He volunteered his services as a physician in rural areas of Mexico.

Christine Crawford's Letter and Testimony

61. Christine Crawford wrote a letter and testified. The following is a summary of her letter and testimony.

62. Ms. Crawford was respondent's office manager for 35 years. She left that position to open a medical billing company. Respondent has always treated his patients and his employees with compassion and respect. He is a person of integrity and high standards. He has provided medical care to members of Ms. Crawford's family and a number of her friends. His patients consider him to be caring and professional. Ms. Crawford testified that, in all the years she worked for respondent, she never heard a patient complain about the care respondent provided. She said respondent is not a threat to the public and can continue to practice safely.

Other Letters of Recommendation

63. Respondent submitted 15 other letters of recommendation. Many of the letter writers have known respondent for 30 or more years. Many have had longstanding professional relationships with him. Two are x-ray technicians. Two are medical transcribers. One is a chiropractor who referred patients to respondent. Other letter writers are friends. Others are pilots who know respondent because of a shared love for flying. All of the letter writers have known respondent well and for many years.

64. All of the letter writers noted that they were writing for the purpose of informing the medical board that respondent is a person of good character, and many added that he is not a threat to the community. Various letter writers described respondent as honest, a person of high integrity, compassionate, caring, kind, professional, hardworking, and unbiased. Many of them had also been respondent's patients, and many had referred family members and friends to him. They praised his skill as a doctor and surgeon. Some observed that he was conservative in recommending invasive procedures only as a last resort.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582; Evid. Code, § 500.)

2. The standard of proof in an administrative proceeding seeking to suspend or revoke a license that requires substantial education, training, and testing, is "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

Grounds for Imposing Discipline

CONVICTION OF AN OFFENSE SUBSTANTIALLY RELATED TO THE PRACTICE OF MEDICINE

3. Business and Professions Code section 2266 provides that the failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to patients constitutes unprofessional conduct.

4. California Code of Regulations, title 16, section 1360, provides:

> For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

5. Business and Professions Code section 2236, subdivision (a), provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of the Medial Practice Act. Business and Professions Code section 2236, subdivision (d), provides that a plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

6. On October 31, 2018, on respondent's guilty plea, he was convicted of a misdemeanor violation of Business and Professions Code section 2266, the failure of a

physician and surgeon to maintain adequate and accurate records relating to the provision of services to a patient.

FAILURE TO MAINTAIN ADEQUATE AND ACCURATE MEDICAL RECORDS

7. A second ground for imposing discipline is the underlying conduct that gave rise to the criminal conviction. Business and Professions Code section 2266 provides that the failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to a patient constitutes unprofessional conduct.

8. Respondent admitted that he failed to maintain the records that Business and Professions Code section 2266 requires.

UNPROFESSIONAL CONDUCT (WHICH COMPLAINANT IDENTIFIES AS VIOLATION OF PROVISIONS OF THE MEDICAL PRACTICE ACT)

9. As a third ground for imposing discipline, complainant alleges Business and Professions Code section 2234. That section provides that the board shall take action against any licensee who is charged with unprofessional conduct. Business and Professions Code section 2234, subdivision (a), provides that unprofessional conduct includes violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of or conspiring to violate the Medical Practice Act.

10. Respondent admitted that he failed to maintain the records that Business and Professions Code section 2266 requires, which constitutes a violation of the Medical Practice Act.

Complainant Alleges a Fourth Ground for Imposing Discipline

11. Complainant's fourth ground for imposing discipline is simply a different statement of complainant's third ground. As with the third ground, the code section complainant cites is Business and Professions Code section 2234. As noted above, that section provides that "the board shall take action against any licensee who is charged with *unprofessional conduct*." (Italics added.) The section then lists seven subdivisions, (a) through (g), as examples of conduct that constitute unprofessional conduct. The introductory paragraph makes clear that the list is not intended to be exhaustive. Unprofessional conduct includes, but is not limited to, the seven examples. It is possible that a respondent has engaged in more than one example of unprofessional conduct and that each act of unprofessional conduct could be a separate ground for imposing discipline. But here complainant does not allege independent acts of unprofessional conduct. Respondent's only act of unprofessional conduct was the record keeping violation.

12. In complainant's third disciplinary ground, complainant alleges the example stated in Business and Professions Code section 2234, subdivision (a), "unprofessional conduct includes . . . violating or attempting to violate . . . any provision of this chapter." In complainant's fourth disciplinary ground, complainant does not allege one of the examples expressed in Business and Professions Code section 2234. Rather, apparently relying on the fact that the stated examples are not exhaustive, complainant alleges that respondent engaged in unprofessional conduct in that he "engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine . . . ."

13. That language comes from *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564. Shea dealt with Business and Professions Code section 2234 but before the section was renumbered. At the time of the Shea decision it was Business and Professions Code section 2361. On numerous occasions, Dr. Shea engaged in unprofessional conduct in that, upon believing a patient to be hypnotized, he described, in the coarsest detail, both sexual foreplay and the mechanics of sexual intercourse without having been solicited to do so and without having first explained his plan. Further, that course of treatment was not appropriate to any of his patients' medical complaints. This was not in the codified list of examples of unprofessional conduct.

14. But here, complainant does not allege that respondent did anything other than violate record keeping requirements. And there is no other evidence that can be used to support the imposition of discipline. There is evidence that he took kickbacks in violation of Labor Code section 139.3. But that is in evidence only pursuant to Business and Professions Code section 2236, subdivision (c), and can be used only to fix the degree of punishment – not as a ground for imposing discipline.

15. It is concluded that complainant did not show that the fourth ground for imposing discipline is different from – or based on conduct other than that asserted in – the third ground.

The Board's Recommended Range of Penalties

CONVICTION OF A CRIME

16. For conviction of a crime substantially related to the qualifications, functions or duties of a physician and surgeon and arising from or occurring during patient care, treatment, management, or billing, the board's recommended minimum

penalty is: Stayed revocation, one-year suspension, and at least seven years' probation. The board's recommended maximum penalty is revocation.

FAILURE TO MAINTAIN ADEQUATE RECORDS

17. For a failure to maintain adequate records, the board's recommended minimum penalty is: A stayed revocation and five years' probation. The board's recommended maximum penalty is revocation.

GENERAL UNPROFESSIONAL CONDUCT

18. For general unprofessional conduct, the board's recommended minimum penalty is: A stayed revocation and five years' probation. The board's recommended maximum penalty is revocation.

Respondent Requested That the Discipline be a Public Reproval

19. Business and Professions Code section 495 provides that any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder for any act that would constitute grounds to suspend or revoke a license or certificate.

20. Respondent contends that the appropriate discipline is a public reproval with a requirement that respondent take a record keeping course and an ethics course. Respondent acknowledges that the restrictions on his practice will remain in effect until the termination of the criminal probation.

21. Respondent contends that the evidence shows that he had a good faith belief that the people he dealt with at King Medial and Monarch were reputable and legitimate. There was no patient harm. Respondent has complied with his criminal

probation. Respondent has been licensed for over 40 years with no license discipline. He has stopped practicing medicine and has no intention of returning to the practice.

22. In the board's published, recommended conditions of probation, condition 33 is one of the standard conditions. It provides, in effect, that a person on probation should engage in the practice of medicine at least 40 hours each calendar month. It is slightly more complicated than that, but that is the essence of it. Respondent contends that, because he has stopped practicing medicine, it would be impossible for him to satisfy that condition. Respondent contends, further, that placing him on probation and conditioning the probation on an impossibility would violate the due process clause, the equal protection clause, and rights protected by the commerce clause. It is assumed that when he asserts the due process and equal protection clauses, he is asserting both the state and federal constitutional protections.

Complainant's Recommendation

23. Complainant recommended a stayed revocation and five years' probation with standard conditions. Complainant recommended that respondent be required to complete a record keeping course, complete an ethics course, and be required to have a billing monitor. Complainant further recommended that respondent be prohibited from treating workers' compensation patients, which would cause the practice restriction to extend beyond the termination of the criminal probation and continue to be in effect for the entirety of the administrative probation.

24. The probationary period the board recommends for probation after conviction of a crime is seven years. For a probation granted when discipline is imposed for a failure to maintain adequate records or for general unprofessional

conduct, the board recommends five years. Complainant recommends a deviation from the seven years, and that is appropriate in this case.

Evaluation

25. Business and Professions Code section 2229, subdivision (a), provides that protection of the public shall be the highest priority for the Division of Medical Quality. Business and Professions Code section 2229, subdivision (b), provides that, whenever possible, action shall be taken to aid in the rehabilitation of licensees. Where restrictions on the scope of practice are needed, restrictions should be ordered.

26. This case does not call for revocation. Labor Code 139.3 was not in effect at the time respondent first entered into an agreement with King Medical and did not go into effect for six months. Respondent entered into the agreement in July 2011, and Labor Code 139.3 did not go into effect until January 1, 2012. There is some evidence that doctors were duped by King Medial and Monarch, but people have an obligation to pay attention to changes in the laws that affect them. Respondent continued with these arrangements for more than three years, six months after Labor Code 139.3 went into effect. There also is the fact that the arrangements were just too good to be true. And respondent should have known they were too good to be true.

27. As noted above, the probationary period the board recommends for probation after conviction of a crime is seven years. For a probation granted after discipline is imposed for a failure to maintain adequate records or for general unprofessional conduct, the board recommends five years. It is appropriate to deviate from the seven-year recommendation and choose five years. There is no evidence of patient harm. Record keeping violations can result in patient harm, but fortunately, in this case, there is no evidence of patient harm. Respondent has complied with his

criminal probation. Respondent has been licensed for over 40 years with no license discipline. Respondent acknowledged his billing deficiencies. Respondent paid the restitution of $38,222.04, and it is remarkable that he paid that before entering into the plea agreement. Respondent self-reported the misdemeanor conviction to the board. On this record, outright revocation is not appropriate.

28. On the other hand, this is not a case that calls for merely a public reproval. Respondent devoted 70 percent of his practice to workers' compensation cases. It is not believable that an anti-kickback law aimed specifically at doctors who treated workers' compensation patients was in effect for over three years, six months before respondent heard about it. As noted above the evidence concerning Labor Code section 139.3 cannot be used here as a ground for imposing discipline, but it is relevant in fixing the degree of discipline.

29. It is not necessary to deal with the constitutional issues respondent raises concerning probationary condition 33 and the 40-hour-per-month work requirement it imposes. Respondent contends that placing him on probation and conditioning the probation on an impossibility would violate the due process clause, the equal protection clause, and rights protected by the commerce clause. But probationary condition 33 would not create an impossibility. Respondent could get a part-time job and work 40 hours per calendar month.

30. Finally, there is no need to extend the prohibition against respondent's treating workers' compensation patients. The existing prohibition, which is a condition of respondent's criminal probation, will continue until October 31, 2021. The people who testified in respondent's behalf and the other people who wrote letters of recommendation were very persuasive – particularly with regard to respondent's being an excellent surgeon. This is not a case in which there is reason to be concerned about

the care respondent will provide. The concern here has to do with kickbacks. That matter must be dealt with through appropriate conditions. In choosing the conditions to impose on a probationary license, the board is concerned with promoting uniformity, certainty, fairness, and deterrence, and, in turn, furthering public protection. At this point, extending the prohibition against treating workers' compensation patients would not promote those goals; it would just be punitive.

ORDER

Certificate No. G 32805 issued to respondent Robert Brant Fenton is revoked pursuant to Legal Conclusions 3 through 10 separately and for all of them. However, revocation is stayed, and respondent is placed on probation for five years on the following terms and conditions.

1. Community Service

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a community service plan in which respondent shall, within the first 2 years of probation, provide 75 hours of free services – medical or nonmedical – to a community or non-profit organization.

Prior to engaging in any community service respondent shall provide a true copy of the Decision to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any changes in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

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. Monitoring - Billing

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

respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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

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

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

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

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program approved in advance by the Board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

5. Notification

Within seven (7) days of the effective date of this Decision, 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.

6. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 Board'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.

12. 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.

13. 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.

14. 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.

15. 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.

DATE: November 5, 2020

Robert Walker
Robert Walker (Nov 5, 2020 14:30 PST)

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

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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: **ROBERT BRANT FENTON, M.D.** 27115 Sunnyridge Road Palos Verdes Peninsula, CA 90274 Physician's and Surgeon's Certificate No. G 32805, Respondent.	Case No. 800-2017-032143 **A C C U S A T I O N**

PARTIES

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

2. On or about August 24, 1976, the Medical Board issued Physician's and Surgeon's Certificate No. G 32805 to Robert Brant Fenton, 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 January 31, 2021, unless renewed.

3. On or about September 22, 2017, an order was issued in the Superior Court of California, County of Orange, Case No. 17CF0798, restricting Respondent's practice of medicine

in the State of California, until a final disposition of the criminal charges pending against him, or as a condition of probation in Case No. 17CF0798.

JURISDICTION

4. 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.

5. 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.

6. Section 2234 of the Code, states, in pertinent part:

> 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.
>
> ...

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7. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

8. 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.

9. Section 2314 of the Code states, in pertinent part:

(a) Unless it is otherwise expressly provided, any person, whether licensed under this chapter or not, who violates any provision of this article is guilty of a misdemeanor.

10. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

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11. 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 to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of a Physician and Surgeon)

12. Respondent has subjected his Physician's and Surgeon's Certificate No. G 32805 to disciplinary action under sections 2227 and 2234, as defined by sections 2266, 2236 and 2314, of the Code, and section 1360 of title 16 of the California Code of Regulations, in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged hereinafter:

13. On or about April 3, 2017, in the case entitled *The People of the State of California v. Robert Brant Fenton*, Superior Court of California, County of Orange, Case No. 17CF0798, a criminal complaint was filed charging Respondent with one (1) count of violating section 550, subdivision (a)(6), of the Penal Code (Conspiracy to Commit Medical Insurance Fraud), two (2) counts of violating section 549 of the Penal Code (False and Fraudulent Claims), three (3) counts of violating section 650 of the Business and Professions Code (Rebates for Patient Referrals), and six (6) counts of violating section 550, subdivision (b)(3), of the Penal Code (Insurance Fraud), all felonies.

14. On or about October 31, 2018, Respondent signed a change of plea form admitting guilt as to one (1) amended count of violating Business and Professions Code section 2266, failure to maintain adequate and/or accurate medical records, as a misdemeanor.

15. On or about October 31, 2018, Respondent's plea of guilty was entered and accepted by the Court. Respondent was sentenced to criminal probation for a period of three (3) years with various terms and conditions, including, but not limited to, payment of restitution in the amount of $33,222.04 and an agreement not to treat patients through workers' compensation.

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SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and/or Accurate Medical Records)

16. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 32805 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and/or accurate medical records, as more particularly alleged in paragraphs 12 through 15, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violation of Provisions of the Medical Practice Act)

17. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 32805 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he has committed a violation or violations of provisions of the Medical Practice Act, as more particularly alleged in paragraphs 12 through 16, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 32805 to disciplinary action under sections 2227 and 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 to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 12 through 17, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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 32805, issued to Respondent Robert Brant Fenton, M.D.;

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2. Revoking, suspending or denying approval of Respondent Robert Brant Fenton, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Robert Brant Fenton, 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, 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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