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

In the Matter of the Accusation Against: Bruce Mark Albert, M.D. Physician's and Surgeon's Certificate No. G 40650 Respondent.	Case No.: 800-2017-032243

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 30, 2021.

IT IS SO ORDERED: August 31, 2021.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

ROB BONTA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
CHRISTINE R. FRIAR
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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: **BRUCE MARK ALBERT, M.D.** **1000 Bristol St. N, Suite 1B** **Newport Beach, CA 92660** **Physician's and Surgeon's Certificate No. G 40650,** Respondent.	Case No. 800-2017-032243 OAH No. 2021010200 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Christine R. Friar, Deputy Attorney General.

2. Respondent Bruce Mark Albert, M.D. (Respondent) is represented in this proceeding by attorneys Dennis Ames and Pogey Henderson of La Follette, Johnson, Dehaas, Fesler &

Ames, whose address is: 2677 North Main Street, Suite 901, Santa Ana, CA 92705-6632.

3. On or about August 24, 1979, the Board issued Physician's and Surgeon's Certificate No. G 40650 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-032243, and will expire on December 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-032243 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 3, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-032243 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-032243. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent agrees that, at a hearing, Complainant could establish a *prima facie* case for the charges and allegations contained in Accusation No. 800-2017-032243 and Respondent

hereby gives up his right to contest those charges.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations in Accusation No. 800-2017-032243, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate No. A 40650 to disciplinary action.

11. 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 Board, all of the charges and allegations contained in Accusation No. 800-2017-032243 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

12. Respondent agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following

Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 40650 issued to Respondent Bruce Mark Albert, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 25 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 50 hours of CME of which 25 hours were in satisfaction 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 - PRACTICE. 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 practice monitor, 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(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), 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 practice 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 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 medicine, and whether Respondent is practicing medicine safely. 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, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

6. SUPERVISION OF ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising 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, subdivision (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 Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

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.

16. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2017-032243 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or

restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Dennis Ames and Pogey Henderson. 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: 6/3/21

BRUCE MARK ALBERT, M.D.
Respondent

I have read and fully discussed with Respondent Bruce Mark Albert, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/3/2021

Pogey Henderson

DENNIS AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

CHRISTINE R. FRIAR
Deputy Attorney General
Attorneys for Complainant

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restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Dennis Ames and Pogey Henderson. 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: _____ _____

BRUCE MARK ALBERT, M.D.
Respondent

I have read and fully discussed with Respondent Bruce Mark Albert, 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: _____ _____

DENNIS AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: June 3, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

Christine R. Friar

CHRISTINE R. FRIAR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-032243

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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:	Case No. 800-2017-032243
BRUCE MARK ALBERT, M.D. **1000 Bristol St. N, Suite 1B** **Newport Beach, CA 92660** **Physician's and Surgeon's Certificate No. G 40650,** Respondent.	**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, 1979, the Medical Board issued Physician's and Surgeon's Certificate Number G 40650 to Bruce Mark Albert, 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 December 31, 2020, unless renewed.

///

JURISDICTION

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

4. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2234 of the Code states, 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.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> ....

6. Section 2052 of the Code states:

(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

7. Section 2264 of the Code states:

The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.

HEALTH AND SAFETY CODE

8. Health and Safety Code section 106965, subdivision (a), states:

It shall be unlawful for any person to administer or use diagnostic or therapeutic X-ray on human beings in this state after July 1, 1971, unless that person has been certified or granted a permit pursuant to subdivision (b) or (c) of Section 114870 or pursuant to Section 114885, is acting within the scope of that certification or permit, and is acting under the supervision of a licentiate of the healing arts.

9. Health and Safety Code section 106970 states that it is "unlawful for any person to direct, order, assist, or abet a violation of Section 106965."

10. Health and Safety Code section 106980 states:

Certification in radiologic technology pursuant to subdivision (b) or (c) of Section 114870 shall not authorize any of the following:

(a) the use of diagnostic, mammographic, or therapeutic X-ray equipment except under the supervision of a certified supervisor or operator;

(b) the interpretation of any radiograph or a diagnosis based upon it;

(c) the reporting of any diagnosis to a patient except as ordered by a licentiate of the healing arts; and

(d) the use of any title or designation indicating or implying the right to practice any of the healing arts.

11. Health and Safety Code section 107100 states:

It shall be unlawful for any licentiate of the healing arts to administer or use diagnostic, mammographic, or therapeutic X-ray on human beings in this state after January 1, 1972, unless that person is certified pursuant to subdivision (e) of Section 114870, Section 114872, or Section 114885, and is acting within the scope of that certification.

12. Health and Safety Code section 114850, states, in pertinent part, that "As used in this chapter . . .

(a) "Department" means the State Department of Public Health.

...

(e) "Limited permit" means a permit issued pursuant to subdivision (c) of Section 114870 to persons to conduct radiologic technology limited to the performance of certain procedures or the application of X-rays to specific areas of the human body, except for a mammogram.

...

(g) "Supervision" means responsibility for, and control of, quality, radiation safety, and technical aspects of all X-ray examinations and procedures.

(h)(1) "Licentiate of the healing arts" means a person licensed under the provisions of the Medical Practice Act, the provisions of the initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation thereof, and repealing all acts and parts of acts inconsistent herewith," approved by electors November 7, 1922, as amended, or the Osteopathic Act.

(2) For purposes of Section 114872 , a licentiate of the healing arts means a person licensed under the Physician Assistant Practice Act (Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code) who practices under the supervision of a qualified physician and surgeon pursuant to the act and pursuant to Division 13.8 of Title 16 of the California Code of Regulations.

...."

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13. Health and Safety Code section 114870 states, in pertinent part:

The department shall do all of the following:

(a) Upon recommendation of the committee, adopt regulations as may be necessary to accomplish the purposes of this chapter.

...

(e) Provide, upon recommendation of the committee, for certification of licentiates of the healing arts to supervise the operation of X-ray machines or to operate X-ray machines, or both, prescribe minimum standards of training and experience for these licentiates of the healing arts, and prescribe procedures for examining applicants for certification. This certification may limit the use of X-rays to certain X-ray procedures and the application of X-rays to specific areas of the human body.

....

14. Health and Safety Code section 114872, subdivision (a), states:

(a) The department shall issue a licentiate fluoroscopy permit to a qualified licentiate of the healing arts, as defined in paragraph (2) of subdivision (h) of Section 114850. Notwithstanding any other provision of law, the department shall accept applications for a fluoroscopy permit from a licensed physician assistant who meets the requirements of this section.

CALIFORNIA CODE OF REGULATIONS

15. California Code of Regulations, title 17, section 30254, subdivision (a), states:

Each user shall afford to the Department or other official agency specifically designated by the Department, at all reasonable times, opportunity to inspect materials, machines, activities, facilities, premises, and records pursuant to these regulations.

16. California Code of Regulations, title 17, section 30305, subdivision (b), states,

(b) Use.

(1) The user shall assure that all X-ray equipment under his jurisdiction is operated only by persons adequately instructed in safe operating procedures and competent in safe use of the equipment.

(2) The user shall provide safety rules to each individual operating X-ray equipment under his control, including any restrictions of the operating technique required for the safe operation of the particular X-ray apparatus, and require that the operator demonstrate familiarity with these rules.

(3) No user shall operate or permit the operation of X-ray equipment unless the equipment and installation meet the applicable requirements of these regulations and are appropriate for the procedures to be performed.

(4) Deliberate exposure of an individual to the useful beam for training or demonstration purposes shall not be permitted unless there is also a medical or dental indication for the exposure and the exposure is prescribed by a physician or dentist.

(c) Areas or rooms that contain permanently installed X-ray machines as the only source of radiation shall be posted with a sign or signs

CAUTION

X-RAY

in lieu of other signs required by the United States, title 10, Code of Federal Regulations, part 20, section 20.1902 as incorporated by reference in section 30253.

(d) High radiation areas caused by radiographic and fluoroscopic machines used solely in the healing arts and which are in compliance with the access control and signal requirements of title 24, California Code of Regulations, Part 2, Chapter 31C, sections 3101C through 3104C shall be exempt from the access control and signal requirements of 10 CFR 20, section 20.1601 as incorporated by reference in section 30253.

(e) The user shall publically display at each installation where an individual performs, or supervises the performance of, radiologic technology, as defined in section 30400, either:

(1) A copy of each of the individual's applicable current and valid certificate or permit issued pursuant to subchapter 4.5 (commencing at section 30400) of this chapter; or

(2) A list of all such persons containing:

(A) For each individual, the individual's name, the applicable certificate or permit number, and the expiration date as indicated on the Department issued document. This information shall be in a font size no less than 12 points; and

(B) The statement "A copy of the individual's certificate or permit is available for viewing upon request." in a font size no less than 14 points.

(f) If a user elects to post the list specified in subsection (e)(2), the user shall maintain the certificate or permit or a copy thereof for all individuals identified on the list.

17. California Code of Regulations, title 17, section 30461, states, in pertinent part:

(a) The permit categories for licentiates of the healing arts are:

(1) Fluoroscopy supervisor and operator;

(2) Radiography supervisor and operator;

...

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(b) A fluoroscopy supervisor and operator permit authorizes the holder, within the limitations of the holder's California healing arts license, to:

(1) Actuate or energize fluoroscopy X-ray equipment registered pursuant to Article 1 of Group 1.5 of subchapter 4.0 (commencing at section 30108); and

(2) Supervise the use of registered fluoroscopy X-ray equipment by:

(A) Certified diagnostic radiologic technologists who possess a current and valid radiologic technologist fluoroscopy permit; or

(B) Students in an approved school when the student is operating fluoroscopy X-ray equipment.

(c) A radiography supervisor and operator permit authorizes the holder, within the limitation of the holder's California healing arts license, to:

(1) Actuate or energize radiography X-ray equipment registered pursuant to Article 1 of Group 1.5 of subchapter 4.0 (commencing at section 30108); and

(2) Supervise the use of registered radiography X-ray equipment by:

(A) Certified diagnostic radiologic technologists;

(B) XT's within the scope of the XT's limited permit category as defined in section 30443 and as restricted by section 30447; or

(C) Students in an approved school when the student is operating radiography X-ray equipment.

....

18. California Code of Regulations, title 17, section 30463, states, in pertinent part:

(a) A fluoroscopy supervisor and operator permit issued by the Department shall be required of any licentiate of the healing arts who does one or more of the following:

...

(3) Supervises one or more persons who hold radiologic technologist fluoroscopy permits issued pursuant to section 30451.

19. California Code of Regulations, title 17, section 30464, states, in pertinent part:

(a) A radiography supervisor and operator permit issued by the Department shall be required of any licentiate of the healing arts who does one or more of the following:

...

(2) Supervises one or more certified diagnostic radiologic technologists.
(3) Supervises one or more XTs.

....

FACTUAL ALLEGATIONS

20. At all relevant times herein, Respondent was a physician and surgeon, specializing in orthopaedic surgery and engaged in the solo practice of medicine.

21. Health and Safety Code section 106965 prohibits the performance of diagnostic and therapeutic X-ray on human beings, except by those who are properly permitted, are acting within the scope of that permit, and are acting under the supervision of a licentiate of the healing arts. A facility performing X-ray exams without employing operators trained with basic understanding of radiation and exam specific procedures, places both patients and operators at risk.

22. Respondent is the holder of Radiography and Fluoroscopy Supervisor and Operator Permit No. 122440 which was first issued on December 12, 1983. Holders of radiography and fluoroscopy supervisor and operations permits are subject to all of the applicable provisions of Health and Safety Code sections 106955 through 107115 and 114840 through 114896, and California Code of Regulations, title 17, sections 30100 *et seq.*

23. The Department of Public Health (CDPH) is the agency of the State of California responsible for the permitting of licentiates of the healing arts to administer or use diagnostic X-ray on human beings, pursuant to Health and Safety Code sections 107110, 114850, subdivision (h)(1), 114872, subdivision (a), and California Code of Regulations title 17, sections 30461, 30463, 30464, 30466 and 30468. Specifically, the Radiologic Health Branch (RHB) is the program that administers the licensing and certification for the state's radiography and fluoroscopy supervisors and operators.

24. Brea Urgent Care is an outpatient medical facility located in Brea, California, partially owned by Respondent, and where Respondent practiced orthopaedic medicine during the relevant time period.

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25. Newport Urgent Care is an outpatient medical facility located in Newport Beach, California, partially owned by Respondent, and where Respondent practiced orthopaedic medicine during the relevant time period.

26. On or about September 25, 2015, a radiation safety inspection was conducted at Brea Urgent Care, located at 395 W. Central Avenue, Brea, California 92821 after the CDPH received an anonymous complaint alleging that the facility, and another facility in Newport Beach owned by Respondent, were not registered. During the inspection, it was found that the Brea facility was not registered and that Respondent was supervising the use of X-ray by one individual who was working outside the scope of his X-ray Technician (XT) permit. A Notice of Violation and Raditiation User's Declaration (NOVRUD) was issued to Respondent for supervising one individual working outside the scope of his permit. Respondent signed the NOVRUD on or about September 29, 2015, agreeing not to violate and to comply with the regulatory sections cited in the NOVRUD.

27. On or about November 16, 2016, a routine radiation safety inspection was conducted at Brea Urgent Care by the CDPH. During the inspection, it was found that Respondent was supervising the use of X-ray by three individuals who were working outside the scope of their XT permits. A NOVRUD was issued to Respondent for supervising and/or directing three Limited Permit X-ray Technicians who were working outside of the scope of their permits. A corrective action plan was submitted by the facility's Practice Manager on or about December 15, 2016, stating that the limited X-ray technicians will be monitored closely and will not be performing any radiological testing outside the scope of their permits. Respondent also submitted a corrective action plan dated January 20, 2017, to the CDPH.

28. On or about April 3, 2017, a radiation safety inspection was conducted at Newport Urgent Care, located at 1000 Bristol North, Suite 1B, Newport Beach, California 92260 by the CDPH. During the inspection, it was found that Respondent had supervised the use of X-ray by one individual who was working outside the scope of her XT permit. A NOVRUD was issued to Respondent for supervising an X-ray technician who was working outside the scope of her permit.

29. On or about February 25, 2019, a radiation safety inspection was conducted at Brea Urgent Care by the CDPH. During the inspection, it was again found that Respondent was supervising the use of X-ray by one individual who was working outside the scope of his XT permit. A NOVRUD was issued to Respondent for supervising and/or directing a Limited Permit X-ray technician who was working outside the scope of his permit.

30. On or about October 8, 2019, the CDPH served Respondent with an Accusation seeking to revoke his Radiography and Fluoroscopy Supervisor and Operator permit. Specifically, the Accusation alleges that on September 25, 2015, November 16, 2016, April 3, 2017, and February 25, 2019, Respondent was found to be supervising use of X-ray by individuals working outside the scope of their permits and therefore not properly certified or permitted to conduct X-ray. Respondent's Radiography and Fluoroscopy Supervisor and Operator permit does not allow supervision of this nature. Additionally, the Accusation charges that it is unlawful for any person to direct, order, assist or abet the use of x-ray on human beings without the appropriate certification or permit.

FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Medicine)

31. Respondent is subject to disciplinary action pursuant to sections 2264, and 2234, subdivision (a), as defined by section 2052, subdivision (b), of the Code, in that he aided and abetted the unlicensed practice of medicine. The circumstances are as follows:

32. The allegations contained in paragraphs 20 through 30 herein are incorporated by reference as if fully set forth, and represent the aiding and abetting the unlicensed practice of medicine.

33. Respondent's acts and/or omissions set forth in paragraphs 20 through 30, above, whether proven individually, jointly, or in any combination thereof, constitute the aiding or abetting of an unlicensed person to engage in the practice of medicine in violation of sections 2264, and 2234, subdivision (a), as defined by section 2052, subdivision (b), of the Code. Therefore, cause for discipline exists.

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SECOND CAUSE OF DISCIPLINE

(Repeated Negligent Acts)

34. Respondent is subject to disciplinary action pursuant to Code section 2234, subdivision (c), in that he committed repeated negligent acts. The circumstances are as follows:

35. The allegations contained in paragraphs 20 through 30 herein are incorporated by reference as if fully set forth, and represent repeated negligent acts.

36. Respondent's acts and/or omissions set forth in paragraphs 20 through 30, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts in violation of 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

37. Respondent is subject to disciplinary action pursuant to sections 2264, and 2234, subdivision (a), as defined by section 2052, subdivision (b), of the Code, in that he committed unprofessional conduct. The circumstances are as follows:

38. The allegations contained in paragraphs 20 through 30 herein are incorporated by reference as if fully set forth, and represent repeated negligent acts.

39. Respondent's acts and/or omissions set forth in paragraphs 20 through 30, above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct in violation of sections 2264, and 2234, subdivision (a), as defined by section 2052, subdivision (b), of the Code. Therefore, cause for discipline exists.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 40650, issued to Bruce Mark Albert, M.D.;

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

3. Ordering Bruce Mark Albert, 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: April 3, 2020

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

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