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

In the Matter of the First Amended Accusation Against: **David Reid Milstein, M.D.** **Physician's and Surgeon's Certificate No. G 37026** **Respondent.**	**Case No.: 800-2018-050126**

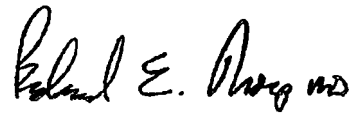
DECISION

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 May 11, 2022.

IT IS SO ORDERED: April 11, 2022.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D., Chair
Panel B

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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 First Amended Accusation Against: **DAVID REID MILSTEIN, M.D.** **16260 Ventura Blvd., Suite 525** **Encino, CA 91436** **Physician's and Surgeon's Certificate No. G 37026,** Respondent.	Case No. 800-2018-050126 OAH No. 2021120450 **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 Karolyn M. Westfall, Deputy Attorney General.

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2. Respondent David Reid Milstein, M.D. (Respondent) is represented in this proceeding by attorney Michael D. Gonzalez, Esq., whose address is: 101 N. Brand Boulevard, Suite 1880, Glendale, CA 91203.

3. On or about July 1, 1978, the Board issued Physician's and Surgeon's Certificate No. G 37026 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2018-050126, and will expire on May 31, 2022, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2018-050126, which superseded the Accusation filed on October 12, 2021, was filed before the Board on February 24, 2022, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on February 24, 2022. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of First Amended Accusation No. 800-2018-050126 is attached hereto 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 First Amended Accusation No. 800-2018-050126. 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 First Amended 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.

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8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2018-050126, and agrees that he has thereby subjected his Physician's and Surgeon's Certificate No. G 37026 to disciplinary action.

10. Respondent further agrees that if he ever petitions for modification or early termination of probation, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2018-050126 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 or elsewhere.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

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13. 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 First Amended Accusation No. 800-2018-050126 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.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 37026 issued to Respondent DAVID REID MILSTEIN, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years from the effective date of the Order on the following terms and conditions:

1. 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.

2. 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.

3. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to cosmetic medicine. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

Respondent shall not practice cosmetic medicine until Respondent has successfully completed the program and has been so notified by the Board or its designee in writing.

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

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Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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

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

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

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

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

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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.

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

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

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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' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

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

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

13. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate

and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

ACCEPTANCE

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

DATED: 3/4/2022

DocuSigned by:
33840AF88DAA4A9...
DAVID REID MILSTEIN, M.D.
Respondent

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

DATED: 3/4/22

MICHAEL D. GONZALEZ, ESQ.
Attorney for Respondent

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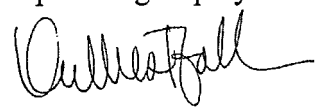
ENDORSEMENT

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

DATED: 3/4/22

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General



KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

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

In the Matter of the First Amended Accusation Against: **DAVID REID MILSTEIN, M.D.** **16260 Ventura Blvd., Suite 525** **Encino, CA 91436** **Physician's and Surgeon's Certificate No. G 37026,** Respondent.	Case No. 800-2018-050126 **FIRST AMENDED ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 1, 1978, the Medical Board issued Physician's and Surgeon's Certificate No. G 37026 to David Reid Milstein, 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 May 31, 2022, unless renewed.

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JURISDICTION

3. This First Amended Accusation, which supersedes the Accusation filed on October 12, 2021, 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, in pertinent part:

> (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.
>
> ...

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:
>
> ...
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

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

...

6. 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.

COST RECOVERY

7. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. G 37026 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he was grossly negligent in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

9. On or about July 14, 2016, after purchasing a Groupon, Patient A presented to Respondent for a "body sculpture" consultation. Patient A had a history of sickle cell disease,[2] splenectomy, cholecystectomy, and breast reduction. At this visit, and every visit thereafter, Respondent's handwritten notes are cursory and difficult to read. During this initial consultation, a complete physical exam was not performed and/or documented by Respondent. Patient A's "body sculpture treatment plan" included her lower and upper abdomen and her lower and upper back. The surgery was scheduled for September 15, 2016. At the conclusion of the visit, Patient A was provided "pre-treatment instructions," that included instructions to eat a heavy protein meal before the procedure.

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

[2] Sickle cell disease is a group of inherited red blood cell disorders, wherein the red blood cells contort into a sickle shape. The cells die early, leaving a shortage of healthy red blood cells (sickle cell anemia), and can block blood flow causing pain (sickle cell crisis). Infections, pain, and fatigue are common symptoms of sickle cell disease.

10. On or about August 4, 2016, Patient A obtained lab work from her primary care physician, J.G., M.D. (Dr. J.G.), which revealed a hemoglobin of 8.7 g/dL and hematocrit of 27.7%. These results were provided to Respondent on or about August 15, 2016.

11. On or about September 1, 2016, Respondent spoke with Dr. J.G. and was informed that the frequency of Patient A's sickle cell attacks was unknown but that her most recent attack was six months prior.[3] Dr. J.G. also informed Respondent that Patient A had prior transfusions. After speaking with Dr. J.G., Respondent decided to proceed with the patient's surgery in two stages.

12. On or about September 15, 2016, Patient A presented to Respondent for her first scheduled surgery. Prior to the surgery, Patient A signed a "body sculpture" consent form. Between approximately 2:20 p.m. and 3:27 p.m., Respondent performed suction assisted lipoplasty[4] on Patient A, during which he removed approximately 1500 cubic centimeters of fat from the patient's abdomen. Respondent's "body sculpture operative report" identified 1000 mg Keflex and 7 ml Versed were administered to the patient, but the method of administration was not noted. The amount of tumescent fluid injected was also not noted. The patient's records for that date identified preoperative and postoperative vital signs, but did not include any vital signs taken during the procedure.

13. On or about September 20, 2016, Patient A presented to Respondent for a post-operative follow-up evaluation. At this visit, Respondent noted the patient's incision sites were clean, dry, and healing. At the conclusion of this visit, Respondent instructed Patient A to return in five days for another evaluation.[5]

14. On or about October 18, 2016, Patient A was scheduled for her lower and upper back "body sculpture" on November 8, 2016.

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[3] According to the patient's medical records, she was hospitalized for approximately two weeks in February 2016 for a sickle cell crisis.

[4] Lipoplasty uses high-frequency sound waves to liquefy fat beneath the skin's surface before removing it with gentle suction.

[5] The patient's medical records do not contain any subsequent follow-up visits from this first surgery.

15. On or about November 8, 2016, Patient A presented to Respondent for her second surgery. Prior to the surgery, Patient A signed a "body sculpture" consent form and a form entitled "Informed consent – Fat transfer procedures fat grafts injections to face / breast / buttocks." A hemoglobin test taken that day revealed a result of 8.4 g/dl. Between approximately 11:55 a.m. and 1:14 p.m., Respondent performed suction assisted lipoplasty without autologous fat transfer on Patient A, during which he removed approximately 1700 cubic centimeters of fat from the patient's back. Respondent's "body sculpture operative report" identified 100 mg Keflex and 9 ml Versed were administered to the patient, but the method of administration was not noted. 5.7 liters of tumescent fluid was injected but the content of the tumescent fluid was also not noted. The patient's records for that date identified preoperative and postoperative vital signs, but did not include any vital signs taken during the procedure.

16. Between on or about November 12, 2016, and on or about November 13, 2016, Patient A texted photos of her back to Respondent and informed him that she had a bruise on her back that hurt. Respondent informed Patient A that her body suit was too tight and instructed her to treat the area with Aquaphor.

17. On or about November 15, 2016, Patient A presented to Respondent for a post-operative follow-up evaluation. At this visit, Respondent noted the patient had a blister patch on her lower back that he determined did not appear to be full thickness or infected. Respondent instructed the patient to continue treating the area with Aquaphor and to return to the clinic in three days.

18. On or about November 17, 2016, Patient A presented to Respondent for a post-operative follow-up evaluation. At this visit, Respondent noted the patient had swelling and open blisters on her back. At the conclusion of this visit, Respondent instructed the patient to continue treating the area with Aquaphor and to return to the clinic in two days.

19. On or about November 23, 2016, Patient A presented to Respondent for a post-operative follow-up evaluation. At this visit, Respondent noted the patient had a necrotic patch on her right lower back. At the conclusion of this visit, Respondent instructed the patient to continue treating the area with Aquaphor and informed her that he would get Dr. J.G. involved.

A follow-up visit was not recommended or scheduled at that time, and the patient was not seen again by Respondent after this visit.

20. On or about November 24, 2016, Patient A presented to the emergency department with complaints of a burn on her back with green discharge. The patient was treated for a wound infection, prescribed antibiotics, and instructed to follow-up with her plastic surgeon.

21. Between on or about November 25, 2016, and on or about November 28, 2016, Patient A corresponded with Respondent by text, sending him photos of her wounds and expressing her continued pain and discomfort. On or about November 28, 2016, Respondent referred Patient A to a dermatologist.

22. On or about November 28, 2016, Patient A was seen by a dermatologist but was told she needed to be seen by a surgeon. Patient A then located a wound care specialist through her insurance and asked Respondent to provide her with a referral. On that same date, Respondent prepared a referral for the patient to see Dr. L.A.

23. On or about December 2, 2016, Patient A presented to Dr. J.G. with complaints of severe pain to her right flank. Dr. J.G. diagnosed Patient A with a full thickness wound and third degree burn with yellow exudate, and referred her to a plastic surgeon at UCLA.

24. On or about December 15, 2016, Patient A was seen by A.V., M.D. (Dr. A.V.) at UCLA. Dr. A.V. diagnosed Patient A with a full thickness soft tissue injury of her right mid-lower back.

25. On or about December 21, 2016, Dr. A.V. performed wound debridement including subcutaneous fat and wound VAC placement on Patient A.

26. On or about January 10, 2017, Dr. A.V. performed split thickness skin grafting to Patient A's right mid-lower back wound.

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

A. Failing to provide appropriate perioperative care, including but not limited to, failing to perform a full physical exam, failing to address the patient's extremely low hemoglobin, failing to discuss and document the risks and benefits of performing surgery

on a patient with a significant underlying medical condition, and recommending the patient eat a large breakfast prior to surgery;

B. Failing to provide appropriate intraoperative care, including but not limited to, failing to monitor and document vital signs during both procedures, and failing to document the amount of tumescent fluid injected, the content of the tumescent fluid, the positioning of the patient during the procedure, and the incisions used;

C. Failing to provide appropriately manage the patient's postoperative complication; and

D. Failing to maintain adequate and accurate records.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

28. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 37026 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 27(D), above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

29. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 37026 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records regarding his care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 27(D), 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 37026, issued to Respondent, David Reid Milstein, M.D.;

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

3. Ordering Respondent, David Reid Milstein, M.D., to pay the Board the costs of the investigation and enforcement of this case, and 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: FEB 24 2022

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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