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

In the Matter of the First Amended Accusation Against: Andrew Ness, M.D. Physician's and Surgeon's Certificate No. A 49649 Respondent.	Case No. 800-2018-042156

DECISION

The attached Stipulated Surrender of License and 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 October 21, 2022.

IT IS SO ORDERED October 14, 2022.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
HAMSA M. MURTHY
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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: **ANDREW NESS, M.D.** **3807 Lone Tree Way** **Antioch CA 94509** **Physician's and Surgeon's Certificate No. A 49649** Respondent.	Case No. 800-2018-042156 OAH No. 2022070513 **STIPULATED SURRENDER OF LICENSE AND 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 Hamsa M. Murthy, Deputy Attorney General.

2. ANDREW NESS, M.D. (Respondent) is represented in this proceeding by attorney, Marvin Firestone, whose address is: 1700 South El Camino Real, Ste. 408 San Mateo, CA 94402.

3. On June 25, 1991, the Board issued Physician's and Surgeon's Certificate No. A 49649 to ANDREW NESS, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2018-042156. An Interim Suspension Order fully restricting all medical practice by Respondent was entered on March 9, 2022. Respondent's Certificate will expire on October 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-042156 was filed before the Board and properly served on Respondent on March 15, 2021. First Amended Accusation No. 800-2018-042156 was filed and properly served on February 4, 2022, and it is currently pending against Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of First Amended Accusation No. 800-2018-042156 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2018-042156. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the 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.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in the First Amended Accusation No. 800-2018-042156, agrees that cause exists for discipline, and hereby surrenders his Physician's and Surgeon's Certificate No. A 49649 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender 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.

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

13. 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 Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 49649, issued to Respondent ANDREW NESS, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. 800-2018-042156 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $86,685.00 prior to issuance of a new or reinstated license.

6. 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 agency in the State of California, all of the charges and allegations contained in First Amended Accusation, No. 800-2018-042156 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 licensure.

ACCEPTANCE

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

DATED: 9-27-22

ANDREW NESS, M.D.
Respondent

I have read and fully discussed with Respondent ANDREW NESS, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 9/28/22

MARVIN FIRESTONE, MD, JD
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 9-28-22

Respectfully submitted,

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

HAMSA M. MURTHY
Deputy Attorney General
Attorneys for Complainant

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Ness stip surrender with costs Sep 26 2022.docx

Exhibit A

First Amended Accusation No. 800-2018-042156

ROB BONTA
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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: **ANDREW NESS, M.D.** **3807 Lone Tree Way** **Antioch, CA 94509** **Physician's and Surgeon's Certificate No. A 49649,** Respondent.	Case No. 800-2018-042156 **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 June 25, 1991, the Board issued Physician's and Surgeon's Certificate Number A 49649 to Andrew Ness, 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 October 31, 2022, unless renewed.

JURISDICTION

3. This Frist Amended 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 2001.1 of the Code makes public protection the Board's highest priority.

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

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

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

7. Section 2052 of the Code provides:

"(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 [Chapter 5, the Medical Practice Act], 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."

8. 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."

9. Section 2263 of the Code states:

"The willful, unauthorized violation of professional confidence constitutes unprofessional conduct."

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10. Section 2266 of the Code provides that "[t]he failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

11. Section 2259.7 of the Code states:

"The Medical Board of California shall adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside a general acute care hospital, as defined in Section 1250 of the Health and Safety Code. In adopting those regulations, the Medical Board of California shall take into account the most current clinical and scientific information available. A violation of these extraction and postoperative care standards shall constitute unprofessional conduct."

12. California Code of Regulations, title 16, section 1356.6, provides, in pertinent parts:

"(a) A liposuction procedure that is performed under general anesthesia or intravenous sedation or that results in the extraction of 5,000 or more cubic centimeters of total aspirate shall be performed in a general acute-care hospital or in a setting specified in Health and Safety Code Section 1248.1.

"(b) The following standards apply to any liposuction procedure not required by subsection (a) to be performed in a general acute-care hospital or a setting specified in Health and Safety Code Section 1248.1:

"(1) Intravenous Access and Emergency Plan. Intravenous access shall be available for procedures that result in the extraction of less than 2,000 cubic centimeters of total aspirate and shall be required for procedures that result in the extraction of 2,000 or more cubic centimeters of total aspirate. There shall be a written detailed plan for handling medical emergencies and all staff shall be informed of that plan. The physician shall ensure that trained personnel, together with adequate and appropriate equipment, oxygen, and medication, are onsite and available to handle the procedure being performed and any medical emergency that may arise in connection with that procedure. The physician shall either have admitting privileges at a local general acute-care hospital or have a written transfer agreement with such a hospital or with a licensed physician who has admitting privileges at such a hospital.

"(2) Anesthesia. Anesthesia shall be provided by a qualified licensed practitioner. The physician who is performing the procedure shall not also administer or maintain the anesthesia or sedation unless a licensed person certified in advanced cardiac life support is present and is monitoring the patient.

"(3) Monitoring. The following monitoring shall be available for volumes greater than 150 and less than 2,000 cubic centimeters of total aspirate and shall be required for volumes between 2,000 and 5,000 cubic centimeters of total aspirate: (A) Pulse oximeter[;] (B) Blood pressure (by manual or automatic means)[;] (C) Fluid loss and replacement monitoring and recording[;] (D) Electrocardiogram.

"(4) Records. Records shall be maintained in the manner necessary to meet the standard of practice and shall include sufficient information to determine the quantities of drugs and fluids infused and the volume of fat, fluid and supranatant extracted and the nature and duration of any other surgical procedures performed during the same session as the liposuction procedure. . . ."

13. Section 726 of the Code states:

(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division.

(b) This section shall not apply to consensual sexual contact between a licensee and his or her spouse or person in an equivalent domestic relationship when that licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

14. The events described herein occurred in Contra Costa County, California.

COST RECOVERY

15. Business and Professions Code section 125.3 states that:

"(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."

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Gross Negligence/Repeated Negligent Acts/Improper Liposuction)

16. Respondent is subject to disciplinary action under sections 2234 and/or 2234(a) and/or 2234(b) and/or 2234(c) and/or 2259.7 of the Code and/or California Code of Regulations, title 16, section 1356.6 in that Respondent engaged in unprofessional conduct and/or was grossly negligent and/or committed repeated acts of negligence and/or failed to follow applicable standards for liposuction procedure in his care and treatment of Patient P-1..[1] The circumstances are as follows:

17. Respondent, who is board certified in family medicine and sports medicine, owns and operates Delta Aesthetics, a medical office in Antioch, CA at which he practices both family medicine and cosmetic medicine. P-1's medical records from Respondent's office reflect that on April 21, 2017, Respondent performed liposuction on P-1 at his medical office. During the procedure, which lasted between five and six hours, a total of approximately 9,900 cc of anesthetic solution was infiltrated into several areas of P-1's trunk which were being suctioned, and approximately 5,000 cc of fat was aspirated from P-1's body. P-1 was not adequately informed and/or notified, and Respondent did not obtain adequate consent for a change from "laser liposuction" to "standard liposuction" during the course of the procedure.

18. Under Respondent's care, as described above, P-1 improperly underwent a major surgery in a medical office without adequate and continuous monitoring, as required. In addition, there is not adequate documentation contained in P-1's medical records describing the surgical, resuscitation, and monitoring equipment of the facility at which Respondent performed the procedure. There are also no standard or acceptable operating room staff or nursing notes documenting, other than one time upon initial admission, P-1's vital signs or the details of administrations of medications.

19. Accordingly, for his care and treatment of P-1, as described above, Respondent is guilty of unprofessional conduct, and Respondent's certificate is subjected to discipline pursuant

[1] The patients are referred to as P-1 and P-2 to protect privacy.

to Code sections 2234 and/or 2234(a) and/or 2234(b) and/or 2234(c) and/or 2259.7 and/or California Code of Regulations, title 16, section 1356.6.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct/ Gross Negligence)

20. The allegations contained in paragraphs 16 through 19 are incorporated by reference as if set out in full. Respondent is subject to disciplinary action under sections 2234 and/or 2234(a) and/or 2234(b) of the Code in that Respondent engaged in unprofessional conduct and/or was grossly negligent with regard to prescribing in his care and treatment of Patient P-1.

21. Respondent provided P-1 with prescriptions for 100 Norco pills (hydrocodone bitartrate and acetaminophen; 25 days' supply) and 60 Xanax pills (alprazolam; 10 days' supply), apparently for post-operative use. Norco is an opioid pain medication and a controlled substance. Xanax is a benzodiazepine and controlled substance. Respondent's prescribing of these drugs to P-1 is not clinically justified and does not conform to the standard of care for treatment after the type of liposuction procedure performed on P-1 by Respondent.

22. Accordingly, for his prescribing to P-1, as described above, Respondent's certificate is subjected to discipline for unprofessional conduct pursuant to sections 2234 and/or 2234 (a) and/or 2234(b) of the Code.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence/ Repeated Negligent Acts/ Failure to Maintain Adequate and Accurate Medical Records)

23. The allegations contained in paragraphs 16 through 22 are incorporated by reference as if set out in full. Respondent is guilty of unprofessional conduct and/or gross negligence, and/or repeated negligent acts, and subject to discipline for violation of Sections 2234 and/or 2234 (a) and/or 2234(b), and/or 2234(c), and/or 2266 of the Code based on his failure to maintain adequate and accurate medical records for P-1. Review of P-1's medical records reveals numerous deficiencies. For example, while there are diagrams in an entry dated February 5, 2014 delineating the areas of P-1's body to be treated with liposuction, there is no text documenting any discussion then, or prior to the procedure in 2017, of P-1's suitability for the procedure and Respondent's surgical plan. Respondent's operative notes include what appear to be an

insufficient "boiler plate" document and an effectively illegible short handwritten note. There is no identification of the areas of the body in which liposuction is to be performed in anatomical terms. In addition, while Respondent's consent form describes the procedure to be performed on P-1 as "laser liposuction" and purports to obtain consent for "additional or different" procedures during the operation due to "unforeseen circumstances," Respondent's medical records for P-1 do not indicate what, if any "unforeseen circumstances" emerged during P-1's liposuction.

24. Accordingly, for his negligent acts and deficient medical recordkeeping, as described above, Respondent's certificate is subjected to discipline under sections 2234 and/or 2234 (a) and/or 2234(b), and/or 2234(c), and/or 2266 of the Code.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/ Ordering Unlicensed Practice of Medicine)

25. Respondent is subject to disciplinary action under sections 2234 and/or 2264 and/or 2052 of the Code.

26. At Respondent's direction, office employees not certified or licensed to perform any medical procedures performed prostate exams and PAP smears on patients.

27. Accordingly, Respondent is guilty of unprofessional conduct, and Respondent's certificate is subject to discipline pursuant to sections 2234 and/or 2264 and/or 2052 of the Code.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/ Gross Negligence)

28. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 2234 and/or 2234(a) and/or 2234(b).

29. Respondent improperly prescribed two controlled substances to his wife on January 4, 2017. In addition, Respondent improperly prescribed controlled substances to a nurse employed in his practice numerous times between November 11, 2016 and September 25, 2017.

30. Accordingly, for his prescribing, as described above, Respondent is guilty of unprofessional conduct, and Respondent's certificate is subjected to discipline pursuant to sections 2234 and/or 2234 (a) and/or 2234(b) of the Code.

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SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Sexual Misconduct)

31. Respondent is subject to disciplinary action under sections 2234 and/or 726 of the Code in that Respondent committed numerous acts of unprofessional conduct and/or sexual misconduct in his care and treatment of a young woman, Patient 2 (P-2). Respondent also engaged in unprofessional conduct and/or sexual misconduct in his conduct toward one or more women who worked in his office, along with P-2. The circumstances are as follows:

32. In January 2018, Respondent invited P-2, a young woman who had recently graduated from college but did not have any healthcare provider license, certificate, or previous training in healthcare, to volunteer in his office. Respondent did not initially pay her, but later began to do so. In February 2018, while Respondent was with the young woman in a patient room waiting to provide care for that patient, Respondent took her wrist without her consent and told her after a few minutes of touching her wrist that she had tachycardia. Although she had a primary care physician, P-2 agreed to be Respondent's patient at his urging, though she did not want to become his patient and did not provide her express consent. Respondent used P-2's purported tachycardia as an excuse to obtain an EKG for P-2. Respondent examined P-2 in his medical offices after business hours. He performed an EKG on her himself, during which time Respondent required P-2 to expose her breasts. Respondent leaned his body into P-2's arm while performing the EKG. Respondent determined that P-2 had tachycardia, based on an EKG with a pulse of 100 when P-2 was emotionally uncomfortable. Respondent prescribed a beta blocker to P-2. Respondent failed to follow up with P-2 regarding the beta blocker prescription.

33. In mid-March 2018, Respondent performed a pelvic exam on P-2 after business hours. Respondent did not offer her a chaperone. Respondent took a photo of P-2's vagina on his phone. Respondent asked P-2 her opinion about the appearance of her genitals and commented favorably to her on the appearance of her genitals. Respondent failed to delete the photo of P-2's vagina immediately, in P-2's presence.

34. Respondent took photos of other patients on his cell phone, and he did not immediately erase the photographs while the patients could observe him doing so.

35. Respondent pressured P-2 to let him perform laser hair removal on her. Respondent performed laser hair removal on P-2 after business hours, and he did not offer P-2 a chaperone for the procedure. When doing the laser hair removal, Respondent took P-2's bra off and removed hair from her nipples without her consent. Respondent took full frontal photographs of P-2's bare chest. Respondent took a photo that included the outline of P-2's labia against the outline of her underwear. Respondent consumed alcohol prior to and/or while doing laser hair removal on P-2. Respondent offered alcohol to P-2 when she was receiving hair removal treatment from him.

36. P-2 observed Respondent telling others who worked at the clinic that they needed cosmetic procedures, to be performed by him. Respondent told P-2 that she should let him perform other cosmetic procedures on her, including liposuction.

37. Respondent required P-2 to do a prostate exam on him, as prefatory to her intended formal medical education and future career in healthcare. Respondent required P-2 to do a rectal exam on him, as prefatory to her intended formal medical education and future career in healthcare.

38. Respondent required P-2 to remove her shirt and bra to discuss shoulder anatomy with him at his medical practice one evening after business hours. Respondent asked P-2 to also remove her pants but she refused. Respondent took off his pants in front of P-2, for the purpose of "training" her regarding leg muscles for a career in healthcare.

39. On more than one occasion, Respondent required P-2 and another female employee to perform hair removal procedures on him after business hours. Respondent consumed alcohol before and during the performance of hair removal procedures on him by P-2 and another female employee. He encouraged P-2 and the other female employee to consume alcohol before and during these procedures.

40. Respondent required P-2, together with another female employee, to perform an Extracorporeal Pulse Activation Technology ("EPAT") procedure on his penis after business hours. That treatment entailed—at Respondent's direction—drawing Respondent's blood, taking photographs of Respondent's penis, moving the EPAT machine up and down Respondent's penis for about ten minutes, injecting Respondent's penis with his own plasma, and then continuing the

use of the EPAT machine on Respondent's penis for about an additional ten minutes. P-2 was asked to perform the procedure on three separate occasions. On each of the three times, the procedure took place after business hours, late in the evening.

41. Respondent required P-2 to give him a number of injections. Instead of pulling his pants down just enough to expose his hip, Respondent took off his pants and underwear completely to receive the injection.

42. Respondent improperly inserted himself into P-2's personal relationships. He negatively commented to P-2 regarding P-2's boyfriend, and also the mother of P-2's boyfriend, who was also a patient. Respondent also improperly commented on P-2's father and on the divorced status of P-2's parents.

43. Accordingly, for each instance of one or more of the wrongful acts set out in the paragraphs above, Respondent is guilty of unprofessional conduct and/or sexual misconduct. Respondent's certificate is thus subject to disciplinary action under sections 2234 and/or 726 of the Code.

SEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct and/or Employing Unlicensed Persons to Improperly Provide Medical Care)

44. The allegations contained in paragraphs 31 through 43 are incorporated by reference as if set out in full. Respondent is subject to disciplinary action under sections 2234 and 2264 of the Code because Respondent committed numerous acts of unprofessional conduct in that he employed and/or ordered unlicensed persons to engage in the improper practice of medicine and/or to provide care and/or treatments to patients via modes requiring licenses and/or training not properly provided or otherwise obtained. The circumstances are as follows:

45. P-2 held no medical professional's license when she volunteered and then was later employed at Respondent's medical office. She was not then and had not ever been enrolled in any medical training program, including a Physician's Assistant's (PA) program. Respondent was not a faculty member and/or instructor in any medical educational program or institution.

46. Respondent never trained P-2 to the level of a Medical Assistant, so as to be able to lawfully give injections. Such training would have required at least ten hours of appropriate

instruction and documentation of observation of P-2 performing the injections successfully at least ten times. At no time did P-2 have the formal training described above.

47. Respondent failed to document training he may have provided to P-2.

48. Respondent improperly ordered P-2 to give injections of vitamins, vaccines, and other medications such as Rocephin, testosterone, lidocaine, and Kenalog to both patients and to Respondent.

49. Respondent improperly ordered P-2 to put sutures in a patient's vagina after a surgical procedure.

50. Respondent also improperly ordered P-2 to remove the sutures from the patient's vagina.

51. Respondent improperly ordered P-2 to suture the liposuction cannula insertion wounds on two patients.

52. Respondent improperly ordered P-2 to administer injections into patients' joints, which may have resulted in direct harm to patients.

53. Respondent wrongfully purported to "train" P-2 to do pelvic exams.

54. Respondent wrongfully purported to "train" P-2 to do prostate exams.

55. Respondent wrongfully purported to "train" P-2 to do rectal exams.

56. Respondent improperly ordered P-2 to do rectal exams on some of his patients.

57. Respondent wrongfully purported to "train" P-2 to use laser hair removal equipment.

58. Respondent improperly ordered P-2 to use laser hair removal equipment on himself and others.

59. Accordingly, for each instance of one or more of the wrongful acts set out in the paragraphs above, Respondent's certificate is subject to discipline under sections 2234 and/or 2264 of the Code for employing and/or ordering unlicensed persons to provide medical care for which a license and/or certificate is required.

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EIGHTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Dishonest Acts)

60. The allegations contained in paragraphs 31 through 59 are incorporated by reference as if set out in full. Respondent is subject to disciplinary action under sections 2234 and 2234(e) of the Code. The circumstances are as follows:

61. Respondent falsely told the Board's investigator that P-2 was a licensed vocational nurse (LVN) when the investigator presented to Respondent's office.

62. At his subject interview, Respondent falsely stated that P-2 was a certified nursing assistant (CNA) or LVN.

63. Respondent falsely told his patients that P-2 was a Physician's Assistant student when he was directing P-2 to conduct medical examinations on them and/or provide other healthcare services.

64. Respondent directed P-2 to continue performing a pelvic exam on a patient to whom Respondent had falsely stated that P-2 was a Physician Assistant's student, even after the patient on whom the pelvic exam was being performed objected to P-2 performing it.

65. Accordingly, for each instance of one or more of the wrongful acts set out in the paragraphs above, Respondent is guilty of unprofessional conduct and/or committing a dishonest act or acts substantially related to the duties and functions of a physician and surgeon. Respondent's certificate is thus subject to disciplinary action under section 2234 and/or 2234(e) of the Code.

NINTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Violation of Professional Confidences)

66. The allegations contained in paragraphs 31 through 65 are incorporated by reference as if set out in full. Respondent is subject to disciplinary action under sections 2234 and 2263 of the Code. The circumstances are as follows:

67. Respondent showed P-2 a fax documenting medications prescribed to P-2's boyfriend's mother, who had been a patient of Respondent's. Respondent also told P-2 that the medications prescribed were for that patient's bipolar disorder.

68. Respondent wrote in a text to P-2 that P-2's boyfriend's family was "mentally ill."

69. Respondent told P-2 that the vagina of a co-worker of P-2 looked "deflated" and that the co-worker needed to have fat transferred to her vagina.

70. Accordingly, for each instance of one or more of the wrongful acts set out in the paragraphs above, Respondent is guilty of unprofessional conduct and/or violation of professional confidences. Respondent's certificate is thus subject to disciplinary action under sections 2234 and/or 2263 of the Code.

TENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Improper Self-Prescribing)

71. The allegations contained in paragraphs 31 through 70 are incorporated by reference as if set out in full. Respondent is subject to disciplinary action under section 2234 of the Code.

72. Respondent ordered P-2, an unlicensed employee, to inject him with vitamins, testosterone and antibiotics.

73. Respondent ordered P-2, an unlicensed employee, to perform laser hair removal on him.

74. Respondent ordered P-2, an unlicensed employee, to perform an EPAT procedure on his penis.

75. Accordingly, for each instance of one or more of the wrongful acts set out in the paragraphs above, Respondent is guilty of unprofessional conduct and/or improper self-prescribing. Respondent's certificate is thus subject to disciplinary action under sections 2234 of the Code.

ELEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct)

76. The allegations contained in paragraphs 31 through 75 are incorporated by reference as if set out in full. Respondent is subject to disciplinary action for unprofessional conduct under section 2234.

77. Respondent refused to refer to specialist physicians in gynecology female patients who requested such referrals.

78. Respondent failed to refer to other appropriate specialist physicians patients who had malignancies on their skin.

79. Respondent sought to convince a patient who was pregnant and sought referral to an obstetrician that he could provide her with all necessary care.

80. Accordingly, for each instance of one or more of the wrongful acts described in the paragraphs above, Respondent is guilty of unprofessional conduct and is subject to disciplinary action under section 2234 of the Code.

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 A 49649, issued to Respondent Andrew Ness, M.D.;

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

3. Ordering Respondent Andrew Ness, M.D., to pay the Board the costs of the investigation and enforcement of this case incurred after January 1, 2022, 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 0 4 2022

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