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

In the Matter of the Third Amended Accusation Against: Max Rudolph Lehfeldt, M.D. Physician's and Surgeon's Certificate No. A 80511 Respondent.	Case No.: 800-2016-024673

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 January 27, 2023.

IT IS SO ORDERED: December 30, 2022.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
CHRISTINA SEIN GOOT
Deputy Attorney General
State Bar No. 229094
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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 Third Amended Accusation Against: **MAX RUDOLPH LEHFELDT, M.D.** **P.O. Box 1526** **South Pasadena, CA 91030** **Physician's and Surgeon's Certificate No. A 80511,** Respondent.	Case No. 800-2016-024673 OAH No. 2020100154 **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 Christina Sein Goot, Deputy Attorney General.

2. Respondent Max Rudolph Lehfeldt, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, whose address is: 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562.

3. On or about September 18, 2002, the Board issued Physician's and Surgeon's Certificate No. A 80511 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Third Amended Accusation No. 800-2016-024673, and will expire on May 31, 2024, unless renewed.

JURISDICTION

4. Third Amended Accusation No. 800-2016-024673 was filed before the Board, and is currently pending against Respondent. The Third Amended Accusation and all other statutorily required documents were properly served on Respondent on September 28, 2021. Respondent timely filed his Notice of Defense contesting the Third Amended Accusation.

5. A copy of Third Amended Accusation No. 800-2016-024673 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 Third Amended Accusation No. 800-2016-024673. 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 Third 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.

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

CULPABILITY

9. Respondent understand and agrees that the charges and allegations in Third Amended Accusation No. 800-2016-024673, if proven at a hearing, constitute cause for imposing discipline

upon his Physician's and Surgeon's Certificate. Respondent hereby gives up his right to contest those charges and allegations.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Third Amended Accusation No. 800-2016-024673 and that he has thereby subjected his license to disciplinary action.

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

CONTINGENCY

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

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an Third Amended Accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Third Amended Accusation No. 800-2016-024673 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. A 80511 issued to Respondent Max Rudolph Lehfeldt, 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 40 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 65 hours of CME of which 40 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

Third Amended 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 Third Amended 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. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Third Amended 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.

5. 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.

6. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement since 2022, including, but not limited to, expert review, amended accusations, legal reviews, joint investigations, and subpoena enforcement, as applicable, in the amount of $7,311.25. Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board.

The filing of bankruptcy by Respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs, including expert review costs (if applicable).

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.

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.

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.

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.

15. 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 Third Amended Accusation No. 800-2016-024673 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 the license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff. 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: June 10, 2022

MAX RUDOLPH LEHFELDT, M.D.
Respondent

I have read and fully discussed with Respondent Max Rudolph Lehfeldt, 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: 6/10/2022

PETER R. OSINOFF, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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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: _____ _____
MAX RUDOLPH LEHFELDT, M.D.
Respondent

I have read and fully discussed with Respondent Max Rudolph Lehfeldt, 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: _____ _____
PETER R. OSINOFF, ESQ.
Attorney for Respondent

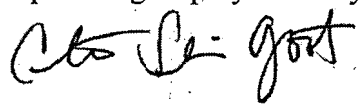
ENDORSEMENT

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

DATED: 6/13/22

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Third Amended Accusation No. 800-2016–024673

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

In the Matter of the Third Amended Accusation Against: **MAX RUDOLPH LEHFELDT, M.D.** **P.O. Box 1526** **South Pasadena, California 91031-1526** **Physician's and Surgeon's Certificate No. A 80511,** Respondent.	Case No. 800-2016-024673 **THIRD AMENDED ACCUSATION**

PARTIES

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

2. On September 18, 2002, the Board issued Physician's and Surgeon's Certificate Number A 80511 to Max Rudolph Lehfeldt, M.D. (Respondent). That 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 Third Amended Accusation is brought before the Board, under the authority of the following laws. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

4. 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.

5. Section 2234 of the Code states:

> 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) . . . .
>
> (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.
>
> ¶ . . . . ¶

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.

7. Section 654.2 of the Code states:

> (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on behalf of, or refer a patient to, an organization in which the licensee,

or the licensee's immediate family, has a significant beneficial interest, unless the licensee first discloses in writing to the patient, that there is such an interest and advises the patient that the patient may choose any organization for the purpose of obtaining the services ordered or requested by the licensee.

(b) The disclosure requirements of subdivision (a) may be met by posting a conspicuous sign in an area which is likely to be seen by all patients who use the facility or by providing those patients with a written disclosure statement. Where referrals, billings, or other solicitations are between licensees who contract with multispecialty clinics pursuant to subdivision (l) of Section 1206 of the Health and Safety Code or who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, the requirements of subdivision (a) may be met by posting a conspicuous disclosure statement at a single location which is a common area or registration area or by providing those patients with a written disclosure statement.

¶ . . . . ¶

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Immediate family" includes the spouse and children of the licensee, the parents of the licensee and licensee's spouse, and the spouses of the children of the licensee.

(2) "Significant beneficial interest" means any financial interest that is equal to or greater than the lesser of the following:

(A) Five percent of the whole.

(B) Five thousand dollars ($5,000).

(3) A third-party payer includes any health care service plan, self-insured employee welfare benefit plan, disability insurer, nonprofit hospital service plan, or private group or indemnification insurance program.

A third party payer does not include a prepaid capitated plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 or Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

¶ . . . . ¶

8. California Code of Regulations, title 16, section 1364.11, states:

The amount of any fine to be levied by a board official shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and shall be within the range set forth below.

(a) In his or her discretion, a board official may issue a citation under Section 1364.10 for a violation of the provisions listed in this section.

¶ . . . . ¶

(10) Business and Professions Code Section 654.2.

¶ . . . . ¶

(b) In his or her discretion, a board official may issue a citation under Section 1364.10 to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.

(c) A citation may include a fine from $100 to $2500. However, a citation may include a fine up to $5,000 if one or more of the following circumstances apply:

(1) The cited person has received two or more prior citations for the same or similar violations;

(2) The citation involves multiple violations that demonstrate a willful disregard for the law.

(d) In his or her discretion, a board official may issue a citation with an order of abatement without levying a fine for the first violation of any provision set forth above.

(e) The sanction authorized under this section shall be separate from and in addition to any other administrative, civil, or criminal remedies.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts – Patients A, B, C, and D)

9. Respondent's license is subject to disciplinary action under Code sections 2234, subdivisions (a) and (c), in that he committed repeated negligent acts in the care and treatment of four patients. The circumstances are as follows:

10. Respondent is a board-certified plastic surgeon. He practices plastic and reconstructive surgery.

Patient A[1]

11. Patient A, a 58-year-old female, had been diagnosed with the BRCA2 gene mutation, which placed her at a higher risk for the development of breast and ovarian cancer. Patient A sought a prophylactic mastectomy from a breast surgeon and breast reconstruction from a plastic surgeon.

12. Prior to seeing Respondent, Patient A had been informed by two plastic surgeons that she would require nipple removal and skin reduction to achieve her goal of smaller, more uplifted reconstructed breasts.

[1] Patients are referred to by letter to protect their identities. The identity of each patient is believed to be known by Respondent. Further information relating to the patients will be provided in response to a request for discovery.

13. Patient A was referred to Respondent by the breast surgeon who ultimately performed the prophylactic mastectomy to discuss breast reconstruction options.

14. Patient A, accompanied by her husband, presented to Respondent on January 12, 2015. Respondent discussed with Patient A the option of a skin reducing breast reconstruction and a nipple-sparing breast reconstruction. During that consultation, Respondent informed Patient A that he used Seri Surgical Scaffold[2] for soft tissue support.

15. According to the patient and her husband, Respondent did not discuss the following: (1) the risks/benefits relating to options other than Seri Surgical Scaffold; (2) whether the Seri Surgical Scaffold for breast reconstruction had FDA approval, and (3) that Respondent had participated in Seri Surgical Scaffold studies sponsored by Allergan, the maker of Seri Surgical Scaffold.

16. Respondent's medical records, created on or about January 12, 2015, did not reflect that Respondent discussed with the patient alternative options to Seri Surgical Scaffold.

17. Respondent performed Patient A's breast reconstruction surgery on February 24, 2015. Seri Surgical Scaffold was used in the procedure.

18. On May 13, 2015, Patient A underwent second stage breast reconstruction, at which time tissue expanders were removed and implants were placed. Respondent observed that some of the Seri Surgical Scaffold had not been incorporated into the patients' tissue, and Respondent debrided that material.

19. In approximately October 2016, in preparation for responding to a Board inquiry about his care of Patient A, Respondent added a notation to Patient A's chart indicating that he had discussed with Patient A the options of Seri Surgical Scaffold as opposed to Alloderm, a collagen scaffold made from cadaver tissue. Respondent did not date or initial this note. Respondent produced these records to the Board in response to a subpoena.

20. On or about March 5, 2018, the Board was advised of Respondent's October 2016 revision to his January 12, 2015 notes in the patient's medical record.

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[2] Seri Surgical Scaffold is a silk netting used in plastic surgery. It serves as a base for the body to regenerate tissue after medical procedures.

21. The standard of care requires that medical records reflect a complete, accurate and contemporaneous account of patient encounters. If errors or omissions are discovered in the medical record, corrections can be made, or additional information added. However, the corrections and/or addenda must be signed and dated to reflect that the "late entry" was made after the date of the patient encounter.

22. Respondent made alterations to Patient A's medical record approximately one year and nine months after the relevant patient encounter. His failure to sign and date the entry constitutes a departure from the standard of care.

Patient B

23. Patient B, a 59-year-old female, presented at Respondent's office on May 11, 2016, for a body contouring consultation. She was seen by a physician assistant and referred to Respondent for further consultation.

24. On June 14, 2016, Respondent evaluated Patient B and found that she was not a good candidate for body contouring. He recommended abdominoplasty (tummy tuck) and liposuction to the flanks.

25. Respondent saw Patient B for a preoperative visit on July 28, 2016, and surgery was scheduled for August 8, 2016, at the Arcadia Outpatient Surgery Center.

26. Respondent performed abdominoplasty with liposuction to the flanks on August 8, 2016. A bupivacaine pain pump catheter was placed for post-operative pain relief. Norco, an opioid pain medication, was also provided post-surgery.

27. Patient B experienced nausea and vomiting when she arrived home after surgery. Upon contacting Respondent's office and leaving a message, she was advised to pick up a nausea medication from the pharmacy. Patient B still did not feel better and decided to stop taking her post-operative pain medications.

28. On August 13, 2018, Patient B's husband returned from taking his daughter to dance practice and discovered that Patient B was unresponsive. She was unable to be revived and expired. According to the autopsy report, the cause of death was community-acquired pneumonia with recent elective abdominoplasty as a contributing factor, possibly due to increased pain, and

failure to inspire and expand the lungs.

29. The medical records for Patient B's visits of May 11, 2016, June 14, 2016, and July 28, 2016, were created by multiple authors without a clear indication of who wrote each note.

30. Respondent's medical records do not document post-surgical contacts with Patient B or her husband.

31. Respondent created personal notes after Patient B's death, which purport to document post-surgical contacts with Patient B and her husband. These personal notes were not included as part of Patient B's medical records. These personal notes include the following information:

A. On August 9, 2016, Respondent's patient coordinator called the patient to follow up after surgery and left a message. No call-back from the patient was received.

B. On August 11, 2016, a family member contacted Respondent's office stating that the patient suffered from nausea and was unable to "keep anything down." There were no complaints of chest pain, shortness of breath, or excessive abdominal pain. The note reflected that the message was conveyed to Respondent who requested that staff inquire as to whether the symptoms were related to pain medication or antibiotic administration. Staff called the patient's husband and clarified that the patient's symptoms were not related to taking other medications, and Respondent called in a prescription for Zofran, a medication used to prevent nausea and vomiting.

32. According to Respondent, Patient B was advised to transition to ibuprofen to manage her pain; however, Patient B's medical record does not reflect this recommendation.

33. Respondent failed to document post-surgery communications with Patient B and her family in Patient B's medical records and/or failed to clearly delineate the author of each note. These documentation failures constitute a departure from the standard of care.

Patient C

34. Patient C, a 37-year-old female, presented at Respondent's office in 2013 for bilateral breast reconstruction after planned prophylactic mastectomy. At the initial consultation, Patient C was noted to have asymmetric breasts that were ptotic.

35. On January 21, 2014, Patient C had a preoperative visit, documented by Respondent's

physician's assistant, during which the risk and benefits of the procedure were discussed. Patient C signed a consent form on that date for "Bilateral Reconstruction with Tissue Expanders." The patient signed a second consent dated January 30, 2014, authorizing a "Bilateral Breast Reconstruction with Tissue Expanders and Seri Scaffold."

36. On February 4, 2014, Patient C underwent bilateral mastectomy performed by another physician. Respondent performed the breast reconstruction using Seri Surgical Scaffold to maintain the position of the inframammary fold, and attached it to the lower border of the pectoral muscle and chest wall to maintain the position of the tissue expander.

37. Post-operatively, Patient C was noted to have ecchymosis/vascular compromise of the right infero-medial mastectomy flap. On February 19 and March 3, 2014, she returned for debridement of the compromised right breast skin, and reclosure. Subsequently, turbid drainage was noted, and the right tissue expander and the Seri Surgical Scaffold was removed. These procedures were performed at Arcadia Outpatient Surgery Center. At the time of these procedures (as well as subsequent procedures), Respondent had an ownership interest in Arcadia Outpatient Surgery Center, but failed to disclose his ownership interest to Patient C.

38. On July 22, 2014, Patient C underwent delayed placement of a right breast tissue expander. On December 30, 2014, she underwent bilateral exchange of her tissue expanders for permanent silicone gel breast implants, and bilateral fat transfer to improve contours.

39. Post-operatively, Patient C healed without infection. On January 27, 2015, she was noted to have asymmetry. Patient C also expressed interest in larger implants. On April 7, 2015, Patient C had a preoperative visit, documented by Respondent's physician assistant, who noted that the plan is for "Seri Scaffold in right breast." Patient C signed an informed consent document, dated April 7, 2015, for "Bilateral Breast Implant Replacement Using Silicone Gel Implants and Placement of Strattice vs. Seri Scaffold in Right Breast."

40. On April 17, 2015, a second consent form was signed by Patient C for "removal/replacement- bilateral breast implants, placement of alloderm right breast." Patient C had this surgery on that date.

41. Subsequently, Respondent performed additional procedures/surgeries on Patient C's

breasts, including latissimus dorsi myocutaneous flap plus implant reconstruction of the right breast and reinforcement of the lower-left breast with placement of a larger implant for symmetry. Patient C was last seen by Respondent on February 13, 2017.

42. Respondent's failure to disclose to Patient C that he was a paid consultant for Allergan, maker of the Seri Surgical Scaffold at the time, was a departure from the standard of care.

43. Respondent's failure to notify Patient C that his use of Seri Surgical Scaffold was an "off label" use was a departure from the standard of care.

44. Respondent's failure to accurately document Patient C's diagnosis on surgical scheduling forms and on disability forms (*e.g.*, diagnosis was coded as M53.82 (cervical dorsopathy), which was incorrect) was a departure from the standard of care.

45. The consent form signed by Patient C on April 7, 2015 was for placement of "Strattice vs. Seri." The consent form signed at the surgery center was for Alloderm. Alloderm was used in Patient C's surgery. The placement of an incorrect consent form in Patient C's medical record was a departure from the standard of care.

46. Respondent's failure to disclose his financial interest in Arcadia Outpatient Surgery Center to Patient C was a departure from the standard of care.

Patient D

47. On February 1, 2019, Patient D, a 54-year-old female, consulted with Respondent regarding the appearance of her abdomen. Respondent recommended an extended abdominoplasty with liposuction of the lateral hips and flanks. During this visit, the risks of the procedure were discussed, including "bleeding, infection, poor wound healing, skin necrosis, umbilical stalk necrosis, hematoma, seroma, ... poor aesthetic result, the need for future revision surgery."

48. On February 14, 2019, Patient D returned to Respondent's office for her pre-operative examination. On March 1, 2019, the abdominoplasty with liposuction was performed. Patient D received intravenous antibiotics prior to incision, and she was prescribed doxycycline twice daily for one week post-surgery.

49. On March 8, 2019, Patient D returned and her umbilicus at that time was felt to be healing well. On March 20, 2019, upon examination, she was noted to have drainage and a foul odor from her umbilicus, as well as a seroma on her left side. A 100 cc seroma was drained with a syringe and needle. Local wound care was instituted for the umbilicus.

50. On March 27, 2019, Patient D was seen by Respondent's physician assistant because Respondent was out of town. The physician assistant documented that the umbilicus was healing and there was no recurrent fluid on the left side.

51. On April 2, 2019, Patient D returned and Respondent noted umbilical odor and debrided some necrotic umbilical tissue and a portion of the muscle plication suture in the depth of the wound.

52. On April 8, 2019, Respondent felt the umbilicus was healing, but debrided some additional necrotic tissue. He noted no cellulitis or purulence, but prescribed doxycycline twice daily for seven days. Patient D returned on April 18, 2019, and was noted to have a 5x5 mm wound opening in the lower umbilicus, draining "turbid" fluid. Respondent recommended increasing the wound care, including irrigation of the wound, to twice daily.

53. On April 22, 2019, the umbilical wound persisted and now the lower abdomen was noted to be firm. Respondent was suspicious of an abscess pocket. He prescribed doxycycline for the third time and told the patient that the wound may need to be opened and washed out. He planned to reassess her in one week. Patient D was seen by the physician assistant on April 25, 2019, who suggested continuing the irrigation and doxycycline. On April 29, 2019, Patient D was seen by Respondent. She continued to have malodorous umbilical discharge and lower abdominal firmness. Respondent scheduled an Incision and Drainage procedure for May 1, 2019, and refilled her doxycycline.

54. On May 1, 2019, Patient D underwent the operative procedure under anesthesia. The lower abdominal flap was elevated centrally. Respondent encountered a cavity 2-3 cm wide and 6-7 cm long that showed evidence of infection, but no excessive purulence. He removed the remainder of the plication suture, irrigated the space with antibiotic solution, placed a drain, and re-sutured the lower abdominal incision line.

55. On May 6, 2019, Patient D returned. Her drain was not functioning and there was purulent debris in the drain bulb and erythema of the lower abdomen indicative of cellulitis. Respondent performed an in-office Incision and Drainage procedure using local anesthesia and nitrous oxide for mild sedation. No patient consent for the procedure was documented. He then referred Patient D to the Emergency Room because he believed she needed intravenous antibiotic care. Patient D was placed on broad spectrum intravenous antibiotics.

56. On May 9, 2019, another physician performed a wound exploration on Patient D. The pathology report noted tissue with acute inflammation and fat necrosis. Cultures of the wound revealed light growth of anaerobic Bacteroides species.

57. Respondent's failure to obtain a culture of Patient D's wound in a timelier manner was a departure from the standard of care.

58. Respondent's repeated use of doxycycline, which was not clearing the infection, was a departure from the standard of care.

59. Respondent's failure to document patient consent prior to the May 6, 2019 Incision and Drainage procedure was a departure from the standard of care.

60. Respondent committed repeated negligent acts in the care and treatment of Patient A, Patient B, Patient C, and Patient D, and his license is subject to discipline.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

61. Respondent's license is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records. The circumstances are as follows:

62. The allegations in the First Cause for Discipline are incorporated herein as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Failure to Disclose Financial Interest)

63. Respondent's license is subject to disciplinary action under Code section 654.2 and California Code of Regulations, title 16, section 1364.11, subdivision (10), in that he failed to disclose his financial interest in Arcadia Outpatient Surgery Center to Patient C. The

circumstances are as follows:

64. The allegations in the First Cause for Discipline are incorporated herein as if fully set forth.

65. Respondent had a "significant beneficial interest," as defined by subdivision (d) of Code section 654.2, in Arcadia Outpatient Surgery Center. Respondent failed to disclose this financial interest to Patient C.

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 80511, issued to Respondent Max Rudolph Lehfeldt, M.D.;

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

3. If placed on probation, ordering Respondent Max Rudolph Lehfeldt, M.D. to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: SEP 28 2021

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

Complainant

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