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

In the Matter of the First Amended Accusation Against: Benny Hau, M.D. Physician's & Surgeon's Certificate No G 74902 Respondent.	Case No.: 800-2019-052549

DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION

No action having been taken on the petition for reconsideration, filed by January 3, 2023, and the time for action having expired at 5:00 p.m. on January 13, 2023, the petition is deemed denied by operation of law.

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

In the Matter of the First Amended Accusation Against: **Benny Hau, M.D.** **Physician's & Surgeon's Certificate No. G 74902** **Respondent.**	**Case No. 800-2019-052549** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Benjamin J. Fenton, Esq. on behalf of Respondent, Benny Hau, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of January 3, 2023, at 5:00 p.m.

Execution is stayed until January 13, 2023, at 5:00 p.m.

This Stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: December 29, 2022

Reji Varghese
Deputy Director
Medical Board of California

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

In the Matter of the First Amended Accusation Against: **Benny Hau, M.D.** **Physician's and Surgeon's Certificate No. G 74902** **Respondent.**	**Case No.: 800-2019-052549**

DECISION

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

This Decision shall become effective at 5:00 p.m. on January 3, 2023.

IT IS SO ORDERED: December 1, 2022.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the First Amended Accusation Against:

BENNY HAU, M.D.,

Physician's and Surgeon's Certificate No. G 74902,

Respondent.

Agency Case No. 800-2019-052549

OAH No. 2022010444

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 25, 26, 27, and 28, 2022. William Prasifka (Complainant) was represented by Rebecca L. Smith, Deputy Attorney General. Benny Hau (Respondent) was represented by Benjamin J. Fenton, Attorney at Law with Fenton Law Group LLP.

At the hearing, the First Amended Accusation was amended by interlineation as follows: at page 1, line 26, "2022" was changed to "2024;" at page 7, lines 1, 2, 4, 6, 10, 11, 12, 14, 17, 20, and 22, "N.B." was changed to "N.H.;" and at page 8, line 5, "sold" was changed to "solid." (Exhibit 1A, pp. A290, A296, A297.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on July 28, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 11, 1992, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G 74902 to Respondent. That license is scheduled to expire on July 31, 2024.

2. On December 24, 2021, Complainant filed the First Amended Accusation while acting in his official capacity as the Executive Director of the Board. Respondent filed a Notice of Defense, and this hearing ensued.

Undercover Operation

4. Respondent is a family practitioner who practices primary care and aesthetics.

5. In 2019, Respondent was operating a medical spa under the business name Sculpt DTLA, located at 705 South Olive Street, in Los Angeles, California.

6. On January 31, 2019, the Board received an anonymous complaint that an unlicensed person was injecting patients with Juvederm (an injectable dermal filler) at Sculpt DTLA. Adriane Ronderos (Ronderos), an investigator with the Department of Consumer Affairs, Division of Investigation (DOI), was assigned to investigate the complaint.

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SEPTEMBER 3, 2019 VISIT

7. On September 3, 2019, Ronderos and Investigator David Budek (Budek) began an undercover operation at Sculpt DTLA. On that date, they visited Sculpt DTLA to inquire about Botox and fillers for Budek, who was posing as a patient named Alex Zimmerman. The receptionist scheduled a consultation for Budek with a registered nurse, Anush Keleshyan (Keleshyan), for September 11, 2019. Budek was given Keleshyan's business card and a list of available treatments and prices.

SEPTEMBER 11, 2019 VISIT

8. On Wednesday, September 11, 2019, Ronderos and Budek (collectively the investigators) returned to Sculpt DTLA for the scheduled consultation with Keleshyan. Ronderos posed as Budek's daughter, and they videotaped the September 11, 2019 visit with a concealed camera. (Exhibits 8 and 9.) At that time, the investigators were told Keleshyan was busy but they would meet with "Natalia." The investigators were taken into a treatment room, and Budek was given consent forms to review and sign. Thereafter, Natalia Hau (Natalia) entered the treatment room, wearing a white lab coat over street clothes. She was not wearing a name tag or other identification indicating her status. She asked, "This is a consultation for injections?" and Budek said, "Yes. I have not had any before." (Exhibit 9.)

9. Natalia discussed the use of Botox and filler injections. She told Budek she thought Botox would help smooth his forehead lines and hyaluronic acid filler injections would help on the outsides of and under his eyes. Natalia told him, "I think if you get at least one syringe on each side, it will look smoother." (Exhibit 9.) She answered Budek's questions and showed him before and after photographs of patients.

10. Budek asked if the injections were painful, and Natalia responded, "We use very tiny baby needles, so small, you will not feel. . . ." (Exhibit 9.) She did not mention any form of analgesia.

11. Natalia began to ask, "If you want to do it today -- " and Budek interrupted to ask how much it would cost. Ronderos also asked "how much" Botox would be used. Natalia informed them that Allergan, the manufacturer of Botox, "recommends at least 20 units" on each area pointing to her forehead, between her eyes, and the areas on the outside of her eyes. She recommended a total of 60 units of Botox. (Exhibit 9.)

12. Budek asked, "Who would do that?" Natalia responded, "I can do it, or Anush can do it." (Exhibit 9.) Budek expressed his nervousness and his preference to have someone with experience perform the injections. He asked Natalia how many years she had been doing injections in the clinic. She informed him she had been doing aesthetic injections in Colombia since 2004, and she had been working at Sculpt DTLA for the past three years. Budek explained, "I only ask because I am so nervous." (*Ibid.*) Natalia assured him that whoever performed the injections would be good.

13. Budek asked Natalia, "And you are a registered nurse?" Natalia responded, "Yeah. Everyone here is a registered nurse. Doctor only hires registered nurses. And we can Facetime the doctor and ask him if you have any concerns." In response to that offer, Budek stated, "No, I trust a nurse. I trust a nurse." (Exhibit 9.)

14. Budek asked Natalia, "How long will it take you to do it?" She responded, "It takes me five minutes. . . Maybe less. It's so fast. It's not painful. And you won't have blood or anything. The fillers take a little longer. . . For me it's like half an hour." (Exhibit 9.)

15. Budek told Natalia he was nervous, and he asked to see the needle that would be used. Natalia left and returned with a Botox vial and a syringe which she showed to the investigators. She placed latex gloves on her hands, and she approached Budek while holding the syringe. Natalia uncapped the syringe, and Budek asked, 'Is it already in there?" Natalia responded, "No. This is the needle. I have to put the product inside." (Exhibit 9.)

16. Budek again stated he was nervous, and he told Natalia he wanted to think about it and come back. He asked when Natalia would be available, and she informed him she typically worked Saturdays. She told Budek he would like the "other girl that is here" named "Amy" because "everyone likes her." (Exhibit 9.) Budek asked, "And she is a registered nurse as well?" Natalia confirmed, "She is a registered nurse. Everyone here is a registered nurse. You can look at our website, and everyone is like 'RN,' 'RN,' 'RN.'" (*Ibid.*)

17. At that point, Keleshyan walked into the examination room, and Natalia introduced her saying "This is Anush." (Exhibit 9.) Natalia told Keleshyan, "We are thinking about Botox and under eye filler, and I recommended 60 units," with 20 units in the forehead, 20 units in between the eyes, and 10 units on the outside of each eye. (*Ibid.*) Budek expressed concern about the treatment being too noticeable, and Keleshyan suggested, "We can do five and five," and she explained why it is optimal to treat the outer eye area at the same time as the forehead. (*Ibid.*)

18. On September 11, 2019, Respondent did not participate in the treatment recommendations for Budek either in person or by videoconference (e.g., Facetime or Skype). No physician, physician assistant, or nurse practitioner conducted an examination of Budek during that visit.

19. Keleshyan, Natalia, and the investigators discussed prices of the treatments. Budek stated he wanted to wait until a later date for treatment.

20. The investigators and Natalia walked to the front desk to set up an appointment for treatment. The staff member at the front desk informed them, "Anush can see you" on certain days. (Exhibit 9.) Budek replied that Natalia said she would see him. Natalia told Budek she was on call and could come in to see him. Budek made an appointment for Botox treatment, and he stated he would decide later about filler injections.

21. Before the investigators left the clinic, Natalia gave them her business card that stated she is the president of Sculpt DTLA.

OCTOBER 16, 2019 VISIT

22. On October 16, 2019, the investigators returned to Sculpt DTLA for Budek's scheduled treatment visit, and they videotaped the October 16, 2019 visit with a concealed camera. (Exhibits 10, 11, and 12.) Natalia greeted them wearing scrub bottoms and a black button-down shirt. She was not wearing an identification tag or badge indicting her status.

23. Natalia took the investigators to a treatment room, and she asked, "We're just doing the lines on the forehead?" (Exhibit 10.) Budek said he was also considering her prior recommendation of dermal filler injections for under-eye treatment. Natalia had Budek look into a handheld mirror while they discussed the locations for filler injections. She placed a latex glove on her right hand to point to the location under his eye where the filler would be injected. Budek agreed to her originally recommended treatment of Botox and filler injections.

24. When Ronderos asked about the amount of filler to be used, Natalia stated, "We will start with one, and if he wants to add more, we'll add more." (Exhibit 10.) Natalia confirmed the minimum treatment that day should consist of two syringes of filler and one of Botox. She left the treatment room and returned with a basket containing products and syringes, which she placed on the instrument tray next to the patient chair where Budek was sitting. Natalia still had the latex glove on her right hand, and she placed a glove on her left hand.

25. Natalia opened a syringe packet, inserted the syringe into a vial of bacteriostatic sodium chloride solution, and withdrew some solution. She then placed the same syringe into the Botox vial. She explained that Botox comes in a powder form which they must mix into liquid for use. She set the mixed Botox down on the instrument tray.

26. Natalia peeled open an unidentified plastic packet without removing the contents. With that packet in her left hand, Natalia picked up the box labeled Belotero Balance (an injectable dermal filler), opened it, and took out a syringe. Holding the syringe in her hand, Natalia looked at Budek and said, "So let's start with. Let me see." Stepping back a few paces, Natalia studied Budek's face from different angles. She moved forward again to Budek's right side, and stated, "Let's start with this one eye." (Exhibit 11.) Natalia began twisting the top of the syringe, but then placed it in her left hand along with the unidentified plastic packet. She explained to Budek, "So, because we are going to work on the area below the eyes," pointing to his right under-eye area with her gloved right hand, "you will see it's not that painful." (Exhibit 11.) Natalia began preparing the syringe by taking something from the unidentified plastic packet and placing it onto the syringe. Pointing to the syringe in Natalia's hand, Budek asked,

"What is that?" Natalia responded, "This is the medication that goes right here," again pointing with her gloved hand to his under-eye area.

27. As Natalia held the syringe up to look at its contents, Ronderos asked, "So you're going to do the bottom first and then his forehead?" (Exhibit 11.) Natalia responded, "Yes, because the Botox is so fast, I think we should start with the slow treatments first." Ronderos asked "Will that one hurt? Because I know you said the Botox was painless and will be fast." (*Ibid.*) Natalia responded, "This is not painful. It has lidocaine in it. . . so it is not painful." *(Ibid.)* She did not mention any other analgesic.

28. Standing next to Budek, Natalia picked up a packet from the instrument tray and told Budkek, "I am going to clean you." (Exhibit 11.)

29. At no time prior to Natalia announcing she was going to clean Budek's face did Respondent participate in the treatment recommendations for Budek, either in person or by videoconference (e.g., Facetime or Skype). No physician, physician assistant, or nurse practitioner conducted an examination of Budek.

30. On the videotape of the October 16, 2019 undercover visit, Natalia displayed a confident demeanor and assured speech, and she appeared to be making her treatment decisions independently, including the order of application of the treatments. When she stood next to Budek and announced she was going to clean him, it appeared she was ready to administer the treatment.

31. Once Natalia announced she was going to clean Budek, Ronderos told Natalia to stop. Budek testified credibly at the administrative hearing that the investigators stopped Natalia prior to the actual administration of treatment because they do not allow an unlicensed individual to inject anyone. Additionally, they do not

allow an individual under investigation to uncap a syringe and approach an undercover patient because that is hazardous, and the sharp object is a potential weapon.

32. After telling Natalia to stop, the investigators identified themselves as Board investigators, and other investigators on the scene were signaled to come inside and assist.

33. Ronderos asked Natalia, "Do you have a medical license?" Natalia replied, "Yes I do." When Ronderos asked what type of license she held, Natalia replied, "It's an LVN [licensed vocational nurse] license." Natalia confirmed she did not hold a registered nurse license. At that point, Ronderos placed Natalia under arrest for practicing medicine without a license and for failing to obtain a good faith examination for Budek.

34. After being advised of her Miranda rights, Natalia agreed to answer Ronderos' questions.

35. During the October 16, 2019 questioning, Ronderos eventually learned Natalia was not a licensed vocational nurse as she had asserted. Ronderos asked Natalia if she had a license number, and Natalia responded, "Before taking the test, they said I could continue doing hours, and so my test is scheduled November 5." (Exhibit 11.) Ronderos inquired, "So you are not an LVN yet? You don't have a license?" (*Ibid.*) Natalia insisted, "I have taken all the requirements." (*Ibid.*) Ronderos pressed, "But you don't have your license yet?" (*Ibid.*) Natalia responded, "No, I have the order to take the test." (*Ibid.*)

36. The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) later certified that Natalia Hau has never held a vocational nurse license in California.

37. During the October 16, 2019 questioning, Natalia revealed she was married to Respondent. She informed Ronderos that she moved to the United States in 2009, and that she had worked with Respondent since 2011 or 2012 doing "medical assistant" work. She confirmed she had been performing Botox and dermal filler injections since 2011 or 2012.

38. On October 16, 2019, the investigators confiscated the following items from the treatment room: one syringe with injectable Belotero Balance and cannula attached; one vial labeled Botox Cosmetic with a syringe still inserted; one opened plastic wrapping for Belotero Balance with syringe removed and unidentified remaining contents; one empty, opened Belotero Balance box; one vial of bacteriostatic 0.9% sodium chloride solution; one packet for DermaSculpt microcannulas (25 gauge x 2 inch) and puncture needle (23 gauge x 1 inch); two syringes containing unidentified product (which Respondent later identified as Botox syringes filled with fluid to be injected into a patient); one box for Juvederm injectable gel with lidocaine, with "1/2 sterile syringe" handwritten on the front of the box, which contained two filled syringes, one with a cannula attached; and a pair of used gloves.

39. The investigators also confiscated certificates that had been displayed on the wall across from the treatment rooms next to the SCULPT DTLA fictitious name permit and Respondent's medical degree. The displayed certificates included: a certificate of completion for "Natalia Hau RN" for Lumenis M22 laser training on July 26, 2017 (Exhibit 48); a certificate of attendance for "Natalia Hau RN" for Lumenis PiQo4 laser training on September 27, 2017 (Exhibit 49); and a certificate of completion for "Natalia Hau RN for "Coolsculpting University training on April 22, 2018 (Exhibit 50).

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Respondent's Testimony and Evidence

RESPONDENT'S PRACTICE BACKGROUND

40. Respondent graduated from medical school in 1991 and completed his residency in family medicine. Thereafter, he worked in the field of family medicine, and he started a mobile private practice which included traveling to vocational schools around Southern California to perform health screening (e.g., blood draws to check for hepatitis and other transmittable diseases) and vaccinations required before students began their clinical rotations.

41. Respondent married Natalia in November 2013. Before their marriage, he learned that Natalia was a registered nurse who worked in El Salvador and Colombia before moving to the United States. She knew a lot about aesthetic treatments, including Botox, lasers, and dermal fillers. Respondent had become interested in aesthetics, and he thought he and Natalia could have a practice providing Coolsculpting and dermal filler injections.

42. Since he had previously run only a mobile medical practice, Respondent chose a location in downtown Los Angeles as his first permanent practice location to operate his medical spa.

43. On June 15, 2017, Benny Hau M.D., Inc., of which Respondent is sole shareholder, applied to the Board for a fictitious name permit to operate a medical spa under the name SCULPT DTLA. On August 11, 2017, the Board issued fictitious name permit number 547605 for SCULPT DTLA.

44. In 2017, Respondent began operating SCULPT DTLA, a medical spa located at 705 South Olive Street, in Los Angeles.

45. Respondent continued to practice some mobile family medicine providing health screening for vocational schools. However, his primary practice eventually became aesthetics.

46. On May 11, 2019, Benny Hau M.D., Inc., of which Respondent remained sole shareholder, applied to the Board for a fictitious name permit to operate a med spa under the name Sculpt, Inc. On July 2, 2019, the Board issued fictitious name permit 550116 for Sculpt, Inc.

47. Respondent currently operates a solo practice treating mostly adult patients at his three medical spa locations in downtown Los Angeles, Silverlake, and Pasadena.

RESPONDENT'S BELIEF RE: LVNS INJECTING BOTOX AND FILLERS

48. Respondent testified at the administrative hearing. His demeanor was relaxed, although he spoke very rapidly at times, particularly when explaining Natalia's participation at SCULPT DTLA. Respondent's explanations for Natalia's duties and actions at SCULPT DTLA were often self-serving, unreasonable, and unconvincing.

49. Around the time Respondent sought to open SCULPT DTLA, he began attending classes to become proficient in aesthetics. Respondent testified that, based on what he heard from one of the course presenters, he believed physician assistants, nurse practitioners, registered nurses, and licensed vocational nurses could all perform Botox and dermal filler injections. Respondent recalled the presenter also said "you must take a look at the laws in your state regarding who can" do so.

50. Based on this admonition, Respondent performed a Google search, and "the first thing that popped up" and "kept popping up" was the Board's Frequently

Asked Questions (FAQs) section. The page addressing Cosmetic Treatments contained the following language:

> Who may use lasers or intense pulse light devices to remove hair, spider veins and tattoos?
>
> Physicians may use lasers or intense pulse light devices to remove hair, spider veins, and tattoos. In addition, physician assistants and registered nurses (not licensed vocational nurses) may use lasers or intense pulse light devices to perform these procedures under a physician's supervision. Unlicensed medical assistants, licensed vocational nurses, cosmetologists, electrologists, or estheticians may not legally perform these treatments under any circumstances, nor may registered nurses or physician assistants, without supervision of a physician.
>
> Who may inject Botox?
>
> Physicians may inject Botox, or they may direct registered nurses or physician assistants to perform the injection under their supervision. No unlicensed persons, such as medical assistants, may inject Botox.

(Exhibit H.)

51. Based on his reading of the FAQs, Respondent testified, "To me it was obvious RNs can [inject Botox], and PAs can do it, and a licensed clinician can do it." He insisted it was also "clear to him" that licensed vocational nurses could inject Botox,

even though that was not stated in the Board's FAQs. Respondent thought the language "cannot be right because [prior to reading the Board's language, he had seen] a talk from a dentist who gave Botox and fillers," so Respondent rationalized that all licensed providers including licensed vocational nurses can inject Botox.

52. Respondent's rationalization was unsound. In the FAQs, the Board specified that physicians, or physician assistants and registered nurses under a physician's supervision, may inject Botox. Those specifically allowed to inject Botox did not include licensed vocational nurses.

53. At the hearing, Respondent asserted the Board's language was "very confusing," but he continued to insist that the language allowed licensed vocational nurses to inject Botox. He argued that licensed vocational nurses "should be able to [inject Botox] because the emphasis was on licensed versus unlicensed" personnel. Although Natalia was unlicensed, he argued "she was a student vocational nurse, and if an LVN could do it, a student could." However, on September 11 and October 16, 2019, Natalia did not identify herself as a vocational nursing student. Additionally, as of October 16, 2019, Natalia was no longer a nursing student but had completed her clinical rotation hours and was studying for the licensing test.

54. Respondent asserted that, when he was looking to ascertain whether licensed vocational nurses could perform Botox and filler injections, there was "not a lot of information" available.

55. Respondent noted he had found an online course offered by the American Association of Aesthetic Medicine and Surgery that allowed doctors, dentists, physician assistants, nurse practitioners, registered nurses, and licensed vocational nurses to take the course. (Exhibit E.) However, this course offering

provided no support to Respondent's position, since the evidence did not establish the course was offered only to California licensees, that the course completion authorized licensed vocational nurses to perform Botox or filler injections in California, or that the course materials cited California laws or regulations allowing licensed vocational nurses to perform Botox or filler injections.

56. Respondent also noted he had found an article on a law office's website that bolstered his position. However, that article provided no support to Respondent's position, since it misquoted the Board's response to the question about who may inject Botox, incorrectly adding licensed vocational nurses to the quoted answer. That article also noted, "There can be a lot of confusion in the industry," and pointed out:

> There is a tendency for the public, and some in the profession, to view laser treatments, Botox, and cosmetic filler injections as cosmetic rather than medical treatments. The use of prescriptive drugs and devices, however, is the practice of medicine, and the same laws and regulations apply to these types of treatments as those driven by medical necessity. There are no separate laws governing these procedures, and physicians will be held to the same standard as they are for their routine medical practices.

(Exhibit G.)

57. Respondent insisted he "had known other practices had LVNs doing injectables," and when he looked "at other listings from aesthetic employers," he saw a job listing from a large local medical spa asking for licensed vocational nurses whose

job responsibilities included injecting Botox and fillers. Respondent provided no evidence to substantiate these assertions.

58. Respondent never contacted the Board to clarify whether licensed vocational nurses in California are allowed to inject Botox or dermal fillers.

59. Given the Board's language (specifying only physicians, or physician assistants and registered nurses under a physician's supervision, may inject Botox), Respondent's conclusion that licensed vocational nurses were allowed to inject Botox and dermal fillers was unreasonable.

60. Even under Respondent's faulty reasoning, Natalia would not have been able to perform Botox and dermal filler injections since she was not a licensed vocational nurse. Respondent sought to remedy that impediment.

USE OF RESPONDENT'S FACILITY FOR CLINICAL ROTATION

61. During the hearing, Respondent pointed out that Natalia had practiced as a registered nurse in El Salvador and Colombia before coming to the United States. He did not produce a copy of her foreign nursing degree or certification, and he did not sufficiently explain why she did not sit for the California registered nursing examination. He only insisted, "I thought that she could [inject] Botox and fillers as an LVN."

62. Respondent wanted Natalia to become a licensed vocational nurse so she could help him "do injectables" at his medical spa. To achieve this goal, in 2017, Natalia enrolled in a vocational nursing program at Angeles Institute. After completing the classroom component of that program, Natalia was required to complete a clinical component of the program to develop the skills "necessary to care for patients of all

ages in current health care settings." (Cal. Code Regs., tit. 16, § 2533, subds. (a), (b).) Respondent sought to have her complete her clinical rotation at his practice.

63. Respondent contacted Brandy Coward, the owner and Director of Nursing at Angeles Institute. Respondent informed Coward that he traveled to vocational schools to perform screening including blood draws consistent with primary care. Respondent thought this could be part of satisfying Natalia's clinical hours, and she could also be "doing injectables."

64. Respondent was required to submit a "Clinical Facility Approval Application" (facility application) to the BVNPT.

65. The BVNPT regulations require school clinical facilities to provide "a variety of clinical experiences consistent with competency-based objectives and theory being taught" and "in the areas specified by Section 2533." (Cal. Code Regs., tit. 16, § 2534, subd. (b).) The specified areas of content for mastery include: anatomy and physiology, psychology, normal growth and development, nursing fundamentals, pharmacology, medical-surgical nursing, communicable diseases, gerontological nursing, rehabilitation nursing, maternity nursing, pediatric nursing, and end-of-life care. (Cal. Code Regs., tit. 16, § 2533, subd. (d).)

66. On August 2, 2017, Respondent signed and subsequently submitted to the BVNPT a facility application, which Coward certified on the same date. The application listed Respondent's facility address as "705 South Olive Street," which is the address for SCULPT DTLA. (Exhibit F.) The "Type of Facility" was listed as "Family Practice," with a "client population" of "adults," "ped[iatric]s," "geriatrics," and "other." (*Ibid.*) The average daily census for the facility was 30 patients, broken down as 20 "family med[icine]" patients, five "ob[stetrics]" patients, and five "ped[iatric]" patients.

(*Ibid.*) Since Respondent's mobile practice involved health screening at vocational schools, the listing of five obstetrics patients and five pediatric patients per day was incorrect. Additionally, there was no mention of the name of the facility as "SCULPT DTLA," nor was there any indication that Respondent and Natalia would be treating aesthetics clients.

67. The BVNPT approved the facility application, and Natalia was allowed satisfy her Angeles Institute clinical hours at Respondent's practice. In the beginning stages of operating SCULPT DTLA, Respondent spent some days doing mobile clinic work and one to two days per week performing aesthetic work at SCULPT DTLA. It was Respondent's understanding that a vocational nursing student had the same scope of practice as a licensed vocational nurse, so Respondent believed Natalia could perform Botox and dermal filler injections.

68. Coward testified at the administrative hearing. She presented as a sincere witness, although occasionally prone to avoiding direct answers to questions and attempting to advocate for Respondent's position, which lessened her credibility. (For example, Coward did not answer directly when asked whether it was appropriate for a vocational nursing student to place certificates on the wall of a medical clinic falsely indicating the student is a registered nurse. Instead, Coward stated she was unsure of the purpose of the certificates or what the training provider asked to create the certificates.)

69. Coward signed the facility application Respondent submitted to the BVNPT, certifying that she had discussed specified requirements including: "course description and student clinical objectives," and "specific nursing care and procedures required for student achievement of clinical objectives." (Exhibit F.)

70. At the hearing, Coward's explanation of her facility certification was evasive and vague. When asked whether Respondent informed her that he was operating a medical spa, Coward responded, "That would have been part of what was sent and talked about [during] the approval process." When asked why the facility application did not reflect the medical spa portion of the practice, Coward responded, "This is many years ago." She noted the facility application indicated Respondent's family practice because "that is part of the things he does as far as mobile service," and the facility address was listed because the application required a business address. When asked again why the facility application did not reflect that the business address was a medical spa or that Respondent was providing medical spa services, Coward responded, "I don't have it on this [application], but the address reflects" it. Despite the application's required breakdown of "THE UNITS/SERVICES (OB, MED/SURG, PEDS, ETC.) AVAILABLE FOR STUDENT ASSIGNMENT FROM THIS PROGRAM, [AND] THE AVERAGE DAILY CENSUS FOR EACH" (Exhibit F, uppercase in original), Coward insisted, unconvincingly, that Respondent was not required to also reveal that students at his facility would perform cosmetic functions. Coward refused to admit that the facility application contained no reference to Respondent's medical spa or his cosmetic practice. Instead, she vaguely answered, "You are getting the site facility approved, the location where the work is going to get done, [and you] may not list every single department or area there, but you are getting the facility approved." She felt it was acceptable for her to certify, under penalty of perjury, that the facility application was true and correct, and she believed it "gave enough information because [she knew the BVNPT] will contact the facility to ask questions."

71. Coward certified on the facility application that she discussed with Respondent "specific nursing care and procedures required for student achievement of clinical objectives." Despite this certification, Coward did not know what specific types

of services Natalia provided at Respondent's facility. Instead, Coward testified the clinical training objectives she and Respondent discussed were that Natalia "would complete LVN duties." These duties were not specified, and they did not discuss the injection of Botox or dermal fillers. Coward maintained, "Whatever is within the scope of LVN [practice] can be completed" by the student. She acknowledged that students are required to comply will all applicable laws while at a facility.

72. Coward had only a generalized understanding of the scope of practice for licensed vocational nurses, which reduced her credibility as the Director of Nursing. When asked whether licensed vocational nurses are permitted to inject Botox or dermal fillers, Coward responded, "I cannot say one way or the other. If it is within the scope [of practice], I would say yes, but I feel it can be a vague kind of thing." Coward was unaware of whether licensed vocational nurses are allowed to inject medical devices in general, or dermal fillers specifically. She was unaware of whether licensed vocational nurses are allowed to inject fillers or Botox.

73. The curriculum at Angeles Institute requires students to complete classroom components for specified knowledge and skills, and then to go to a clinical site to apply that knowledge and skill. The curriculum does not specifically include the injection of Botox or dermal fillers.

74. Coward noted that vocational nursing students' clinical training includes a variety of skills and tasks doing "anything an LVN can do," including giving medications, injections, cleaning, feeding, and assessing patients. According to Ms. Coward, the vocational nursing student must be supervised by a physician or a registered nurse.

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75. According to Coward, vocational nursing students are allowed to perform dermal and intramuscular injections of medications. When asked if students are permitted to inject dermal fillers, Coward evasively responded, "Unless I am there, I am not seeing what they are injecting. They are working within the facility itself." When specifically asked whether her vocational nursing program permits students to inject dermal fillers, Coward again provided an evasive answer, stating, "I don't say what they would be injecting, so it is not something I would think about."

76. Coward confirmed that Natalia was a student in Angeles Institute's nursing program around 2017 through 2019.

77. Natalia is the only Angeles Institute student to complete clinical training at Respondent's facility.

78. According to Coward, the clinical component of the program required 954 hours of clinical work before a vocational nurse can be licensed.

79. Coward acknowledged a vocational nurse must be licensed by the BVNPT to be considered an "LVN." While working at a facility prior to licensure, vocational nursing students must identify themselves as students, and they should wear their student photo identification. Coward volunteered several times, "But they lose them all the time." She acknowledged that she never received any notification from Natalia that she had lost her student identification. She also acknowledged that Angeles Institute does not allow vocational nursing students to represent themselves as registered nurses.

80. Coward confirmed that, on October 16, 2019, Natalia no longer a student of Angeles Institute. Although the vocational nursing program typically takes about a year to complete, some students may take a year and a half. According to Coward,

since Natalia had completed the nursing program and was no longer a vocational nursing student, she was no longer required to identify herself as a student or to wear her student identification at the facility. Coward has never discussed with students how to refer to themselves after completing the nursing program but prior to licensure because "generally they are studying for boards and not interacting" with patients. Coward opined the students should not refer to themselves as licensed vocational nurses until they are actually licensed, but they may refer to themselves as students. Coward did not explain how Natalia, as an unlicensed person no longer completing a student clinical rotation could be performing nursing duties, even under supervision.

81. Overall, Coward's testimony did not establish a justification for Natalia to perform aesthetic procedures. The BNVPT did not approve her performing those procedures, and Respondent did not disclose them as a component of Natalia's clinical rotation.

NATALIA'S ACTIVITIES AT SCULPT DTLA

82. Other than Natalia, all staff at SCULPT DTLA performing Botox and dermal filler injections in 2019 were registered nurses.

83. According to Respondent, the custom and practice at SCULPT DTLA was to allow Natalia to inject Botox and dermal fillers under the supervision of, and in the presence of, Respondent or a registered nurse.

84. On September 11 and October 16, 2019, Natalia represented herself as a registered nurse at SCULPT DTLA, and there were certifications displayed on the clinic wall indicating she was a registered nurse. One of those certifications was for laser treatment, a procedure only a registered nurse, not a licensed vocational nurse, can perform with supervision. On both dates, Natalia conducted an evaluation of an

undercover patient and recommended treatment while alone in the treatment room. On September 11, 2019, Natalia may have been a vocational nursing student (the evidence did not establish when she completed the Angeles Institute program), but she never identified herself was a student and she was not wearing any student identification. On October 16, 2019, Natalia was no longer a nursing student, having completed her supervised clinical rotation, and she was therefore an unlicensed person at SCULPT DTLA. Nevertheless, she identified herself first as RN, then as an LVN, and she independently made treatment recommendations without supervision.

85. On October 16, 2019, Natalia, an unlicensed individual, had prepared all treatment modalities, and she indicated she was going to clean the undercover patient's face in preparation for treatment. This was all done independently without any registered nurse in the room, and prior to any good faith examination.

RESPONDENT'S POSITION RE: GOOD FAITH EXAMINATION

86. Respondent insisted it was, and is, his custom and practice to conduct a good faith examination for all new patients prior to treatment. According to Respondent, the good faith examination occurs by videoconference initiated by the nurse just before the procedure because "it is the legal thing you have to do." In a good faith examination, Respondent introduces himself, asks if the patient understands the treatment recommended by staff, and has a discussion of the treatment.

87. If Respondent is not available for the good faith examination, a physician assistant or nurse practitioner conducts the good faith examination. Physician Assistant Coralee Koning testified credibly that she has performed Facetime good faith

examinations for SCULPT DTLA when Respondent is out of town, including during September and October 2019.

88. To stress the importance of good faith examinations, Respondent has sent email reminders to staff about the requirement. On July 3, 2019, Respondent sent an email to staff stating, "As a reminder, I should do a good faith exam on all new patients. If I am not present in the clinic and a new patient is there, please face time me so I can do a face-time consult." (Exhibit J, p. B36.) On September 13, 2019, Respondent sent staff an email stating: "You MUST call me when a patient is new and/or there is a new procedure. Be prepared to give me the patient's background and pertinent medical history. Remember, implicitly, when you do a procedure it is because I have given a nursing order. When charting, please note that you have spoken to me." (*Id.* at p. B42.) Respondent testified he believed he sent the September 13, 2019 email because he "caught someone not doing a good faith examination with a new patient, and it may have been one of the new hires . . . when [he] came back from [his out-of-town] trip."

89. The September 13, 2019 email also advised staff, "At the time being, I am asking everyone to not give filler in the nose or glabella area unless you talk to me first." (Exhibit J, p. B42.) This appeared contrary to Respondent's assertion that it is custom and practice for him to perform good faith examinations prior to initial provision of treatment. When this was pointed out, Respondent insisted his staff was already "talking to him" first before performing the filler injections to the nose and glabella areas.

90. Respondent insisted he had a policy in place in September and October 2019 that addressed patient procedures. He submitted as evidence an undated document, entitled "Sculpt DTLA Patient Procedure Policy," that details how a patient

treatment session should occur. The undated policy addresses the issues at hand in this case. Specifically, item 9 requires "If this is a new patient or a new procedure, nurse must Facetime physician or PA for a GFE (Good Faith Exam)." (Exhibit I.) Additionally, item 12 states, "Before, during or after the GFE with physician or PA, nurse may set up for procedure." (*Ibid.*) Item 13 states, "PHOTOS must be taken before treatment has begun for following treatments: a. Any and all fillers." (*Ibid.*) There was no evidence to confirm the undated policy was in place in September and October 2019. Nevertheless, it is Respondent's current office policy.

91. Respondent testified that before staff call him for a good faith examination, "they have option of prepping the patient first, potentially drawing some of the medications and getting fillers prepared, washing patient's face, and taking photos of patient." Respondent endorsed conducting good faith examinations after the treatment products are opened and ready to be used, explaining, "I believe [my] nurses know what I feel should be done for my patients. We have to have trust in each other. The nurses understand what I want and what I need. They are not new nurses, [but have been] doing it for years and know what I require from them." Given Respondent's description of this approach, it appears Respondent's "good faith examination" is a perfunctory and superficial step to meet the legal requirement of a physician examination. Respondent merely rubber stamps the nurse's evaluation and treatment recommendation.

92. Respondent reviewed the October 16, 2019 undercover video and provided his opinion about what would have happened if the investigators had not stopped Natalia from proceeding further. However, this opinion was speculative, and Respondent stated he "can't tell for sure" if he was going to be called for a good faith

examination. He could only assert that "Anush and Natalia always called me for good faith examinations."

93. Respondent admitted that Natalia made treatment recommendations for Budek. Respondent agreed that a physician must diagnose patient and form a treatment plan. He also agreed he should have been called to perform a good faith examination and make treatment recommendations on October 16, 2019. However, he asserted it was office policy for him to conduct a good faith examination and treatment recommendations prior to treatment being rendered.

94. To support his argument that a good faith examination would have taken place, Respondent pointed out that the nurses generally use lidocaine before using the puncture needle prior to dermal fillers, and he did not see any lidocaine in the room. This assertion contradicts Natalia's assertion that there was lidocaine in the syringe with the filler that she was holding.

95. Respondent also asserted that Anush or Natalia needed to take photographs prior to any good faith examination because the patient was to receive filler injections. However, this assertion does not establish that Natalia would have taken the photographs or that she would have called him for a good faith examination.

96. Respondent asserted that, after taking photographs, but "before numbing cream is placed," the nurses should call him for a good faith examination. Respondent insisted they "always used" numbing cream for filler injections "because the needles are longer and there is deeper penetration into the skin." Respondent testified that they will "talk to the patient and say they will use numbing cream [because] it is part of the procedure." However, Natalia never mentioned using

numbing cream to help with the pain, instead assuring Budek the filler injection would not hurt because it had lidocaine in it. Respondent asserted the failure to apply numbing cream on Budek was an indication Natalia intended to first call Respondent for a good faith examination. This assertion was not persuasive and did not establish that Natalia would have applied numbing cream or that she would have called him for a good faith examination.

97. Respondent testified that, after the good faith examination, it was their custom and practice for "Anush to come into the room to wipe the patient's face to be ready for the injections." Respondent noted the patient's face "should be washed and cleaned before you inject." On October 16, 2019, Natalia was about to clean Budek's face when they stopped her from proceeding further.

98. The evidence established Natalia did not always follow protocols as Respondent expected. For example, Respondent testified when he heard Natalia represent herself as a registered nurse on the undercover video, he "was mortified." He "strongly disagreed with her saying that," and he "cannot excuse her." Respondent insisted "when I saw patients with her, never once did she call herself a registered nurse."

RESPONDENT'S CORRECTIVE MEASURES AND CURRENT POSITIONS

99. Respondent acknowledged that certificates identifying Natalia as a registered nurse were posted on a wall in his clinic. He initially indicated "a nurse" placed them on the wall but then acknowledged he had allowed it. Respondent sought to justify the certificate placement as "mostly decorative," noting that the wall on which they were placed is in a hallway that leads "to the employee wash area, an area only the employees use." However, the evidence established, and Respondent

eventually admitted, the certificates were posted on the wall across from the patient treatment rooms, under Respondent's medical degree and next to his fictitious name permit. Respondent explained he "did not think it was a problem because [Natalia] is a registered nurse in her home country and her degree does not disappear when she comes to the United States." However, he acknowledged, "now seeing people can have a misunderstanding, which was not my intention, I could see this was not the best idea I had." Respondent "now regret[s] doing that because it conveyed the wrong idea." The certificates were confiscated on October 16, 2019, and they are no longer displayed at SCULPT DTLA.

100. At the hearing, Respondent maintained his position that licensed vocational nurses are allowed perform Botox and filler injections. However, he conceded, "Now I can see where you could possibly say I was wrong."

101. Respondent noted that licensed vocational nurses are allowed to administer medications by hypodermic needle under the direction of a physician. However, he agreed that the use of prescription medical devices and injections for cosmetic reasons is the practice of medicine. He agreed that Juvederm and dermal fillers are medical devices, not medications. However, Respondent would not concede that licensed vocational nurses are not authorized to inject medical devices or that this was not part of their scope of practice.

102. Respondent assured the Board that Natalia no longer works at SCULPT DTLA. Respondent does not employ any licensed vocational nurses at SCULPT DTLA.

103. When asked what physician extenders he employs now, Respondent indicated he has one physician assistant and three nurse practitioners. He included Keleshyan as one of the nurse practitioners. However, he later added that he is "just

considering her" as a registered nurse "for safety's sake" because she has finished nurse practitioner coursework but has not yet taken the examination. As of July 25, 2022, the Board of Registered Nursing certified that Keleshyan is licensed as a registered nurse, with no added certification as a nurse practitioner. Nevertheless, as of July 22, 2022, the SCULPT DTLA website listed Keleshyan as an "NP," not just as an "RN." (Exhibit 58, p. A306.) Respondent insisted, "Marketing did that." Respondent then indicated his understanding was that "after finishing nurse practitioner school, [the nurse] can be called an NP." However, he stated he would "investigate this further" and remove the designation of Keleshyan as "NP" from his website.

104. Registered Nurse, Calvin Hines, testified credibly and confirmed Respondent's current custom and practice of requiring good faith examinations. Hines has been employed at SCULPT DTLA and the Sculpt Silverlake location from November 2019 through the present. He confirmed good faith examinations are conducted by Facetime for all new patients and whenever a new procedure is performed on a patient. The good faith examinations are performed by Respondent, his physician assistant, Gina, or more recently by their newly-hired nurse practitioner, Diana. Hines does not prepare any treatment products until after the good faith examination is completed.

Experts' Background

105. Complainant offered the testimony of Michael S. Schwartz, M.D., to establish the standard of care in this case and to opine whether Natalia's actions constituted the unauthorized practice of medicine. Dr. Schwartz received his medical degree from Loyola Stritch School of Medicine in 1982. Thereafter, he completed post-graduate training at Los Angeles County (LAC) / USC Medical Center, including an internal medicine internship and residency, a general surgery internship, and a

residency in otolaryngology with a focus on head and neck surgery. He also completed a fellowship in facial plastic and reconstructive surgery. From 1990 through 1995, he served as a Clinical Assistant Professor in the Division of Facial Plastic Surgery, Department of Otolaryngology, at LAC/USC Medical Center. Dr. Schwartz is licensed to practice medicine in California and is a diplomate of the American Board of Otolaryngology (1989), the American Board of Facial Plastic and Reconstructive Surgery (1992), and the American Board of Cosmetic Surgery (2010). He runs a cosmetic surgery private practice in Pasadena, and he has hospital privileges at multiple local hospitals and surgical centers. He also operates a medical spa. Although the majority of Dr. Schwartz's practice involves cosmetic surgery, he provides Botox and dermal filler injections at his medical spa.

106. Respondent offered the testimony of Alexander Rivkin, M.D., to counter Dr. Schwartz's opinions. Dr. Rivkin received his medical degree from Yale University School of Medicine in 1997. Thereafter, he completed post graduate training at University of California, San Diego, including an internship in general surgery and a residency in otolaryngology with a focus on head and neck surgery. Dr. Rivkin is licensed to practice medicine in California. Since 2003, Dr. Rivkin has been the Medical Director and owner of Westside Aesthetics in Los Angeles, where he operates a non-surgical aesthetics practice. Since 2003, Dr. Rivkin has also served as an Assistant Clinical Professor at UCLA David Geffen School of Medicine.

107. Drs. Schwartz and Rivkin provided expert reports setting forth their opinions regarding the issues in this matter. Those reports were admitted into evidence at the hearing, and Drs. Schwartz and Rivkin testified in general conformity with their reports.

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108. Drs. Schwartz and Rivkin were equally qualified to testify as experts in this case. Any additional weight given to one expert's testimony over the other's was based on the content of their testimonies and bases for their opinions, as set forth more fully below.

Standard of Care

AIDING AND ABETTING THE UNLICENSED PRACTICE OF MEDICINE

109. The Accusation alleges Respondent aided and abetted an unlicensed person (i.e., Natalia) to engage in practice of medicine. The unlicensed practice of medicine includes "any person who practices or attempts to practice, . . . any . . . mode of treating the sick or afflicted in this state, or who diagnoses, treats, . . . 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 [medical license] or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law." (Bus. & Prof. Code, § 2052, subd. (a).)

110. The parties disputed whether Natalia's actions on September 11, 2019 (as a vocational nursing student), and October 16, 2019 (as a former vocational nursing student), constituted the unlicensed practice of medicine.

111. As noted above, the undercover videos depict Natalia's confident demeanor and assured speech. She gave the impression she was making the treatment decisions independently, including the specific amounts to be administered and the order of application of the treatments. On October 16, 2019, Natalia prepared the treatment modalities, and she stood next to Budek and announced she was going to clean him. Since (as confirmed by Dr. Rivkin) disinfection occurs just prior to injection,

it appeared Natalia was ready to administer the treatment without contacting Respondent for a good faith examination and without any licensed provider in the room. The investigators stopped her from proceeding further.

112. Respondent sought to establish that Natalia would have contacted him for a good faith examination on October 16, 2019, if she had not been stopped. However, as noted above, Respondent reviewed the October 16, 2019 undercover video and stated he "can't tell for sure" if he was going to be called a good faith examination. Additionally, Dr. Rivkin testified, "I don't know either way what would have happened" if Natalia had not been stopped. Any additional expert testimony regarding what would have happened is speculative.

113. While Natalia did not actually render treatment on September 11, 2019, she made specific treatment recommendations without consulting Respondent. On October 16, 2019, as an unlicensed and unsupervised former nursing student, she confirmed those specific treatment recommendations and additionally recommended the order of treatment.

114. The diagnosis, and treatment of medical conditions is the practice of medicine. (See Bus. & Prof. Code, § 2053.5.) In his report, Dr. Schwartz correctly points out, "In the state of California, one must be a licensed physician (MD), osteopath, physician's assistant (PA), or nurse practitioner (NP) to diagnose and treat medical conditions." (Exhibit 6, p. A47.)

115. Dr. Schwartz testified at hearing, and his demeanor was contemplative and cooperative, even on cross-examination. He presented as a very credible witness.

116. Dr. Schwartz opined, and Respondent agreed, that Juvederm and Belotero Balance are hyaluronic acid gel fillers which are considered prescription

medical devices, not medications. Dr. Schwartz opined, and Respondent agreed, the injection of Juvederm, Beltero Balance, or other dermal fillers is a medical procedure for cosmetic reasons and constitutes the practice of medicine.

117. Dr. Schwartz credibly opined that Botox is a neurotoxin that paralyzes muscle to lessen wrinkles. Botox may only be ordered by a licensed physician, and its injection constitutes a medical procedure for cosmetic reasons.

118. In a medical spa practice, such as in this case, the practice of medicine would include examining a patient, evaluating and diagnosing the patient's condition, and prescribing/recommending treatments including specific amounts of Botox and dermal fillers. The practice of medicine would also include the injection of Botox and dermal fillers.

119. The practice of medicine can be delegated, but only as specifically authorized as within the scope of practice of another licensed care provider. For example, physician assistants and nurse practitioners under physician supervision can conduct examinations (Bus. & Prof. Code, § 3505.2), and engage in other activities authorized by a written practice agreement with specified protocols. Registered nurses and licensed vocational nurses are authorized only to perform tasks within their scope of practice. The Nursing Practice Act (Bus. & Prof. Code, § 2700 et seq.) allows registered nurses to perform specified functions and procedures according to policies and protocols, and the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840 et seq.) specifies the functions and procedures a licensed vocational nurse is allowed to perform when directed by a physician. The Nursing Practice Act and the Vocational Nursing Practice Act each caution that it "confers no authority to practice medicine or surgery." (Bus. & Prof. Code, §§ 2726, 2860.) The Vocational Nursing Practice Act adds that it confers no authority "to undertake the prevention, treatment or cure of disease,

pain, injury, deformity, or mental or physical condition in violation of any provision of law." (Bus. & Prof. Code, § 2860.)

120. Dr. Schwartz opined that Natalia's September 11, 2019 and October 16, 2019 recommendations for Budek to receive Botox and filler injections in specific amounts constituted a diagnosis and treatment recommendations. Dr. Schwartz also opined the standard of care required that diagnosis and treatment recommendations should only be done by a medical doctor, osteopath, physician assistant, or nurse practitioner. Dr. Schwartz credibly noted that even a registered nurse (without nurse practitioner certification) is unauthorized to diagnose medical conditions. Consequently, Keleyshan's concurrence with Natalia's treatment recommendations on September 11, 2019, did not convert it to an appropriate diagnosis and recommendation. For both dates, Dr. Schwartz credibly opined that a vocational nursing student is not allowed to diagnose and recommend treatment for medical conditions.

121. Dr. Rivkin testified at the administrative hearing, and he presented as a steadfast witness, leaning more toward the role of an advocate than a neutral expert. Rather than conceding even minor points which could be unflattering to Respondent, Dr. Rivkin would often evade a response or provide unsolicited explanations for Respondent's position, which lessened his credibility as an expert. For example, when asked if Natalia's certificates hanging on the wall in Respondent's clinic could be misleading and suggest she was a registered nurse in California, Dr. Rivkin responded, "It is hard to say." He initially acknowledged "they are incorrect," but then stated that he "took it back" because he did not know "the legal ramifications." He argued, "my MD does not change in another country," and he asserted Natalia's certificates hanging next to Respondent's medical degree and fictious name permit were not

misleading because "it is a part of who she is," and would be misleading only if they certified she is a nurse in California.

122. Dr. Rivkin disagreed with Dr. Schwartz's opinion that Natalia had made a diagnosis and treatment recommendations. Dr. Rivkin testified the undercover video depicted only "an informational exchange," and it was "not really the practice of medicine, just a consultation for a potential procedure, but no procedure was performed." Dr. Rivkin added, "I don't know the legal definition of the practice of medicine, but all I saw . . . was an informational exchange." This assertion is not persuasive since Natalia was not just providing information about Botox and fillers but had recommended treatment to specific areas, the amount to be injected, and the order of application.

123. Dr. Rivkin also opined that Natalia was not performing outside her scope of practice as a nursing student because "is clearly the standard of care in the industry" to have consultants and medical assistants discuss with patients where they want to be treated and render their opinion about what they should do but that they "will see what the provider says when they come in." Dr. Rivkin testified "the final word is with the provider," and "they change the plan potentially when they see the patient." He did not believe it was below the standard of care to allow an unlicensed medical consultant to recommend specific units of Botox and filler, as Natalia did in this case, "with the caveat that the injector comes in and performs their own adjustments to the amount they feel is appropriate." Dr. Rivkin's assertions are unpersuasive because Natalia made specific, definitive treatment recommendations that she apparently intended to carry out, and she never said they "will see what the provider says when they come in." Additionally, Respondent's potential subsequent adoption of Natalia's

already-rendered diagnosis and treatment recommendations does not retroactively authorize her unlicensed actions.

124. Regarding whether Natalia engaged in the unauthorized practice of medicine by evaluating and making treatment recommendations for Budek, Dr. Schwartz's opinions at Factual Findings 116 through 118, and 120 are more persuasive than those of Dr. Rivkin and are adopted as facts herein.

125. Consequently, Complainant established by clear and convincing evidence that Natalia engaged in the unlicensed practice of medicine on September 11, 2019, by evaluating a patient and making specific treatment recommendations which included the injection of medical devices, and on October 16, 2019, by independently confirming her previously recommended treatment doses along with her added recommendation regarding order of treatment administration.

126. In addition to Natalia's unauthorized diagnosis and treatment recommendation, the parties disputed whether Natalia was attempting to engage in the unlicensed practice of medicine by her attempt to inject fillers and Botox into Budek on October 16, 2019. It appeared Natalia was about to commence with treatment without a good faith examination. However, even if a good faith examination had occurred, the clear and convincing evidence established Natalia would have been the person injecting the Botox and fillers on October 16, 2019, given Respondent's admission that Natalia had been injecting Botox and fillers in his practice based on his belief that licensed vocational nurses could do so.

127. The parties disputed whether licensed vocational nurses are allowed to inject Botox and fillers. As noted above, licensed vocational nurses are authorized only to perform tasks within their scope of practice. The Vocational Nursing Practice Act

specifies the functions and procedures a licensed vocational nurse is allowed to perform when directed by a physician, but these functions do not include the injection of Botox or fillers. Additionally, the Nursing Director of Angeles Institute could not confirm that licensed vocational nurses are allowed to inject medical devices in general, or dermal fillers and Botox specifically, and the Angeles Institute curriculum does not include the injection of Botox or dermal fillers. Furthermore, the Vocational Nursing Practice Act "confers no authority to practice medicine" (Bus. & Prof. Code, § 2860), and the injection of Botox, Juvederm, Belotero Balance, or other dermal fillers is a medical procedure and constitute the practice of medicine. Moreover, the Board's FAQs page indicates only that physicians, or registered nurses and physician assistants under their supervision, may inject Botox, and that no unlicensed persons may inject Botox. Licensed vocational nurses are not specifically authorized to inject Botox.

128. Both experts also provided opinions regarding whether licensed vocational nurses were allowed to inject Botox and fillers. Dr. Schwartz noted that registered nurses are permitted to inject neuromodulators such as Botox, and dermal fillers. However, he opined that licensed vocational nurses are not permitted by law to inject Botox and fillers. He pointed out he has employed licensed vocational nurses at his practice, and they have never injected Botox or fillers. When asked whether licensed vocational nurses are permitted to inject Botox and fillers, Dr. Rivken testified that this "seems to be a gray area within California." Dr. Rivkin argued, "Part of the ambiguity is that [Natalia] has a training diploma where her name and LVN are clearly written from Allergan," the manufacturer of Botox that provides training, and to have a diploma on which it "clearly indicated LVN, it is a clear endorsement of the fact that LVNs can inject Botox." Dr. Rivkin also argued, "It is clear that in other states LVNs are clearly allowed to administer Botox and other aesthetic injectables." Dr. Rivkin's arguments are not persuasive since they do not take into account that California,

unlike other states, does not allow licensed vocational nurses to inject Botox, and Allergan only provides training but does not interpret California law. Dr. Rivkin admitted he does not have licensed vocational nurses in his practice injecting Botox or fillers.

129. The clear and convincing evidence established that licensed vocational nurses are not authorized to inject Botox or fillers as part of their scope of practice.

130. The parties disputed whether Natalia, while she was a vocational nursing student, could be supervised by a registered nurse to perform Botox and filler injections. The Vocational Nursing Practice Act provides, "Vocational nursing services may be rendered by a student enrolled in an approved school of vocational nursing when these services are incidental to the student's course of study." (Bus. & Prof. Code, § 2862.) Even if Natalia could be supervised by a registered nurse as a vocational nursing student, the evidence did not establish that the tasks she was performing, i.e., injection of Botox and fillers, were within a licensed vocational nurse's scope of practice or incidental to her course of study. While registered nurses may be authorized to inject Botox and fillers, this did not mean that a licensed vocational nurse or a vocational nurse student under their supervision could be delegated registered nurse functions that a licensed vocational nurse is not authorized to perform. Additionally, as Dr. Schwartz credibly noted, Natalia was no longer a vocational nursing student on October 16, 2019, and unlicensed persons are not authorized to inject Botox or fillers even under supervision and after a good faith examination.

131. The clear and convincing evidence established that, on October 16 2019, Natalia attempted the unauthorized injection of Botox and fillers into Budek.

132. Dr. Schwartz credibly opined that Natalia engaged in the unlicensed practice of medicine at SCULPT DTLA. Dr. Schwartz noted that Respondent, as Natalia's supervisor and owner of SCULPT DTLA has the ultimate responsibility for the actions of his staff, and that physicians are not allowed to aid and abet the unlicensed practice of medicine.

133. Dr. Rivkin opined that Respondent was "not liable" for Natalia's unlicensed practice of medicine if she "disobeyed his directives." He pointed out that Respondent's directives were "adherent to the standard of care within the community."

134. Dr. Schwartz's opinions at Factual Finding 132 are more persuasive than those of Dr. Rivkin and adopted as facts herein.

GROSS NEGLIGENCE

135. Dr. Schwartz testified credibly, and without contravention, that Respondent committed an extreme departure from the standard of care in aiding and abetting the unlicensed practice of medicine with its attendant risks to the patient.

FURNISHING DANGEROUS DRUGS WITHOUT EXAMINATION

136. Complainant alleges in the Accusation that, based on the events of September 11, 2019, and October 16, 2019, "Respondent is subject to disciplinary action pursuant to section 2242, of the Code, in that he prescribed, dispensed, or furnished dangerous drugs without an appropriate prior examination and medical indication." (Exhibit 1, p. A9, para. 32.)

137. There was no evidence that directly addressed this cause for discipline. While there was no good faith examination, Respondent never dispensed or furnished dangerous drugs to Budek on September 11, 2019, or October 16, 2019. Additionally,

there was no evidence or argument to establish that Natalia's unlicensed treatment recommendations constituted Respondent's prescribing of dangerous drugs such that he was subject to disciplinary action under Business and Professions Code section 2242. Consequently, Complainant failed to establish by clear and convincing evidence that Respondent violated Business and Professions Code section 2242.

Costs

138. Complainant submitted as evidence of the costs of prosecution of this matter a declaration of Deputy Attorney General Rebecca L. Smith (DAG). The DAG's declaration indicates the Department of Justice (DOJ), Office of the Attorney General billed the Board: $8,448.75 in prosecution costs through January 1, 2022; $26,185 in additional prosecution costs after January 1, 2022, through July 25, 2022. The total DOJ costs billed to the Board were $34,633.75.

139. The Board also incurred investigation costs as follows: investigator costs of 5.25 hours at an hourly rate of $158 per hour (subtotal $829.50); and expert witness costs of $1,032.00. The total Board investigative costs were $1,861.50.

140. The total costs of investigation and prosecution incurred by the Board were $36,495.25. These costs are reasonable.

Respondent's Character Evidence

141. Respondent has no record of prior Board discipline.

142. Respondent has the support of friends, Mark Harris, M.D., and David Fukuda, M.D., who testified on his behalf.

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143. Dr. Harris has known Respondent since graduate school in 1991, and they stayed in touch. He described Respondent as an honest person who "looks out for other people as best he can." Dr. Harris admitted he had a limited understanding of the allegations against Respondent in this case. Nevertheless, he testified that since he has known Respondent over 30 years, he knows "what his character has been so [he] can give character testimony."

144. Dr. Fukuda has known Respondent since medical school in 1987. He described Respondent as a caring person who "wants to help others and [is] professional about it." Dr. Fukuda admitted he had a limited understanding of the allegations against Respondent in this case.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. The Board has the authority to revoke or suspend a physician's license for engaging in unprofessional conduct. (Bus. & Prof. Code, §§ 2004, 2234.) Unprofessional conduct includes gross negligence. (Bus. & Prof. Code, § 2234, subd. (b).)

3. Business and Professions Code section 2052, subdivision (a), describes the unlicensed practice of medicine and provides, in pertinent part:

> [A]ny person who practices or attempts to practice, . . . 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 [medical license] 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. . . .

4. Business and Professions Code section 2264 provides:

> 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.

5. Business and Professions Code section 2242, subdivision (a), provides that "prescribing, dispensing, or furnishing dangerous drugs . . . without an appropriate prior examination . . . constitutes unprofessional conduct."

6. Cause exists to discipline Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a), and 2264, in that Respondent aided and abetted the unlicensed practice of medicine, as set forth in Factual Findings 4 through 134.

7. Cause exists to discipline Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a), and 2264, for gross negligence in aiding and abetting the unlicensed practice of medicine, as set forth in Factual Finding 135.

8. Cause does not exist to discipline Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2242, in that Complainant failed to establish by clear and convincing evidence that Respondent prescribed dangerous drugs without a prior examination within the meaning of section 2242, as set forth in Factual Findings 136 through 137.

9. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of investigation and enforcement of this matter in the amount of $36,495.25, as set forth in Factual Finding 140.

10. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and whether or not the licensee has raised a colorable defense. The Board must also consider the licensee's ability to make payment.

11. Considering all of the *Zuckerman* factors, there is no basis for reducing the award of Complainant's reasonable costs. Although one of the causes for discipline was not established, the investigation and prosecution costs for all three causes for discipline were intertwined.

12. Complainant established that in September and October 2019, Respondent engaged in aiding and abetting the unlicensed practice of medicine and gross negligence in allowing Natalia to evaluate and make specific treatment recommendations and to attempt her usual practice of injecting Botox and fillers (in this case to attempt such treatment). The remaining question is the nature of the discipline to be imposed against Respondent's certificate for his violations.

13. Business and Professions Code section 2229 provides, in pertinent part:

> (a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.
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> (b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

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14. Business and Professions Code section 2227, subdivision (a), provides:

> (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, . . . and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the division.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.
>
> (4) Be publicly reprimanded by the division.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

15. Respondent's aiding and abetting the unlicensed practice of medicine stemmed from a superficial approach to running his medical practice. In building a practice around Natalia, Respondent created a facade of accomplishment without ensuring actual compliance. He allowed Natalia to post misleading certificates in the clinic, indicating her status as a registered nurse. He shaped a distorted and unreasonable interpretation of the Board's FAQs to justify Natalia's authority to

perform Botox and filler injections. And he fashioned the facility application submitted to the BVNPT to obscure the aesthetic procedures Natalia would be performing. At his own practice, Respondent was the supporting actor who appeared occasionally to rubber-stamp nurses' and his unlicensed wife's treatment plans, with products already prepared and no contribution on his part other than to appear prior to the procedure because "it is the legal thing you have to do."

16. Respondent sought to assure the Board that Natalia is no longer working at SCULPT DTLA, thus removing the origin of his violations. However, the Board cannot rely on that assurance, particularly given Respondent's lax interpretation of compliance in the past. The Board has a duty to protect the public and to ensure that no further violations occur.

17. Respondent has been practicing medicine for decades without discipline, and his current violations appear limited to a specific origin. Consequently, outright revocation is not warranted. A period of probation with education courses, an ethics course, and employment of a practice monitor will provide adequate public protection while ensuring Respondent's rehabilitation. Since Respondent's violations did not arise from any failed supervision of physician assistants or nurse practitioners, the standard term barring supervision of those licensed practitioners will not be imposed.

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ORDER

Physician's and Surgeon's Certificate Number G 74902, issued to Respondent, Benny Hau, M.D., is revoked. However, the revocation is stayed, and Respondent is placed on probation for five years upon the following terms and conditions.

1. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

2. 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.

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3. 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.

4. 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 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.

5. 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.

6. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in

an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice for 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; and Quarterly Declarations.

7. 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.

8. Costs

Respondent shall pay to the Board costs associated with its enforcement of this matter pursuant to Business and Professions Code section 125.3 in the amount of $36,495.25. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

9. 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 of the additional 40 hours of CME in satisfaction of this condition.

10. 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 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.

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11. Practice Monitoring

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

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

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

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

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

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

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

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 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.

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14. Completion of Probation

Respondent shall comply with all financial obligations (i.e., 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.

DATE: 08/25/2022

Julie Cabos-Owen

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings