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

In the Matter of the First Amended Petition to Revoke Probation and Accusation Against: SCOTT DOUGLASS EWING, M.D. Physician's and Surgeon's Certificate No. A 83530 Respondent.	Case No. 800-2021-076486

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 March 8, 2023.

IT IS SO ORDERED February 6, 2023.

MEDICAL BOARD OF CALIFORNIA

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

BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Petition to Revoke Probation and Accusation Against:

SCOTT DOUGLASS EWING, M.D.,

Physician's and Surgeon's Certificate No. A83530,

Respondent.

Agency Case No. 800-2021-076486

OAH No. 2022050439

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 9 and 10, 2023. William Prasifka (Complainant) was represented by Christina Sein Goot, Deputy Attorney General. Scott Douglass Ewing, M.D. (Respondent) was represented by Mark F. Von Esch, Attorney at Law.

Testimony and documents were received in evidence. Exhibits 14, 18, and 22 contained confidential information protected from disclosure to the public. Redaction of these exhibits to obscure confidential information was not practicable and would not provide adequate privacy protection. To prevent the disclosure of confidential information, the ALJ issued a Protective Order sealing Exhibits 14, 18, and 22. The exhibit shall remain under seal and shall not be opened, except by order of the Medical Board of California (Board), by OAH, or by a reviewing court. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order provided that the documents are protected from release to the public.

The record closed and the matter was submitted for decision on January 10, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 22, 2022, Complainant filed the First Amended Petition to Revoke Probation and Accusation in this matter while acting in his official capacity as the Executive Director of the Board.

2. Respondent filed a Notice of Defense requesting a hearing.

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License History and Probation Orders

3. On June 11, 2003, the Board issued Physician's and Surgeon's Certificate Number A 83530 (license) to Respondent. That license is scheduled to expire on October 31, 2024.

4. On September 30, 2015, an Accusation was filed against Respondent in Case Number 04-2013-233827, alleging Respondent's criminal convictions (2010 driving the influence of alcohol; 2014 possession of a controlled substance and battery on peace officer); gross negligence and repeated acts of negligence in performing cosmetic surgery on two patients; unprofessional conduct in using profane language with a patient; failure to maintain adequate and accurate records for several patients; and false advertising with one patient. That Accusation was resolved by a Stipulated Settlement and Disciplinary Order (Stipulated Settlement) which included several probationary terms. Respondent signed the Stipulated Settlement under the paragraph certifying, "I have carefully read the above [Stipulated Settlement] and have fully discussed it with my attorney, Mark F. Von Esch. I understand the stipulation and the effect it will have on my [license]." (Exhibit 4, p. A159.)

5. In a Decision and Order adopting the Stipulated Settlement, effective December 16, 2016 (2016 Probation Order), the Board revoked Respondent's license, stayed the revocation, and placed Respondent on probation for seven years with specified terms and conditions. The 2016 Probation Order prohibits Respondent from performing surgery and prescribing controlled substances and requires him to: abstain from the consumption of alcohol and the unauthorized use of controlled substances; submit to random biological fluid testing; undergo a clinical evaluation; participate in psychotherapy and substance abuse support group meetings; complete courses in

ethics, medical recordkeeping, and professional boundaries; and complete the Professional Assessment and Clinical Education (PACE) program at the University of California, San Diego School of Medicine (UCSD).

6. Respondent's probationary terms include Condition 8 which requires Respondent to employ Board-approved worksite monitor(s). Respondent's worksite monitor(s) must monitor Respondent at his worksite(s), report any suspected substance abuse to Respondent's supervisor(s) and the Board, and submit monthly reports to the Board.

7. Respondent's probationary terms include Condition 15 which requires Respondent to employ a Board-approved practice monitor. Condition 15 specifically states in pertinent part:

> [C]ontinuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation. [¶] . . . [¶]
>
> The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the

> quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.
>
> [¶] . . . [¶]
>
> In lieu of a monitor, Respondent may participate in a professional enhancement program [(PEP)] equivalent to the one offered by the [PACE] Program at [UCSD], that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in [PEP] at Respondent's expense during the term of probation.

(Exhibit 4, p. A152.)

8. Respondent opted to participate in the PEP program.

9. On July 19, 2018, Respondent received written notification of his enrollment in the PEP program which has several core components, including: "Onsite visit (including site assessment, chart review, interview, etc.) and then site visit every six months for the duration of the program if necessary" (Exhibit 14, p. A1105); and a monthly chart audit of seven randomly selected chart entries. On the first day of the month, Respondent is required to fax to the PEP program a list of every patient he treated in the previous month "at any and all locations." (*Ibid.*) The PEP staff selects seven patients' charted visits at random, and Respondent must fax or email the selections to the PEP program.

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10. Respondent's probationary terms include Condition 16, which prohibits solo practice. Condition 16 specifically states:

> SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.
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> If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The Respondent shall not resume practice until an appropriate practice setting is established.
>
> If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60

> calendar days of the practice setting change, 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. The Respondent shall not resume practice until an appropriate practice setting is established.

(Exhibit 4, pp. A153-A154.)

11. Respondent's probationary terms include Condition 22 which sets forth general probation requirements. Condition 22 specifically states, in pertinent part:

> 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[.]
>
> 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.

(Exhibit 4, p. A155.)

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12. On May 23, 2019, a Second Amended Petition to Revoke Probation and Accusation was filed against Respondent in Case Number 800-2018-041694, alleging Respondent's: gross negligence, repeated negligence, and failure to maintain adequate and accurate in his treatment of a patient; aiding and abetting the unlicensed practice of medicine by serving as medical director and performing medical procedures at a clinic owned by an unlicensed individual; violation of his probation by his failure to check in for biological fluid testing 15 times and by his failure to submit to testing three times; and violation of Condition 16 of his probation by engaging in the solo practice of medicine.

13. In a Decision and Order after Non-Adoption, effective March 12, 2020 (2020 Probation Order), the Board "reaffirmed" the stay of revocation and probationary terms in the 2016 Probation Order, and extended Respondent's probation term by two years, until December 16, 2025. The 2020 Probation Order found that Respondent engaged in gross negligence, repeated negligence, failure to maintain adequate and accurate records, and that he aided and abetted the unlicensed practice of medicine. The 2020 Probation Order also found Respondent violated the biological fluid testing condition and the solo practice prohibition set forth in the 2016 Probation Order. Regarding Respondent's engaging in the solo practice of medicine, the 2020 Probation Order specifically found:

> In 2017, Respondent was introduced to Dr. Lin, who was also on probation; they agreed to come to each other's office and help each other, and the Board approved the arrangement. They jointly marketed and advertised the offices in Huntington Beach (Respondent's office) and El Monte (Dr. Lin's office). At some point, Dr. Lin went to

> Huntington Beach less frequently; he never went there after December 2018, though Respondent kept going both to the Huntington Beach and the El Monte offices. Though complainant offered no evidence that Respondent saw any patients in Huntington Beach after Dr. Lin stopped joining him there, the office was open and Respondent was, in effect, engaged in solo practice there. Respondent did not inform the Board or his probation monitor of this state of affairs. On the contrary, Respondent told Inspector Nyla Holt, of the Board's Probation Unit, that he was working with Dr. Lin at Huntington Beach, though he was not. Ms. Holt telephoned Dr. Lin, who said he had not been to the Huntington Beach office for months, and that he only covered for Respondent when he did go to Huntington Beach, meaning that Respondent practiced there alone.
>
> [R]espondent eventually affiliated with another physician, in Westminster, and moved his practice there from Huntington Beach, so he is again in compliance with this probation condition.

(Exhibit 6, pp. A260-A261.)

Probation Violations

14. Regina Armstrong, served as Respondent's Board probation monitor from January 2020 through December 2022. She testified at the administrative hearing, and she presented as a forthright and credible witness.

15. On March 11, 2020, Armstrong reviewed every term of Respondent's probation with him. After reviewing his probationary terms, Respondent signed an "Acknowledgment of Decision" affirming that he received a copy of the 2020 Probation Order, Armstrong "explained all of the terms and conditions of [his] probation" Order, and he "understood what was required of [him] during [his] term of probation." (Exhibit 14, p. A538.)

CONDITION 22 – PRACTICING MEDICINE IN HOME

16. By early 2019, Respondent began practicing with Francois Bui, M.D., at Venus MD, located at 10161 Bolsa Avenue, Suite 201B, Westminster, California (Venus Westminster clinic).

17. On July 2, 2019, Respondent's prior patient, Patient 1, sent Respondent a text message seeking further treatment. (The patient's name is not used to protect her privacy.) On the same day, Respondent arranged for Patient 1 to visit his residence where he treated her with Xeomin cosmetic injections.

18. In an October 29, 2020 interview with a Board investigator, and at the administrative hearing, Respondent admitted treating Patient 1 at his home. Respondent explained he did not have a key to access the Venus Westminster clinic, and Dr. Bui was on vacation for a week, so Respondent chose to provide treatment at his home instead. Respondent maintained this was not his typical practice but happened only on a rare and "urgent basis." (Exhibit 10, p. A369). Respondent recalled treating patients in his home "probably three times." (*Id.* at p. A368.)

19. Respondent's practice of medicine in his residence constitutes a violation of Condition 22 of his probation.

CONDITIONS 8,15, 16, AND 22 – PRACTICE AND WORKSITE MONITORS / SOLO PRACTICE PROHIBITION / NOTIFICATION OF PRACTICE ADDRESS

20. Condition 22 of Respondent's probation requires him to immediately notify the Board in writing of any change in his business addresses.

21. Condition 8 of Respondent's probation requires him to employ worksite monitors at his worksites. At the administrative hearing, Armstrong credibly noted Respondent must have a worksite monitor for every location where he works.

22. Condition 15 of Respondent's probation requires him to employ a practice monitor or PEP to monitor his practices.

23. Condition 16 or Respondent's probation prohibits him from engaging in solo practice.

24. By 2019, Respondent was practicing with Dr. Bui at the Venus Westminster clinic. On July 2, 2019, the Board approved Mimi Nguyen, R.N. as Respondent's worksite monitor for the Venus Westminster clinic.

25. By April 2022, Venus MD had relocated to 7501 Center Ave, Suite 32, Huntington Beach, California (Venus Center Avenue clinic).

26. Respondent never reported any practice location to the Board other than the Venus Westminster clinic and the Venus Center Avenue clinic. Respondent worked at both of those locations with his partner, Dr. Bui. Respondent had Board approval for worksite and practice monitors at those locations only.

27. In 2021 or 2022, Armstrong was alerted to another practice location Respondent had not disclosed to the Board: Phenix Salon Suites at Huntington Beach

Five Points, 18531 Main Street, Huntington Beach, California (Phenix Salon location). When Armstrong checked the Phenix Salon Suites website, it listed vendors who rented spaces, and the list included "Doug Ewing" at Suites 153 and 154. (Exhibit 17, p. A1747.)

28. Armstrong visited the Phenix Salon location. At Suite 153, the door sign stated "SEACOVE Med Spa" with Respondent's cell phone number on it. Next to the door was a suite sign and Respondent's business cards stating: "Sea Cove Med Spa[;] Scott Ewing, M.D." (Exhibit 20.) Respondent' business card listed a website address (seacovemedspa.com) and Respondent's cell phone number under which was noted "text for appointment." (*Ibid.*)

29. Neither Dr. Bui's nor Venus MD's names or phone numbers were listed on the Sea Cove Med Spa door sign, suite sign, or business card found at the Phenix Salon location.

30. When Armstrong looked through the glass inlay of Sea Cove Med Spa's front door, she noticed a treatment table and medical items at the back of the suite.

31. Armstrong discovered Respondent had created an Instagram page for Sea Cove Med Spa, and he posted photographs and comments on that page. The top of the Sea Cove Med Spa Instagram page states, "Seacovemedspa.com[;] Beauty, cosmetic & personal care[;] located in Huntington Beach." (Exhibit 18, p. A1752.) The Sea Cove Med Spa Instagram page includes numerous photographs of Respondent and his patients, comments from Respondent's patients, a photograph of Sea Cove Med Spa's door sign listing Respondent's cell phone number which was identical to the door sign that Armstrong saw at the Phenix Salon location, and a photograph of

the treatment room that Armstrong saw when peeking through the glass door at the Phenix Salon location. (*Id.* at pp. A1791, A1803.)

32. As of September 21, 2022, Respondent continued operating his Sea Cove Med Spa practice and accepting patient appointments at the Phenix Salon location. On September 21, 2022, an undercover law enforcement officer with the Department of Consumer Affairs, Division of Investigation (DOI), posed as a patient and sent Respondent a text message stating, "Hello, I'd like to set up an appointment for Botox." (Exhibit 21, p. A1836.) The DOI undercover officer informed Respondent by text, "I passed by your suite when I was getting my lashes done at Phenix." (*Id.* at p. A1837.) Respondent texted back, "Hello[.] [S]ure[.] [W]ant to come tomorrow at 11?" (*Ibid.*) The DOI undercover officer responded, "Perfect[.] [S]ee you tomorrow! Should I just knock on the suite door when I get there?" Respondent answered, "[Y]es. [I] will be there." (*Ibid.*)

33. Respondent never disclosed to the Board he was operating Sea Cove Med Spa or any practice at the Phenix Salon location.

34. Condition 21 of Respondent's probation requires him to submit quarterly declarations under penalty of perjury stating whether he has been compliant with all conditions of his probation. The front page of each quarterly declaration form has a space for Respondent to fill in his "Primary Place of Practice (include additional places of practice on reverse)." (Exhibit 12, p. A428.) The quarterly declaration forms include a section for Respondent to list his additional places of practice. The section instructs: "List the name, address, and work schedule (hours/days) of any other locations where you practice medicine . . . or indicate if there has been any change to your practice address[.]" (Exhibit 12, p. A429.)

35. In his April 2019 through January 2022 quarterly declarations to the Board, Respondent reported only the Venus Westminster location as his place of practice. In his April 2022 through October 2022 quarterly declarations to the Board, Respondent reported the Venus Center Ave location as his place of practice.

36. Respondent never disclosed Sea Cove Med Spa or the Phenix Salon location in any of his quarterly declarations, either on the first page or in the section for additional locations.

37. On every quarterly declaration form, Respondent answered "yes" to question 16 which inquired, "Have you complied with each term and condition of your probation[?]" (*Id.* at p. A428.) Respondent's responses to question 16 were false.

38. Respondent has been affiliated with Dr. Bui at two locations, and Respondent informed Armstrong when Dr. Bui was planning to move his practice from the Venus Westminster location to the Venus Center Avenue location. However, Respondent never informed Armstrong that he or Dr. Bui was interested in opening a practice at the Phenix Salon location.

39. At their September 30, 2022 quarterly meeting, Armstrong asked Respondent about his practice locations. Respondent did not disclose the Sea Cove Med Spa Phenix Salon location to her. Instead, he informed her he had been advised by his attorney not to speak about any practice locations. Armstrong noted the following in her Probation Quarterly Report for July 2022 through October 2022:

> I asked [Respondent] if he has any other practice locations, he stated no. Please Note: When I asked this particular question, [Respondent] produced a letter he stated was

> from his attorney. [Respondent] indicated that he had been advised not to answer any questions regarding his practice locations until he could discuss this matter further with his attorney. I asked [Respondent] if he would like to give me a copy of this letter and he stated not at this time. [Respondent] then proceed to tell me that this location (Center Avenue) was his only location where he practices medicine at.

(Exhibit 13, p. A529.)

40. Respondent's failure to notify the Board in writing of his Sea Cove Med Spa business address at the Phenix Salon location constitutes a violation of Condition 22 of his probation.

41. Respondent was required to nominate a worksite monitor for the Phenix Salon location but never did so.

42. None of Respondent's worksite monitor's reports mentioned the Phenix Salon location.

43. Respondent's failure to nominate and obtain a worksite monitor for the Phenix Salon location constitutes a violation of Condition 8 of his probation.

44. Respondent was to sole practitioner at Sea Cove Med Spa and its Phenix Salon location.

45. Respondent engaging in a solo practice at the Phenix Salon location constitutes a violation of Condition 16 his probation.

46. Respondent's PEP practice monitor selects and reviews a portion of Respondent's patient charts from his reported practice locations. PEP has never reviewed patient charts from Sea Cove Med Spa or the Phenix Salon location.

47. Respondent's failure to obtain practice monitoring for the Phenix Salon location constitutes a violation of Condition 15 of his probation.

RESPONDENT'S EXPLANATIONS FOR PROBATION VIOLATIONS

48. At the administrative hearing, Respondent testified in an evasive and challenging manner. His overall testimony lacked credibility.

49. Regarding Condition 22's prohibition against practicing medicine at his residence, Respondent testified he "had not read that line specifically, but [he] was aware it was probably not recommended." Respondent admitted he should not have treated any patients in his home, but he insisted he "did not know it was so clearly stated in the order." He commented the 2016 Probation Order "is a very long and very complicated document and took me three years to understand it." Respondent asserted the Board is seeking "to hold doctors to strict compliance," and there are "ambiguities in the verbiage" that are "designed to trip up doctors."

50. Respondent insisted there were "extenuating circumstances" prompting his violation of Condition 22 on July 2, 2019. He explained Patient 1 wanted immediate treatment, but he did not have keys to access the clinic. However, Respondent did not adequately explain why non-exigent treatment could not have been delayed until Dr. Bui returned from vacation. Additionally, Respondent failed to explain the circumstances prompting his admitted practice of medicine at his residence on two other dates.

51. Respondent's explanation for practicing medicine at his residence in violation of Condition 22 is unpersuasive and fails to establish any mitigation.

52. Respondent admitted operating Sea Cove Med Spa during his probation, but he sought to avoid connection with the Phenix Salon location. Instead, Respondent evasively noted Sea Cove Med Spa "has many locations," and "is located wherever I am practicing." When asked if Sea Cove Med Spa was located at the Phenix Salon location, Respondent answered, "Sort of, in a way." When asked if Sea Cove Med Spa has ever been located at the Phenix Salon location, Respondent admitted, "In a temporary manner, yes." Respondent eventually admitted seeing patients at Sea Cove Med Spa's Phenix Salon location "temporarily and on a limited basis." Respondent admitted he operated Sea Cove Med Spa at the Phenix Salon location "briefly between mid-2020 to early 2022." Respondent's estimated termination date of "early 2022" for operating Sea Cove Med Spa at the Phenix location is not credible. Respondent continued accepting appointments to treat patients at the Phenix Salon location as late as September 20, 2022.

53. Respondent also sought to sidestep any responsibility for the Phenix Salon location, instead noting it was "started by" his father, Douglass Ewing. Respondent's father is a physician who previously surrendered his license to the Board. According to Respondent, his father leased the Phenix Salon location on his own volition, not at Respondent's request. Respondent insisted he was "pushed significantly by [his] father to start the office there, and [his father] was the driver behind setting up that office and assured [Respondent they] were going to be in compliance." Respondent denied any attempt "to circumvent the Board." Respondent's attempt to lay blame for operating the Phenix Salon location at his father's feet is disingenuous and not credited.

54. When Respondent was asked if he understood he was prohibited from engaging in solo practice, Respondent answered, "That is where it gets ambiguous." He testified he was told by his first probation monitor that he would "just have to have two names on a card and practice." However, Dr. Bui's name was not on the Sea Cove Med Spa practice sign or business card. Consequently, Respondent's explanation was inadequate to justify his solo operation of Sea Cove Med Spa at the Phenix Salon location.

55. Respondent denied that the Board disciplined him in 2020 for engaging in the solo practice of medicine. After being shown the 2020 Probation Order finding he had engaged in the solo practice of medicine from September 28, 2018, to May 23, 2019 (Exhibit 6, p. A268), Respondent insisted he was "not aware of that part of the disciplinary action until just right now." Respondent testified he read the 2020 Probation Order "a little," but he asserted the Board is "trying to get [him] in details and red tape." Respondent explained, "The whole thing is upsetting to me, so I don't like to spend a lot of time going over it because I don't feel a lot of it is fair."

56. Respondent acknowledged he is required to keep the Board informed of his business and residence addresses. He insisted he was previously "not clear on" the requirement that he immediately notify the Board of any address changes, but he "understand[s] that now." He explained he was "not as educated [about] the Order as [he] should have been."

57. Respondent sought to explain his failure to immediately inform the Board about the Phenix Salon location. He testified Dr. Bui wanted to move from Westminster to Huntington Beach, and initially they both planned to move to the Phenix Salon location. However, Dr. Bui wanted a bigger space, and he moved to the

Venus Center Avenue location instead. Respondent stated he "regret[s]" not informing the Board about the Phenix Salon location, but he did "not know that Dr. Bui would not be coming there." Respondent insisted he "disassociated with that location once Dr. Bui decided not to move there." However, Respondent's explanation is disingenuous. Respondent informed the Board that he and Dr. Bui had moved to the Venus Center Avenue location sometime between January and April 2022. Respondent's assertion that he "disassociated with" the Phenix Salon location when Dr. Bui moved elsewhere is contradicted by Respondent's continued solo practice at the Phenix Salon location until September 2022.

58. Respondent understands he is required to have a worksite monitor and a practice monitor. Respondent asserted his worksite monitor has visited the Sea Cove Med Spa Phenix Salon location. This assertion is not credible. Nurse Nguyen submitted no worksite monitor reports indicating her visit to the Phenix Salon location, and she did not testify to corroborate Respondent's assertion.

59. Respondent's explanation for violating probation Condition 22 (by his failure to notify the Board in writing of his Sea Cove Med Spa practice at the Phenix Salon location) is unpersuasive and established no mitigation.

60. Respondent's explanation for violating probation Condition 16 (by engaging in solo practice at the Sea Cove Med Spa Phenix Salon location) is unpersuasive and established no mitigation.

61. Respondent provided insufficient explanation to establish mitigation for violating probation Conditions 8 and 15 (by failing to obtain Board-approved worksite and practice monitors for his Sea Cove Med Spa practice at the Phenix Salon location).

62. Respondent admitted he violated the terms of his probation "in part." He does not believe he violated "the nature of why [he] is on probation." He noted he has remained sober since 2016, and he asserted his substance abuse and negligence were the "primary reasons" for his probation, "even the Board does not want to admit it." Respondent contended the Board has made "no effort" to rehabilitate physicians, but instead attempts "to try to trip up physicians" and "just to get rid of them." Respondent maintained, "I have worked hard to get where I am, and it seems like it should take a major violation of the reason I was placed on probation" to warrant license revocation. Respondent insisted he is capable of safely practicing medicine.

Character Evidence

63. Respondent has the support of several patients who testified on his behalf and lauded his skills providing cosmetic injections.

64. Respondent's practice partner, Dr. Bui, did not testify or submit any letter on his behalf.

65. Respondent's worksite monitor, Nurse Nguyen, did not testify or submit any letter on his behalf.

Costs

66. Complainant submitted as evidence of the costs of prosecution of this matter the declaration of Deputy Attorney General Christina Sein Goot (DAG). The DAG's declaration indicates the Department of Justice (DOJ), Office of the Attorney General billed the Board $38,018.75 in prosecution costs through December 23, 2022.

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67. Complainant also submitted as evidence of the costs of investigation of this matter the declaration of Jeremy Paris, Supervising Investigator I, with the Department of Consumer Affairs, Division Investigation (DOI), Health Quality Investigation Unit (HQIU). Investigator Paris's declaration indicates the DOI HQIU billed $237 for 1.50 hours of work at an hourly rate of $158.

68. The total costs of investigation and prosecution incurred by the Board were $38,255.75. These costs are reasonable.

LEGAL CONCLUSIONS

Petition to Revoke Probation

1. Pursuant to Condition 26 of Respondent's 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." (Exhibit 4, p. A158.)

2. First Cause to Revoke Probation: Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition 22 of his probation by engaging in the practice of medicine at his residence, as set forth in Factual Findings 3 through 19.

3. Second Cause to Revoke Probation: Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Condition 16 of his probation by engaging in the solo practice of medicine at the Sea Cove Med Spa Phenix Salon location, as set forth in Factual Findings 3 through 15 and 20 through 47.

4. Third Cause to Revoke Probation: Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Condition 8 of his probation by failing to obtain a worksite monitor for the Sea Cove Med Spa Phenix Salon location, as set forth in Factual Findings 3 through 15 and 20 through 47.

5. Fourth Cause to Revoke Probation: Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Condition 15 of his probation by failing to obtain practice monitoring for the Sea Cove Med Spa Phenix Salon location, as set forth in Factual Findings 3 through 15 and 20 through 47.

6. Fifth Cause to Revoke Probation: Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with the Condition 22 of his probation by failing to immediately notify the Board of his additional business address at Sea Cove Med Spa Phenix Salon location, as set forth in Factual Findings 3 through 15 and 20 through 47.

Accusation

7. 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 "[t]he commission of any act involving dishonesty . . . which is substantially related to the qualifications, functions, or duties of a physician and surgeon. (Bus. & Prof. Code, § 2234, subd. (e).)

8. First Cause for Discipline (Dishonesty): Cause exists to revoke or suspend Respondent's license, pursuant to Business and Professions Code section 2234,

subdivision (e), in that Respondent engaged in dishonesty when he signed quarterly declarations under the penalty of perjury attesting he had complied with each term and condition of his probation despite knowingly practicing medicine at his residence, engaging in solo practice, failing to notify the Board of his business address at the Phenix Salon location, and failing to obtain worksite and practicing monitoring for the Phenix Salon location, as set forth in Factual Findings 3 through 47.

9. Second Cause for Discipline (Unprofessional Conduct): Cause exists to revoke or suspend Respondent's license, pursuant to Business and Professions Code section 2234, in that Respondent engaged in unprofessional conduct by violating Conditions 8, 15, 16, and 22 of his probation, as set forth in Factual Findings 3 through 47.

10. Respondent was placed on probation in 2016 for violations which included gross negligence, repeated negligence, and failure to maintain adequate and accurate patient records. In 2020, he was again disciplined, and his probation was extended, when he committed the same types of violations (gross negligence, repeated negligence, and failure to maintain adequate and accurate patient records), as well as a violation of probation Condition 16 by engaging in the solo practice of medicine. Respondent has again violated his probation by engaging in the solo practice of medicine at a business location undisclosed to the Board for about two years. He also treated at least three patients at his residence. Given Respondent's prior instances of gross negligence and repeated negligence, the Board must be able to verify Respondent is practicing medicine safely and unimpaired. However, the Board is unable to carry out its monitoring function if Respondent does not reveal all his practice locations.

11. Respondent sought to assure the Board he is capable of safely practicing medicine and has caused no reported patient harm. However, the Board is not required to postpone the imposition of discipline until actual patient harm occurs. (*In re Kelley* (1990) 52 Cal.3d 487, 495.) Additionally, the Board should not be left to rely on Respondent's assurances. The Board has the authority to monitor and verify his safe practice of medicine at all locations where he provides treatment through the methods specified in its probation orders. Respondent has not respected the means through which the Board has chosen to monitor and confirm his safe practice of medicine. Instead, he ignored and defied his probationary conditions without excuse, and he concealed his violations.

12. In addressing the Board's paramount concern, protection of the public, the analysis must focus on the likelihood Respondent will again violate his probation. Respondent's continued flouting of his probationary obligations (including a second violation of the prohibition on solo practice) demonstrates his lack of reliability as a probationer. Furthermore, at hearing, Respondent provided little assurance that he would be willing and able to comply with his probationary conditions in the future. Instead, Respondent sought to minimize his violations and evade full responsibility. He also demonstrated his disdain for the Board's probationary conditions which he characterized as the Board's attempt "to get [him] in details and red tape." This all bodes poorly for Respondent's future compliance with, and successful completion of, his probation.

13. Revocation of Respondent's license is an unfortunate consequence of Respondent's continued failure to comply with his probationary conditions. However, given the foregoing, the Board's priority of public protection necessitates revocation at this time.

ORDER

Physician's and Surgeon's Certificate Number A83530, issued to Respondent, Scott Douglass Ewing, M.D., is hereby revoked.

DATE: 01/23/2023

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings

ROB BONTA
Attorney General of California
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Petition to Revoke Probation and Accusation Against: **SCOTT DOUGLASS EWING, M.D.** **7989 Osuna Circle** **Huntington Beach, CA 92648** Physician's and Surgeon's Certificate No. A 83530, Respondent.	Case No. 800-2021-076486 **FIRST AMENDED PETITION TO REVOKE PROBATION AND ACCUSATION**

Complainant alleges:

PARTIES

1. William Prasifka ("Complainant") brings this First Amended Petition to Revoke Probation and Accusation solely in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On June 11, 2003, the Board issued Physician's and Surgeon's Certificate Number A 83530 to Scott Douglass Ewing, M.D. ("Respondent"). That Certificate was in effect at all times relevant to the charges brought herein and will expire on October 31, 2022, unless renewed.

3. In a disciplinary action titled *In the Matter of Accusation Against Scott Douglass Ewing, M.D.*, Case No. 04-2013-233827, the Board issued a Decision, effective December 16, 2016 (the "2016 Decision"), in which Respondent's Physician's and Surgeon's Certificate was

revoked. However, the revocation was stayed, and his Certificate was placed on probation for seven (7) years with certain terms and conditions. A copy of the 2016 Decision is attached as Exhibit A and is incorporated by reference.

4. In another disciplinary action titled *In the Matter of the Second Amended Petition to Revoke Probation and Accusation Against Scott Douglass Ewing, M.D.*, Case No. 800-2018-041694, the Board issued a Decision, effective March 12, 2020 (the "2020 Decision"), in which the stay of revocation ordered in the 2016 Decision and the probationary conditions imposed therein, were reaffirmed with the following modifications: (1) the term of probation was extended two years, to expire on December 16, 2025; and (2) for the first year after the effective date of the 2020 Decision, biological fluid sampling would be required as frequently as during the first year of probation. A copy of the 2020 Decision is attached as Exhibit B and is incorporated by reference.

JURISDICTION

5. This First Amended Petition to Revoke Probation and Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2004 of the Code states:

> The board shall have the responsibility for the following:
>
> (a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
>
> (b) The administration and hearing of disciplinary actions.
>
> (c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
>
> (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
>
> (e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.
>
> (f) Approving undergraduate and graduate medical education programs.
>
> (g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

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

8. Section 2234 of the Code states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
>
> (d) Incompetence.
>
> (e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct which would have warranted the denial of a certificate.
>
> (g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.
>
> (h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the Board. This subdivision shall only apply

to a certificate holder who is the subject of an investigation by the board."

9. Section 2261 of the Code states: "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE TO REVOKE PROBATION

(Engaging in the Practice of Medicine in Respondent's Residence)

11. At all times after the effective date of Respondent's probation, Probation Condition 22 stated:

"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."

12. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 22, referenced above. The facts and circumstances regarding this violation are as follows:

A. On November 19, 2018, Patient 1[1], a 29-year-old female, first treated with Respondent. She had purchased a Groupon deal for 40 units of Xeomin.[2] Patient 1 met Respondent at his office, where he injected her forehead area with 40 units of Xeomin.

[1] The patient is referred to as Patient 1 to protect privacy.

[2] Xeomin and Botox are two injectable medicines that are used to reduce the appearance of fine lines and wrinkles. Both contain botulinum toxin type A, a neurotoxin, that works by blocking neuromuscular signals to relax targeted muscles at the injection site. Xeomin, manufactured by Merz Pharma, contains a "naked" form of botulinum toxin. Unlike Botox, manufactured by Allergan, which contains accessory proteins.

B. Several months later, Patient 1 desired and sought additional Xeomin injections from Respondent. Respondent offered to perform the injections at his home if Patient 1 could not come during regular office hours. On July 2, 2019, Patient 1 met Respondent at his residence, where Respondent injected 10 units of Xeomin into Patient 1's forehead and 30 units of Xeomin into Patient 1's brow area. Respondent engaged in the practice of medicine in his residence when he administered Xeomin injections to Patient 1 in violation of the terms of his probation.

SECOND CAUSE TO REVOKE PROBATION

(Engaging in Solo Practice)

13. At all times after the effective date of Respondent's probation, Probation Condition 16 stated:

> SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.
>
> If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The Respondent shall not resume practice until an appropriate practice setting is established.
>
> If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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. The Respondent shall not resume practice until an appropriate practice setting is established.

14. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 16, referenced above. The facts and circumstances regarding this violation are as follows:

A. The allegations of the First Cause to Revoke Probation are incorporated by reference as if fully set forth herein.

B. Respondent is operating a solo medical practice offering "botox/filler/threads/peels/

stemcell/prp" at the Huntington Beach 5 Points location of Phenix Salon Suites, which is located at 18531 Main Street, Suite #153, Huntington Beach, CA 92648 ("Phenix Location").

C. Respondent has been operating a medical practice at the Phenix Location since at least January 2021 and, as of the date of the filing of this First Amended Petition to Revoke Probation and Accusation, Respondent has not notified the Board or its designee of his medical practice at the Phenix Location. In addition, he practiced medicine solo at his home/residence as described in the First Cause to Revoke Proation.

THIRD CAUSE TO REVOKE PROBATION

(Violation of Worksite Monitor Condition for Substance-Abusing Licensees)

15. At all times after the effective date of Respondent's probation, Probation Condition 8 stated:

> WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEES. Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more license physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.
>
> The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the working monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.
>
> The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.
>
> Respondent shall pay all worksite monitoring costs.
>
> The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.
>
> The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee

within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (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.

16. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8, referenced above. The facts and circumstances regarding this violation are as follows:

A. The allegations of the First and Second Causes to Revoke Probation, inclusive, are incorporated by reference as if fully set forth herein.

B. As of the date of the filing of this First Amended Petition to Revoke Probation, and Accusation, Respondent has not submitted to the Board or its designee for prior approval, the name and qualifications of a worksite monitor for the Phenix Location or his home/residence.

C. Respondent has been practicing at the Phenix Location and at his home/residence without a worksite monitor, as required by Condition 8.

FOURTH CAUSE TO REVOKE PROBATION

(Violation of Practice Monitor Condition)

17. At all times after the effective date of Respondent's probation, Probation Condition 15 stated:

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

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

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

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

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

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

18. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, referenced above. The facts and circumstances regarding this violation are as follows:

A. The allegations of the First, Second and Third Causes to Revoke Probation, inclusive, are incorporated by reference as if fully set forth herein.

B. As of the date of the filing of this First Amended Petition to Revoke Probation and Accusation, Respondent has not disclosed his practice at the Phenix Location to the Board or its designee; thus, Respondent's practice at the Phenix Location has not been monitored, as required by Probation Condition 15.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Notify of Address Change)

19. At all times after the effective date of Respondent's probation, Probation Condition 22 stated:

"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(b)."

20. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 22, referenced above. The facts and circumstances regarding this violation are as follows: The allegations of the Second Cause to Revoke Probation are incorporated by reference as if fully set forth herein.

FIRST CAUSE FOR DISCIPLINE

(Dishonest and Corrupt Acts)

21. Respondent is subject to disciplinary action under sections 2261 and 2234, subdivision (e), of the Code in that he committed dishonest and corrupt acts and/or falsely

represented facts to the Board. The circumstances are as follows:

A. The allegations in Paragraph 12 are incorporated by reference as if fully set forth herein. In addition, Respondent prepared and signed a quarterly declaration under the penalty of perjury, attesting that he complied with each term and condition of his probation. By signing the quarterly declaration, Respondent acknowledged that any misstatements, misrepresentations, or omissions of material fact in the declaration could be cause for further disciplinary action. Respondent did not disclose that he administered Xeomin injections to Patient 1 in his residence.

B. The allegations of the First, Second, Third, Fourth, and Fifth Causes to Revoke Probation, inclusive, are incorporated by reference as if fully set forth herein. In addition, Respondent prepared and signed a quarterly declaration under the penalty of perjury, attesting that he complied with each term and condition of his probation. By signing the quarterly declaration, Respondent acknowledged that any misstatements, misrepresentations, or omissions of material fact in the declaration could be cause for further disciplinary action. As of the date of the filing of this First Amended Petition to Revoke Probation and Accusation, Respondent has not disclosed the Phenix Location to the Board or its designee or disclosed this medical practice in any quarterly declaration signed by him and provided by him to the Board or its designee.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

22. Respondent is subject to disciplinary action under Code section 2234, in that Respondent engaged in general unprofessional conduct.

23. The allegations of the First, Second, Third and Fourth Causes to Revoke Probation, inclusive, are incorporated by reference as if fully set forth herein.

DISCIPLINE CONSIDERATIONS

24. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that, pursuant to the 2016 Decision, Respondent's license was revoked, the revocation was stayed and Respondent was placed on probation for seven years for failing to maintain adequate patient records, for dishonest acts in connection with a civil law suit, for misleading advertising related to his practice of medicine, for gross negligence in the care and

treatment of patients, for conviction of the crime of possession of a controlled substance, and for conviction of the crime of driving a vehicle while having 0.08 percent or more, by weight, of alcohol in his blood. The 2016 Decision is now final and is incorporated by reference as if fully set forth.

25. To further determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that, pursuant to the 2020 Decision, the probationary conditions imposed in the 2016 Decision were extended for two years for gross negligence, repeated negligent acts, failure to maintain adequate medical records, aiding and abetting the unlicensed practice of medicine, general unprofessional conduct, dishonest and corrupt acts, and failure to comply with the biological fluid testing and prohibition against the solo practice of medicine terms of the 2016 Decision. The 2020 Decision is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking the probation that was granted by the Medical Board of California in Case No. 800-2018-041694 (which extended the probation granted in Case No. 04-2013-233827) and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 83530 issued to Respondent Scott Douglass Ewing, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 83530 issued to Respondent Scott Douglass Ewing, M.D.;

3. Revoking, suspending or denying approval of Respondent Scott Douglass Ewing, M.D.'s authority to supervise physician assistants and advanced practice nurses;

4. Ordering Respondent Scott Douglass Ewing, M.D. to pay the Board, the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. If placed on probation, ordering Respondent Scott Douglass Ewing, M.D. to pay the Board the costs of probation monitoring; and

///

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

DATED: SEP 2 2 2022

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

Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 04-2013-233827

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

In the Matter of the Accusation Against:	)	
SCOTT DOUGLASS EWING, M.D.	)	Case No. 04-2013-233827
Physician's and Surgeon's Certificate No. A83530	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on December 16, 2016.

IT IS SO ORDERED: November 17, 2016.

MEDICAL BOARD OF CALIFORNIA

Jamie Wright, J.D.
Chair, Panel A

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

In the Matter of the Accusation Against: **SCOTT D. EWING, M.D.** 7989 OSUNA CIRCLE HUNTINGTON BEACH , CA 92648 **Physician's and Surgeon's Certificate No. A83530,** Respondent.	Case No. 04-2013-233827 OAH No. 2016030370 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Christina L. Sein, Deputy Attorney General.

2. Respondent Scott D. Ewing, M.D. (Respondent) is represented in this proceeding by attorney Mark F. Von Esch, whose address is: 810 E. Commonwealth Ave., Fullerton, CA 92831.

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3. On or about June 11, 2003, the Medical Board of California issued Physician's and Surgeon's Certificate No. A83530 to Respondent. The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on October 31, 2016, unless renewed.

JURISDICTION

4. Accusation No. 04-2013-233827 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 30, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 04-2013-233827 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 04-2013-233827. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 04-2013-233827 and that he has thereby subjected his license to disciplinary action.

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

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 04-2013-233827 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

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

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

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A83530 issued to Respondent Scott D. Ewing, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If Respondent forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business

and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. ALCOHOL - ABSTAIN FROM USE: Respondent shall abstain completely from the use of products or beverages containing alcohol.

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the

Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

4. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, Respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing

Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret

and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the

acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52 (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

5. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

6. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS. Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shalt be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance

abuse problem or problems; and whether Respondent is a threat to himself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he or she is fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation.

Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

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7. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee.

Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance. and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

8. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEES. Within thirty (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more license physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the working

monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (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.

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 for 65 hours of CME of which 40 hours were in satisfaction of this condition.

10. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping

course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

11. 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. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

12. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program equivalent to the Professional Boundaries Program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of Respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The Program shall evaluate Respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire Program not later than six (6) months after Respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on Respondent's performance in and evaluations from the assessment, education, and training, the Program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, Respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The Program has the authority to determine whether or not Respondent successfully completed the Program.

A professional boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of

this Decision.

If Respondent fails to complete the Program within the designated time period, Respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that Respondent failed to complete the Program.

13. CLINICAL TRAINING PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

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Respondent shall not practice medicine until Respondent has successfully completed the Program and has been so notified by the Board or its designee in writing, except that Respondent may practice in a clinical training program approved by the Board or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

14. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

15. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of

Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

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

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If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

16. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an

appropriate practice setting within 60 calendar days of the practice setting change, 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. The Respondent shall not resume practice until an appropriate practice setting is established.

17. PROHIBITED PRACTICE. During probation, Respondent is prohibited from performing cosmetic surgery. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from performing cosmetic surgery. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

18. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff privileges.

19. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

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20. 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.

21. 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.

22. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

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(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty

(30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

23. 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.

24. 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 in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. 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 a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice 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; and General Probation Requirements.

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

26. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE-ABUSING LICENSEES. Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(l), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of the determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If Respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(l), of Title 16 of the California Code of Regulations, at Respondent's expense;

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) 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.

27. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

ACCEPTANCE

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

DATED: 4/20/10

SCOTT D. EWING, M.D.
Respondent

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

DATED: 4/20/10

MARK F. VON ESCH
Attorney for Respondent

[Endorsement on following page]

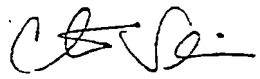
ENDORSEMENT

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

Dated: 9/30/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



CHRISTINA L. SEIN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 04-2013-233827

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
MICHEL W. VALENTINE
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 30 2015
BY _____ ANALYST

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

In the Matter of the Accusation Against: **SCOTT D. EWING, M.D.** **7989 Osuna Circle** **Huntington Beach, CA 92648** **Physician's and Surgeon's Certificate No. A83530** Respondent.	Case No. 04-2013-233827 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On or about June 11, 2003, the Medical Board issued Physician's and Surgeon's Certificate Number A83530 to Scott D. Ewing, M.D. ("Respondent"). The Physician's and Surgeon's Certificate will expire on October 31, 2016, unless renewed.

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JURISDICTION

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

4. Section 2004 of the Code provides that the Board is responsible for the administration and hearing of disciplinary actions involving enforcement of the Medical Practice Act.

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

6. Section 2228 of the Code states:

"The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

"(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

"(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

"(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

"(d) Providing the option of alternative community service in cases other than violations relating to quality of care."

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7. Section 2225.5 of the Code states:

"(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

"...

"(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board. ..."

8. Section 2234 of the Code, states:

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

"...

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

9. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. ..."

"...

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

10. Section 2237 of the Code states:

"(a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

"(b) Discipline may be ordered in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

11. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

12. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

"(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

13. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

14. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

15. Section 2271 of the Code states: "Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct."

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16. Section 651 of the Code states:

"(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

"(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

"(1) Contains a misrepresentation of fact.

"(2) Is likely to mislead or deceive because of a failure to disclose material facts.

"(3)(A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

"...

"(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

"(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

"...

"(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

"(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

"(h) Advertising by any person so licensed may include the following:

"...

"(5)(A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

"...

"(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision."

17. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

18. California Health and Safety Code section 123110 states, in relevant part:

"(a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be

entitled to inspect patient records upon presenting to the health care provider a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing. ..."

FACTUAL SUMMARY – PATIENT A.B.[1]

19. From 2005 through approximately 2011, Respondent performed multiple cosmetic surgery procedures on Patient A.B. Respondent failed to provide certified copies of Patient A.B.'s medical records, indicating at his August 22, 2014 subject interview that he had lost Patient A.B.'s medical records. However, the circumstances of the care and treatment that Respondent provided to Patient A.B. may be partially ascertained via interviews of both Respondent and Patient A.B.

20. In 2005, Patient A.B. was employed as a phlebotomist by Respondent's father, D.E., a former California licensed physician and surgeon whose license was surrendered in 2009. Respondent met Patient A.B. through her work with D.E. While Patient A.B. was employed by D.E., Respondent commissioned Patient A.B. to assist him in continuing his cosmetic surgery training by submitting to liposuction of her stomach and outer thighs. Although Patient A.B. was not interested in cosmetic surgery, she ultimately relented, and Respondent performed liposuction of Patient A.B.'s thighs and stomach.

21. Respondent conducted liposuction of Patient A.B.'s stomach and outer thighs, using local anesthesia. Respondent failed to conduct and document an adequate pre-operative physical examination and medical history or post-operative follow-up examinations. Approximately two weeks after the procedure, Patient A.B. complained to Respondent of numbness and swelling in

[1] Initials are used to protect patient confidentiality. Names will be released pursuant to a request for discovery.

the areas where he performed liposuction. Respondent failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

22. Approximately three to four weeks after the procedure, Respondent observed Patient A.B.'s results and suggested that she undergo additional liposuction on her inner thighs. Patient A.B. again resisted the idea of undergoing cosmetic surgery, but ultimately relented to assist Respondent in obtaining additional cosmetic surgery training. Respondent again performed liposuction on Patient A.B. with local anesthesia, focusing on her inner thighs. Respondent failed to conduct and document an adequate pre-operative physical examination and medical history or post-operative follow-up examinations. Following the procedure, Patient A.B. again complained of numbness and swelling. Respondent again failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

23. Approximately three months after the procedure, Patient A.B. observed lumpy bulges and indentations on her outer thighs and experienced numbness and shooting pains. She notified Respondent of her symptoms and Respondent again failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

24. From approximately 2005 through 2008, Patient A.B. repeatedly expressed concern for her continuing numbness, shooting pain, and lumpiness. Respondent again failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

25. In 2005, D.E.'s medical license was suspended, and he terminated Patient A.B. from employment. From approximately 2006 through 2008, Respondent employed Patient A.B. as an office administrator.

26. In 2008, Patient A.B. underwent a third revision procedure to correct the lumpy appearance in her thighs. Using local anesthesia, Respondent inserted a wire under Patient A.B.'s skin to raise the indentations. Respondent failed to conduct and document an adequate pre-operative physical examination and medical history or post-operative follow-up examinations. Following the procedure, Patient A.B. again complained of lumpiness. Respondent again failed

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to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

27. In 2011, Patient A.B. underwent a fourth revision procedure to correct the lumpy appearance of her thighs. During this procedure, Respondent performed a fat transfer on Patient A.B.'s thighs, again using local anesthesia. Respondent extracted fat from Patient A.B.'s flanks, cleaned the fat with saline and "what appeared to be a common kitchen strainer," and injected the fat into the indentations on her thighs. Respondent failed to conduct and document an adequate pre-operative physical examination and medical history or post-operative follow-up examinations. Following the procedure, Patient A.B. complained of pain and swelling. Respondent again failed to perform a physical examination of the areas.

FIRST CAUSE FOR DISCIPLINE

(Failure to Provide and/or Maintain Adequate Patient Records for Patient A.B.)

28. Paragraphs 19 through 27 are incorporated herein.

29. Respondent is subject to disciplinary action under Code sections 2266 [failure to maintain adequate patient records], and/or 2225.5 [failure to provide patient records], and/or Health and Safety ("HS") Code section 123110(a) [failure to provide patient records], in that Respondent failed to maintain and furnish medical records for Patient A.B. pursuant to Patient A.B.'s October 18, 2012 request for her own medical records or the Board's 2014 request for Patient A.B.'s certified medical records. During the August 22, 2014 subject interview, Respondent admitted that he did not have medical records for Patient A.B.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Acts and/or False Representations for Patient A.B.)

30. Paragraphs 19 through 27 are incorporated herein.

31. Respondent is subject to disciplinary action under Code sections 2234(e) [dishonest act] and/or 2261 [false representations], in that on January 16, 2013, Patient A.B. filed a civil complaint entitled [*Patient A.B.*] *v. Scott Douglas Ewing, M.D.*, case no. 30-2013-00624836, before the Orange County Superior Court. In litigating this matter, Respondent filed an Ex Parte Motion to Continue Trial Date; or Alternatively For an Order Shortening Time for Notice of

Hearing on Motion for Continuance of Trial ("Motion") on January 3, 2014. In a declaration attached to the Motion, Respondent states: "[w]ithin the last several months I have been diagnosed with Bi-Polar disorder that included a manic breakdown. Said condition resulted in having to receive both in-patient and out-patient treatment [and] has impaired my ability to operate my business and temporarily to defend or participate in this litigation." The declaration was submitted under penalty of perjury.

32. On August 22, 2014, Respondent submitted to a subject interview. When questioned about his mental health status, Respondent indicated that he had never been diagnosed with or treated for bi-polar disorder and that the representations made in the Motion were a "gross exaggeration" of what he describes as irritability and stress.

PATIENT V.S.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Dishonest Act and/or False or Misleading Advertisement for Patient V.S.)

33. Respondent is subject to disciplinary action under Code sections 2234(e) [dishonest act], and/or 651(a) [false or misleading advertising], and/or 2271 [false or misleading advertising], in that he published an advertisement for medical care that misstated his training and credentials. The circumstances are as follows:

34. Prior to August of 2013, Patient V.S. purchased a LivingSocial deal for discounted Botox treatment at Respondent's cosmetic surgery center, Breeze Cosmetic Surgery, where Respondent practices cosmetic surgery and procedures as a solo-practitioner. The advertisement stated that the procedure would be conducted by "[a] board-certified physician with post-doctoral training in facial surgery." Respondent is not now, nor has he ever been, a board-certified physician and Respondent has no post-doctoral training in facial surgery.

FACTUAL SUMMARY – PATIENT R.Z.

35. On or about June 20, 2013, Patient R.Z. attended a cosmetic surgery consultation with Respondent at Breeze Cosmetic Surgery, seeking excision of a lump in her breast, a possible scar tissue deposit from a breast augmentation procedure she received by another doctor in 2007. At

this time, Patient R.Z. asked Respondent's office manager, T.W., if Respondent was board-certified, to which T.W. answered affirmatively. During the consultation, Respondent indicated that R.Z. required a breast lift. Patient R.Z. indicated that she simply wanted the lump removed, but Respondent reiterated the need for a complete breast lift. Patient R.Z. ultimately relented.

36. On or about July 2, 2013, Patient R.Z. presented at Breeze Cosmetic Surgery for the breast lift, lumpectomy, and liposuction of her chin. Patient R.Z.'s blood pressure measured 135/106 and she disclosed that she was on a medical regime of Toprol[2] and clonidine.[3] Respondent failed to conduct and document a pre-operative electrocardiogram ("EKG") or metabolic blood panel laboratory studies. Respondent failed to conduct or document a mammogram, ultrasound, MRI, and/or biopsy and pathologic study of Patient R.Z.'s reported breast mass. Respondent failed to conduct or document adequate pre-operative planning for a mastopexy procedure or proper intra-operative technique for a Wise pattern breast reduction to ensure proper symmetry of the breasts.

37. Respondent conducted the procedures under intravenous and local anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of her vital signs. During the procedure, Patient R.Z. complained that she could feel the scalpel, to which Respondent replied, "give her more fucking dope." Respondent cursed throughout the course of the surgery, becoming agitated and verbally abusive to his staff. During the procedure, Respondent removed both of Patient R.Z.'s areolas, performed a lift procedure, and closed both breasts. Patient R.Z.'s left breast bled excessively during the procedure, which Respondent indicated resulted from his failure to properly reconnect her blood vessels. The entire procedure lasted approximately seven hours.

38. Following the procedure, Respondent failed to adequately conduct and document monitoring of Patient R.Z.'s vital signs. Respondent reported to Patient R.Z.'s waiting fiancé,

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[2] **Toprol** is the trade name for metoprolol, a beta-blocker that affects circulation used in the treatment of angina, hypertension, and heart attack prevention.

[3] **Clonidine** is an anti-hypertensive, indicated in the treatment of hypertension. Clonidine has a potential sedative effect and should be used cautiously by patients undergoing surgery.

saying, "she's so sexy," in reference to Patient R.Z. Additionally, one of Respondent's staff persons showed Patient R.Z. her own breasts, indicating that Respondent had performed her breast augmentation as well. Patient R.Z. noted that her breasts showed significant scar tissue.

39. On or about July 3, 2013, Respondent examined Patient R.Z.'s breasts. Patient R.Z. noted that the nipple on her right breast appeared abnormal. Respondent indicated that her recovery looked normal and re-bandaged her in the old bandage, indicating that he could not afford to use a clean bandage on her. Respondent failed to document an adequate post-operative physical examination.

40. On or about July 8, 2013, Patient R.Z. noticed that a wound had opened up around the areola on her right breast. She returned to Respondent's office and Respondent indicated that her recovery was normal, instructing her to keep her breasts bandaged. Respondent failed to document an adequate physical examination.

41. On or about July 11, 2013, Patient R.Z. noticed that the areola on her right breast had begun to discharge and felt hot and painful. She also noticed that a wound had opened up around the areola on her left breast as well. Patient R.Z. returned to Respondent's office, and Respondent stated, "Don't fuck with them (her nipples). You're going to make them fucking worse." Patient R.Z. began to cry, to which Respondent responded by kissing her cheeks and telling her she would be his "poster child" of successful breast surgery. R.Z. requested antibiotics, to which Respondent responded by becoming angry and yelling "fuck!" Respondent failed to document an adequate physical examination or adequately address Patient R.Z.'s infected incision.

42. Approximately three weeks later, the areola on Patient R.Z.'s right breast peeled off. She reported to the emergency room of St. Joseph Hospital in Orange, California, where she was diagnosed with an infection and received intravenous antibiotics. Patient R.Z.'s wounds eventually healed, but she continued to experience residual pain.

43. On approximately February 14, 2014 and March 6, 2014, Respondent certified that he had no medical records for Patient R.Z.

44. On approximately July 18, 2014, Respondent produced certified medical records for Patient R.Z.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Gross Negligence, and/or Repeated Acts of Negligence, and/or Incompetence in the care and treatment of Patient R.Z.)

45. Paragraphs 35 through 44 are incorporated herein.

46. Respondent is subject to disciplinary action under Code sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated acts of negligence], and/or 2234(d) [incompetence], in that each of the following constitute an extreme departure from the standard of care and/or demonstrated lack of knowledge.

A. Respondent failed to conduct or document a pre-operative EKG or metabolic blood panel laboratory studies to properly clear Patient R.Z. for elective cosmetic surgery in light of her underlying and poorly controlled hypertension.

B. Respondent failed to conduct or document a mammogram, ultrasound, MRI, and/or biopsy and pathologic study of Patient R.Z.'s reported breast mass.

C. Respondent failed to conduct or document adequate pre-operative planning for a mastopexy procedure or proper intra-operative technique for a Wise pattern breast reduction to ensure proper symmetry of the breasts.

D. Respondent performed a breast reduction procedure lasting approximately seven hours under intravenous and local anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of her vital signs and provided no post-operative monitoring.

E. Respondent failed to provide or document adequate post-operative care in the presence of an infection and wound separation.

F. Respondent engaged in profane and inappropriate language and behaviors in his repeated cursing, yelling, kissing, and provocative comments of Patient R.Z.'s physical appearance.

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FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Patient Records for Patient R.Z.)

47. Paragraphs 35 through 44 are incorporated herein.

48. Respondent is subject to disciplinary action under Code sections 2266 [failure to maintain adequate patient records], in that he failed to adequately document Patient R.Z.'s pre-, intra-, and post-operative care and treatment. Additionally, Respondent provided repeated certifications that no medical records existed for Patient R.Z. for a period of approximately five months before producing certified medical records for Patient R.Z.

FACTUAL SUMMARY – PATIENT R.B.

49. In June of 2013, Patient R.B. purchased a deal from Groupon for discounted Botox treatments at Breeze Cosmetic Surgery. On June 10, 2013, Patient R.B. reported to Respondent's medical office for her appointment. Upon her arrival, Patient R.B. was escorted into an examination room where Respondent entered and administered ten Botox injections throughout Patient R.B.'s face. Respondent failed to conduct and document an adequate physical examination or patient history prior to administering the Botox treatments. During the appointment, Patient R.B. discussed with Respondent the possibility of returning for a breast augmentation and liposuction of her chin area.

50. In July of 2013, Patient R.B. returned to Breeze Cosmetic Surgery for a brief pre-operative consultation for the breast augmentation and chin liposuction. Respondent again failed to conduct or document a pre-operative physical examination or medical history. Respondent asked Patient R.B. if she had Acquired Immune Deficiency Syndrome ("AIDS"), but failed to perform pre-operative blood panel laboratory studies. Respondent also indicated that he was the best at what he does and instructed her not to ask him any questions.

51. On or about July 12, 2013, Patient R.B. returned for her breast augmentation and chin liposuction. Respondent failed to conduct and document an adequate physical examination or patient history prior to performing the surgery. Respondent conducted the breast augmentation and chin liposuction procedures lasting approximately three hours under intravenous and local

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anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of her vital signs and provided no post-operative monitoring.

52. On or about July 19, 2013, Patient R.B. began to experience profuse bleeding from her left breast. Patient R.B. returned to Breeze Cosmetic Surgery and Respondent briefly examined her breast, indicated that her stitches had opened, and advised her that she was healing nicely and that the incision would close on its own. Respondent failed to adequately address the post-surgical complication or accurately document the visit.

53. Approximately three days later, Patient R.B. noticed a blood blister forming underneath her left breast. Respondent declined to accommodate Patient R.B.'s request for an appointment, indicating that he had a prior personal engagement. Patient R.B. opted to go to the local urgent care center where the physician on duty closed her incision with medical glue and advised her to return to Respondent.

54. On approximately July 23, 2013, the protrusion reoccurred and Patient R.B. returned to Respondent's practice for care. When Patient R.B. arrived, Respondent was in the middle of performing a facelift on another patient and became agitated at the interruption, telling Patient R.B. to stop harassing his staff. Respondent then examined Patient R.B. and observed that the protrusion was actually the breast implant. Respondent again became agitated and stated, "if you're going to get an attitude with me then you can get the fuck out of my office!" Patient R.B. began to cry and left Respondent's office. Patient R.B. attempted to consult with three other cosmetic surgeons; however, each declined to treat her while she remained under the care of Respondent. Respondent later phoned Patient R.B. and asked her to return to his practice where he pushed the implant back into the breast pocket and stitched the wound closed. Respondent failed to document the care and treatment provided to Patient R.B. on this day.

55. From approximately July 30 through September 27, 2013, Patient R.B. returned to Respondent's practice approximately once per week to have her left breast re-stitched. When Patient R.B. expressed concern, Respondent admonished her for being overly active and repeatedly breaking the stitches, despite her insistence that she had not engaged in any strenuous activities. During this period, Respondent popped Patient R.B.'s implant while attempting to re-

stitch the wound on three separate occasions. Each time, he would immediately reinsert a new implant. On the third occasion, Patient R.B. returned to urgent care where she was diagnosed with an active infection that would not heal unless the implant was removed. Patient R.B. then returned to Respondent's practice where he removed her implant and instructed her to irrigate the breast pocket with a pre-filled syringe for the next three days. Respondent failed to document the care and treatment provided to Patient R.B. during each of these office visits.

56. On the fourth day, approximately October 3, 2013, Patient R.B. returned to Respondent's practice where he performed a subsequent breast revision surgery. Respondent failed to conduct or document an adequate physical examination or patient medical history prior to performing the surgery. Respondent failed to administer anesthetic to Patient R.B., who remained awake, aware of, and able to feel each incision. Respondent responded to Patient R.B.'s obvious pain and distress by holding her down with both arms and saying, "if you don't shut up, I'm putting you in restraints." During the surgery, Patient R.B. noted her blood pressure had dropped to 98/47 just before she lost consciousness. When she awoke, Patient R.B. asked for someone to call her husband, and when Respondent's assistant T.W. complied, Respondent punched T.W. in the face. When Patient R.B.'s husband arrived, Respondent insisted that he sign a form indicating that Patient R.B. was refusing his medical care. Patient R.B.'s husband declined to do so. T.W. then said to Respondent, "our patient is bleeding to death. Call 911." Respondent then began to close Patient R.B.'s wound, saying, "holy shit. Did I really put that much liquid in? But I have to go stitch it up anyways," and immediately left the office afterwards. Patient R.B. returned home to recuperate. Respondent failed to conduct and document post-operative vital sign monitoring.

57. On approximately October 4, 2013, Patient R.B. lost consciousness and was transported to Orange Coast Memorial Medical Center where she was diagnosed with severe sepsis resulting from a popped and deflated implant left inside her breast pocket. Patient R.B. received treatment from cosmetic surgeons and infectious disease specialists.

58. Respondent later text messaged Patient R.B. to notify her that he was terminating their doctor-patient relationship.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Gross Negligence, and/or Repeated Acts of Negligence, and/or Incompetence in the care and treatment of Patient R.B.)

59. Paragraphs 49 through 58 are incorporated herein.

60. Respondent is subject to disciplinary action under Code sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated acts of negligence], and/or 2234(d) [incompetence], in that each of the following constitutes an extreme departure from the standard of care and/or demonstrated lack of knowledge.

A. Respondent failed to conduct and document a pre-operative physical examination and medical history of Patient R.B.

B. Respondent performed a breast augmentation and chin liposuction procedures under intravenous and local anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of her vital signs and provided no post-operative monitoring.

C. Respondent failed to provide or document adequate post-operative care in the presence of an infection and wound separation.

D. Respondent engaged in profane and inappropriate language and behaviors in his repeated cursing, yelling, and verbally abusing Patient R.B. and his staff.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Patient Records for Patient R.B.)

61. Paragraphs 49 through 58 are incorporated herein.

62. Respondent is subject to disciplinary action under Code section 2266 [failure to maintain adequate patient records], in that he failed to adequately document Patient R.B.'s pre-, intra-, and post-operative care and treatment.

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EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Substantially Related Conviction, and/or Drug Related Conviction, and/or Violating a Statute Regulating Drugs, and/or Dangerous Use of Drugs and Alcohol and/or Self-Administering Controlled Substances)

63. Respondent is subject to disciplinary action under Code sections 2236 [substantially related conviction], and/or 2237 [drug related conviction], and/or 2238 [violating of a statute regulating drugs], and/or 2239 [dangerous use of alcohol and/or self-administering controlled substances], in that Respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a physician and surgeon certificate holder within the meaning of California Code of Regulations, title 16, section 1360. The circumstances are as follows:

(February 25, 2014 Possession of a Controlled Substance and Battery of a Peace Officer Convictions)

64. On October 23, 2013, a Huntington Beach Police Officer was dispatched to investigate an altercation at a private business. The officer reported to the scene of the disturbance and observed Respondent screaming at other patrons in the parking lot of the business. Respondent was immediately placed into handcuffs to protect the responding officers and business patrons. Respondent indicated that he had been drinking and was addicted to opiates. The officer observed Respondent's objective signs of intoxication and placed Respondent under arrest for violating Penal Code ("PC") section 647(f) [public intoxication]. Respondent submitted to a search of his person, during which officers recovered four pills, which were later identified as Norco.[4] Respondent failed to provide proof of a prescription. Officers also charged Respondent with violating Health and Safety ("HS") Code section 11350(a) [possession of a controlled substance]. After Respondent was transported to the Huntington Beach Police Department, he began to resist the arresting officers, kicking one officer in the

[4] **Norco** is a trade name for hydrocodone bitartrate with acetaminophen. Norco tablets contain 10 milligrams ("mg") of hydrocodone bitartrate and 325 mg of acetaminophen (referred to as Norco 10/325). Norco is a dangerous drug as defined in Code section 4022 and a Schedule III controlled substance as defined by Health and Safety Code section 11056, subdivision (e). Repeated administration of Norco over a course of several weeks may result in psychic and physical dependence.

groin. Officers then charged Respondent with violating PC section 243(b) [battery of a peace officer].

65. On December 5, 2013, in a criminal complaint entitled *The People of the State of California v. Scott Douglas Ewing*, case number 13F13144, filed before Orange County Superior Court. Respondent was charged with violating HS Code section 11350(a), a felony, as well as PC 243(b) and 647(f), both misdemeanors.

66. On February 25, 2014, Respondent was convicted by guilty plea of violating HS Code section 11350(a) and PC 243(b) and the remaining charge was dismissed. Respondent was granted deferred entry of judgment as to the violation of HS Code section 11350(a). On the remaining charge, Respondent was sentenced as follows: three years probation, $850.00 in restitution, fines and fees.

67. On August 22, 2014, Respondent participated in a subject interview wherein he admitted to taking the Norco from his practice. Respondent further admitted that he has taken Norco from his practice for pain intermittently in the past.

(September 15, 2010 DUI Conviction)

68. On January 10, 2010, a Huntington Beach Police Officer was dispatched to the scene where an adult male, later identified as Respondent, was found unconscious behind the wheel of a car within an intersection – the engine was on and the vehicle was in drive. The officer approached the vehicle and attempted to awaken Respondent, who then lifted his foot from the brake pedal which caused the vehicle to lurch forward. The officer quickly responded by placing the vehicle in park and removing the keys from the ignition. The officer observed Respondent's objective signs of intoxication and administered the standard field sobriety tests, which Respondent failed. When questioned, Respondent admitted to drinking prior to driving. Respondent was then placed under arrest for violating Vehicle Code ("VC") section 23152(a) [driving under the influence], a misdemeanor. Respondent later submitted to a blood draw which measured 0.19% blood alcohol concentration ("BAC").

69. On May 21, 2010, in a criminal complaint entitled *The People of the State of California v. Scott Douglas Ewing*, case number 10W05507, filed before the Orange County

Superior Court, Respondent was charged with violating VC section 23152(a) and 23152(b) [driving under the influence with a BAC of 0.08% or greater], with enhancement for violating VC section 23578 [driving under the influence with a BAC of 0.15% or greater], misdemeanors. The complaint further alleged a prior conviction, in that on May 19, 2004, Respondent was convicted of violating VC section 23152(a) in Los Angeles County Superior Court, case number 4PM0535001.

70. On September 15, 2010, Respondent was convicted by plea of guilty to violating VC section 23152(b) and the remaining charge was dismissed. Respondent was sentenced as follows: thirty days jail time, five years probation, and $857.00 in restitution, fines, and fees.

MATTERS IN AGGRAVATION

71. On May 19, 2004, Respondent was arrested for driving under the influence.

72. On July 7, 2004, in a criminal complaint entitled *The People of the State of California v. Scott Douglass Ewing*, case number 4PM0535001, filed in Los Angeles County Superior Court, Respondent was charged with violating VC section 23152(a) and VC section 23152(b) with enhancement within the meaning of VC section 23578 [driving under the influence with a BAC of 0.20% or greater].

73. On October 13, 2004, Respondent was convicted by plea of nolo contendere of violating VC section 23152(a), a misdemeanor.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A83530, issued to Scott D. Ewing, M.D.;

2. Revoking, suspending or denying approval of Scott D. Ewing, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Scott D. Ewing, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: September 30, 3015

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit B

Decision and Order

Medical Board of California Case No. 800-2018-041694

BEFORE THE

MEDICAL BOARD OF CALIFORNIA

DEPARTMENT OF CONSUMER

AFFAIRS STATE OF CALIFORNIA

In the Matter of the Second Amended Petition to Revoke Probation and Accusation against:

SCOTT DOUGLASS EWING, M.D.,

Physician's and Surgeon's Certificate No. A83530,

Respondent.

Agency Case No. 800-2018-041694

OAH No. 2019010336

DECISION AFTER NON-ADOPTION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 8, 10, 11, and 12, 2019, in Los Angeles.

Edward Kim, Deputy Attorney General (DAG), represented Petitioner and Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Mark Von Esch, Attorney at Law, represented Respondent Scott Douglass Ewing, M.D., (Respondent) who was present.

During the hearing, Petitioner and Complainant moved for leave to amend the Second Amended Accusation to add a "Sixth Cause for Discipline (Dishonest Acts and False Representations)" and to add paragraphs 30A and 30B, which read,

> 30A. Respondent is subject to disciplinary action under sections 2261 and 2234, subdivision (e), of the Code in that Respondent he [sic] committed dishonest and corrupt Acts and/or falsely represented facts to the Board. The circumstances are as follows:
>
> 30B. The allegations in the First through Fifth Causes for Discipline inclusive are incorporated here by reference as if fully set forth. In addition, Respondent prepared a quarterly declaration and signed a hand written letter to the Board, dated April 3, 2017, which stated that he was having issues with his "app" and that he was "checking in via the app." He also checked the box on paragraph 13 of the quarterly declaration. However, his failure to check in to his biological testing service occurred on or about May 30, 2017.

The ALJ overruled Respondent's objection and granted the motion.

Oral and documentary evidence was received. The record was held open through July 15, 2019, to allow Respondent to file a response to complainant's objections to Respondent's trial brief. Respondent timely filed a response, which was marked as exhibit I.

The record was closed and the matter was submitted on June 25, 2019. The ALJ issued a Proposed Decision on August 13, 2019.

On November 15, 2019, Panel A of the Board issued an Order of Non-Adoption of

Proposed Decision. Oral argument on the matter was heard by Panel A on January 30, 2020, with ALJ Coren Wong presiding. DAG John Gatschet represented Petitioner and Complainant. Respondent was present and was represented by attorney Mark Von Esch. Panel A, having read and considered the entire record, including the transcript and the exhibits, and having considered the written and oral argument, hereby enters this Decision After Non-Adoption.

Protective Order

Petitioner and Complainant moved for a protective order sealing exhibits to protect confidential information concerning third parties; Respondent made no objection. The ALJ issued a protective order dated July 24, 2019. Redaction of those documents subject to the protective order, to obscure confidential information, was not practicable and would not have provided adequate privacy protection. Those exhibits shall remain under seal and shall not be opened, except by order of the Board, by OAH, or by a reviewing court. The ALJ ordered court reporters to refer in the hearing transcript to Respondent's patients by initials only.

SUMMARY

Petitioner and Complainant petitions to terminate probation on grounds that Respondent violated two conditions of probation—failure to check in and submit samples for biological fluid testing (condition 4), and failure to abstain from solo practice (condition 16). Petitioner and Complainant also seeks to discipline Respondent's physician's and surgeon's certificate for engaging in gross negligence, repeated negligent acts, inadequate and inaccurate recordkeeping, aiding and abetting the unlicensed practice of medicine, and general unprofessional conduct, all in treating Patient A in June 2016 with a facial biotoxin, Dysport, as well as dishonest acts. Respondent denies that the petition's allegations warrant termination of probation and asserts the accusation's causes for discipline are unfounded.

FACTUAL FINDINGS

Jurisdiction

1. Petitioner and Complainant and filed a Second Amended Petition to Terminate Probation and Accusation, dated May 23, 2019, in her official capacity. Respondent timely filed a notice of defense.

2. The Board issued Physician's and Surgeon's Certificate No. A83530 to Respondent on July 11, 2003. Respondent's certificate was in full force and effect at all relevant times and is scheduled to expire on October 30, 2020.

Current Probation and Cease Practice Order

3. On September 30, 2015, the Board's executive director served on Respondent an Accusation in case number 04-2013-233827 (2015 Accusation), stating two causes for discipline regarding patient A.B. (failure to provided and maintain adequate patient records and dishonest acts and false representations); one cause for discipline regarding patient V.S. (dishonest act and false or misleading advertisement); two causes for discipline regarding patient R.Z. (gross negligence or repeated acts of negligence and incompetence, and failure to maintain adequate patient records); two causes for discipline regarding patient R.B. (gross negligence or repeated acts of negligence and incompetence, and failure to maintain adequate patient records); and one cause for discipline for two convictions, in 2014 and 2010, of substantially related crimes, drug-related convictions, or violating a statute regulating drugs, or dangerous use of drugs and alcohol and self-administering controlled substances. In aggravation, complainant pled that Respondent was convicted in 2004 of driving under the influence with a blood alcohol content of 0.20 percent or greater.

4. The 2015 Accusation set forth the following factual allegations:

a. With respect to patient A.B., Respondent failed to maintain and furnish medical records when the patient and then the Board requested them, and that Respondent had falsely declared under penalty of perjury that he himself had been diagnosed with and treated for bipolar disorder.

b. With respect to patient V.S., Respondent falsely advertised himself as board certified and having had post-doctoral training in facial surgery.

c. With respect to patient R.Z., Respondent failed to conduct or document laboratory studies to clear her for elective cosmetic surgery; failed to conduct or document a mammogram, ultrasound, MRI, or biopsy and pathologic study of a reported breast mass; failed to conduct or document adequate pre-operative planning; performed a breast reduction procedure lasting seven hours under intravenous and local anesthesia in a non-accredited facility without an anesthesiologist or adequate monitoring of vital signs during and after surgery; failed to provide or document adequate post-operative care in the presence of an infection and wound separation; engaged in profane and inappropriate language and behaviors, cursing, yelling, kissing, and making provocative comments; and failed to adequately document pre-, intra-, and post-operative care and treatment.

d. With respect to patient R.B., Respondent failed to conduct and document a pre-operative physical examination and medical history; performed breast augmentation and chin liposuction procedures under anesthesia in a non-accredited facility without an anesthesiologist or adequate monitoring of vital signs during and after surgery; failed to provide or document adequate post-operative care in the presence of an infection and wound separation; engaged in profane and inappropriate language and behaviors, repeatedly cursing, yelling, and verbally abusing the patient and his staff; and failing to adequately document the patient's pre-, intra-, and post- operative care and treatment.

e. With respect to Respondent's criminal convictions:

i. On February 25, 2014, Respondent was convicted after pleading guilty of violating Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance, i.e., Norco), a felony, and Penal Code section 243, subdivision (b) (battery of a peace officer), a misdemeanor. The court deferred entry of judgment as to the felony and placed Respondent on three years' probation for the misdemeanor.

ii. On September 15, 2010, Respondent was convicted after pleading guilty to violating Vehicle Code section 23152, subdivision (b) (driving under the influence with a blood alcohol content of 0.08 percent or greater), a misdemeanor. The court placed Respondent on five years' probation.

iii. Pled in aggravation, on October 13, 2004, Respondent was convicted after pleading nolo contendere to violating Vehicle Code section 23152, subdivision (a), a misdemeanor.

5. On November 17, 2016, the Board issued a Decision, effective December 16, 2016 (2016 Decision), adopting a Stipulated Settlement and Disciplinary Order signed by Respondent. The Stipulation recites that Respondent "does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegation contained in Accusation No. 04-2013-233827 and that he has thereby subjected his license to disciplinary action." (Ex. 3, p. 3.)

6. In its 2016 Decision, the Board revoked Respondent's certificate, stayed the revocation, and placed Respondent on probation for seven years on various terms and conditions, including requiring that he submit to biological fluid testing "on any day, at any time" (condition 4; ex. 3, p. 7); and prohibiting him from engaging in the solo practice of medicine, including a practice where Respondent "is the sole physician practitioner at that location (condition 16; ex. 3, p. 21).

7. Probation is scheduled to terminate in December 2023.

8. On February 23, 2018, the Board issued a cease practice order (CPO), reciting that Respondent "committed a major violation of probation by failing to undergo biological fluid testing when ordered and failing to check-in daily with the laboratory service." The order prohibited Respondent "from engaging in the practice of medicine. Respondent shall not resume the practice of medicine until further written notice by the Board." (Ex. 5, p. 2.) The Board removed the CPO after Respondent underwent a medical evaluation.

9. On March 13, 2019, the Board issued another CPO, reciting that Respondent practiced medicine solo and failed both to notify the Board and establish a practice with another physician within 60 days. The order prohibited Respondent "from engaging in the practice of medicine. The Respondent shall not resume the practice of medicine until he has secured employment in an appropriate setting." (Ex. 5, p. 1.)

Second Amended Petition to Revoke Probation and Accusation

10. In her Second Amended Accusation, complainant states six causes for discipline, alleging that Respondent treated Patient A on June 14, 2016, by injecting Dysport, a biotoxin, into the patient's lower face, around her mouth. The treatment was intended to reduce wrinkling. Complainant alleges that Respondent:

a. Committed gross negligence when he failed to prepare or keep adequate and accurate medical records for his care and treatment of Patient A;

b. Committed repeated negligent acts when he failed to explain or document his explaining the procedure to the patient; failed to obtain an informed consent and document it; failed to responsibly address the patient's post-procedure concerns; and failed to responsibly re-evaluate the patient upon learning of her concerns.

c. Failed to maintain adequate and accurate records related to the medical services he provided to patient A.

d. Aided and abetted the unlicensed practice of medicine, admitting to an investigator that in June 2016 he acted as a medical director and performed medical procedures at the clinic where he treated Patient A, and that the clinic was owned by a person not licensed by the Board.

e. Engaged in general unprofessional conduct.

f. Engaged in dishonest acts and false representations on a quarterly declaration he submitted while on probation, misrepresenting when he was purportedly having difficulties checking in with FirstSource Solutions (FSS), formerly

known as FirstLab, for biological fluid testing.

11. In her Second Amended Petition to Revoke Probation, petitioner states two causes for revocation against Respondent for failure to comply with probationary conditions. The causes for revocation are based on allegations that Respondent:

a. Failed to check in with FSS for biological fluid testing nine times between May 30 and November 15, 2017, and six times between January 15 and May 26, 2018, thereby repeatedly violating probationary Condition 4; and

b. Engaged in the solo practice of medicine from September 28, 2018, to May 23, 2019, in violation of probationary Condition 16.

Evidence at Hearing

Regarding Allegations in the Second Amended Petition to Revoke Probation

12. Elena Contreraz, a program analyst in the Board's Probation Unit, monitors biological fluid testing compliance of Board probationers. She testified that probationers are required to check in every day with FSS, which notifies them whether they have been selected to provide a sample that day. When probation started, Respondent acknowledged that his Board probation monitor reviewed the terms and conditions of probation with him. Among other things, Respondent was told of three methods for checking in with FSS: by telephoning, by logging into the FSS website, and by using the FSS mobile phone application. Until January 5, 2017, Respondent checked in by using the FSS website; after that, he used only the mobile phone application.

13. Probationers must check in with FSS between midnight and 5:00 p.m. each day. To accurately detect alcohol in the blood, a test must occur on the day following the day the alcohol was consumed. Testing was required more frequently during Respondent's first year of probation than in subsequent years.

14. Respondent has missed 15 call-ins, nine in 2017 and six in 2018. On three of those dates, June 15, 2017, November 15, 2017, and February 10, 2018, Respondent was selected to provide a fluid sample; he failed to do so.

15. Ms. Contreraz notified Respondent in writing when he failed to check in, and when he missed a test. Respondent customarily wrote in response to that notification, and Ms. Contreraz would call and speak with Respondent about the issue.

16. Ms. Contreraz educated herself about the cellphone application by speaking with the FSS account coordinator, Stephanie Comnick. Ms. Comnick told her that, if a person using the phone application does not fully log out after checking in, then the next day, when using the application, the person will see the previous day's screen. Upon check in, the screen background color is red or green; if green, no test is required, but if red, the person must provide a sample. If a person failed to fully log out, the next time they logged in they would see old information, i.e., they would see the red or green screen from the day before, and they would not be deemed to have checked in. To check in, and to obtain current information about whether the user has been selected to provide a sample, the user must first check out from the previous day's use of the mobile phone application.

17. Ms. Contreraz told Respondent to contact Ms. Comnick to inquire about any issues he was having with the application, and she reminded him there were two other methods of checking in. Respondent noted Ms. Comnick's telephone number. (Ex. 49, p. 2.) In a letter to Respondent dated June 23, 2017, Ms. Contreraz wrote, "If you choose to continue to use the app, please log out each day to avoid further violation." (Ex. 13, p. 5.)[1] This should have sufficed to inform Respondent whom to contact if he was having difficulties using the FSS mobile phone application, and to remind him of other methods of checking in, including using the FSS website, a method he had already used, to prevent further check-in and biological fluid sample

[1] Respondent signed a quarterly declaration and a letter to the Board, dated April 3, 2017, which stated that he was "checking in via the app," and was having issues with it, but in fact he did not fail to check in until May 30, 2017.

violations.

18. In a written response dated July 23, 2017, Respondent notified the Board that he checks in with the FSS mobile phone application daily and did not miss the days in question. (Ex. 49.) It is apparent from the evidence that he had been using the phone application incorrectly, however, and had not effectively checked in.

19. During the subsequent months, Respondent continued to fail to check in correctly, repeatedly making the same error of not logging out of the mobile phone application and refusing to use any other method of checking in. Ms. Contreraz continued to send noncompliance letters to Respondent, and issued two Citation Orders for Respondent's failure to check in and provide samples when required. Ms. Contreraz repeatedly explained Respondent's error to him, by telephone and in writing, and reminded Respondent of other ways to check in. Respondent continued to check in using the mobile application only, making the same error again and again.

20. On February 21, 2018, after Respondent missed his third fluid test, a major violation of probation (ex. 1, p. 37; Cal. Code Regs., tit. 16, § 1361.52, subd. (a)), Ms. Contreraz recommended that the Board issue a cease-practice order (CPO) to Respondent and order him to undergo a clinical diagnostic evaluation, and that the Board file a petition to revoke probation. (Ex. 8.) The Board issued a CPO. Respondent was medically evaluated, after which the Board removed the CPO.

21. Respondent argued that Ms. Contreraz, who knew he suffered from Attention Deficit Hyperactivity Disorder (ADHD), should have met with him and helped him use the mobile phone application. But she had written to him to remind him to log off each day (ex. 13, p. 5), she had repeatedly reminded him he could use other methods of checking in, as he had at the start of his probation, and she had instructed him how to contact Ms. Comnick, who worked at FSS, for help using FSS's mobile app. Respondent ignored all of these suggestions. Even after Ms. Contreraz sent Respondent two letters, in January and February 2018, to remind Respondent of various methods of checking in with FSS, he continued to violate this probationary condition. Respondent complained at hearing of the difficulty of checking in because

most call-ins reveal that he is not required to provide a sample. Respondent's complaint is not convincing.

22. Respondent noted that he was tested 56 times in 2017 and more than 12 times in 2018, and continues to be tested in 2019, and has never tested positive for alcohol or controlled substances. Respondent also argued that his record of conforming to the probation terms has vastly improved: while missing nine check-ins in 2017, he missed only six in 2018; while failing to provide samples twice in 2017, he failed only once in 2018. These are minor, not vast, improvements, and still do not demonstrate compliance with probation condition 4. Respondent also notes that he has missed no check-ins or sample tests in 2019, because he now knows how to check in properly.

23. Ms. Contreraz offered anecdotal testimony to the effect that, by missing a urine sample test, probationers may have been able to use alcohol without detection due to the short window for detecting such use through urine sampling. Ms. Contreraz acknowledged that FSS could have required hair follicle testing, which could detect alcohol use during the previous 90 days, rather than urine testing, and that FSS had on one occasion required Respondent to submit to hair follicle testing. Ms. Contreraz offered insufficient evidence to establish that Respondent had missed three tests for the purpose of concealing alcohol or substance use, and no evidence as to why FSS or the Board did not require Respondent to submit to a hair follicle test on the three occasions when he failed to provide a sample.

24. The evidence supports the petition's allegations regarding Respondent's violation of probation condition 16, the prohibition against engaging in a solo practice.

25. In 2017, Respondent was introduced to Dr. Lin, who was also on probation; they agreed to come to each other's office and help each other, and the Board approved the arrangement. They jointly marketed and advertised the offices in Huntington Beach (Respondent's office) and El Monte (Dr. Lin's office). At some point, Dr. Lin went to Huntington Beach less frequently; he never went there after December 2018, though Respondent kept going both to the Huntington Beach and the El Monte

offices. Though complainant offered no evidence that Respondent saw any patients in Huntington Beach after Dr. Lin stopped joining him there, the office was open and Respondent was, in effect, engaged in solo practice there. Respondent did not inform the Board or his probation monitor of this state of affairs. On the contrary, Respondent told Inspector Nyla Holt, of the Board's Probation Unit, that he was working with Dr. Lin at Huntington Beach, though he was not. Ms. Holt telephoned Dr. Lin, who said he had not been to the Huntington Beach office for months, and that he only covered for Respondent when he did go to Huntington Beach, meaning that Respondent practiced there alone.

26. Respondent eventually affiliated with another physician, in Westminster, and moved his practice there from Huntington Beach, so he is again in compliance with this probation condition.

REGARDING ALLEGATIONS IN THE SECOND AMENDED ACCUSATION

27. With respect to the allegations in the Second Amended Accusation, Patient A saw Respondent in June 2016 after purchasing an online coupon for Dysport.[2] The FDA on-label indications for Dysport are for the upper face: the forehead, between the eyebrows, and around the eyes. There are many off-label applications, including the lower face. But when used off-label, Dysport may have more side effects.

28. Together, Respondent and Patient A decided to improve her "marionette lines," i.e., a downturn from the corner of the mouth. Biotoxins weaken those muscles and create an upturn. Respondent performed the procedure.

29. A few days later, Patient A developed side effects. She experienced lower facial paralysis and difficulty with swallowing and speech. Her mouth was droopy and she was drooling. According to Respondent, those are side effects he regularly

[2] Dysport is related to Botox and has a three-to-one unit equivalency to Botox; 60 units of Dysport may be used instead of 20 units of Botox. One vial of Botox has 100 units; one vial of Dysport has 300 units. Dysport acts more quickly than Botox.

discusses with patients when obtaining their informed consent. But here, Patient A repeatedly called and emailed Respondent's office to inquire about the side effects; on one such call, someone at Respondent's office told her that a medical professional would call her back, but no one did. Patient A is a cosmetologist; she works at a hair salon and has to meet with and talk to her clients constantly, so she was very self-conscious about the side effects she suffered.

30. Complainant introduced the expert witness testimony of Boris Zaks, M.D. Dr. Zaks obtained his medical degree at the University of California, Los Angeles, School of Medicine, and completed a dermatology residency at Martin Luther King, Jr./Drew Medical Center. He is a diplomate of the American Board of Dermatology and has been an expert reviewer for the Board since 2009. He is licensed in California and has had his own dermatology practice since 2003.

31. Dr. Zaks wrote a report to the Board, dated July 16, 2019, assessing Respondent's treatment of Patient A. Dr. Zaks found that Respondent chose a very well-known and common off-label use of this toxin therapy and performed it within the standard of care: the injection was in an appropriate area and applied an appropriate dose of 60 units.

32. Dr. Zaks wrote, and testified, that Respondent engaged in an extreme departure from the standard of care, however, in not preparing or keeping adequate and accurate medical records for Patient A. Respondent was unable to find any records for Patient A, either in his own files or at OMG OC Aesthetics, where he performed the procedure. The fact that Respondent did not own the clinic does not change Dr. Zaks's opinion; a doctor, independent of where he or she is working, whether as an employee or an independent contractor, must have medical records for every patient. Dr. Zaks also noted that Respondent could find neither his own charts nor those of the clinic of which he was the managing physician. Patient A said in her interview with the Board investigator that, when she went to see Respondent, she signed in but was given no paperwork to fill out, lending support for the proposition that Respondent never created medical records for her. This was an extreme rather than a simple departure from the standard of care because it is not a case of inadequate records—there were no records

whatsoever.

33. Dr. Zaks opined that Respondent engaged in a simple departure from the standard of care in not having a record showing that he had obtained informed consent from the patient. The physician must document informed consent, other treatment options considered and discussed, and the risks and benefits of each, the patient's medical conditions, contraindications to certain procedures, and allergies, and what was done, among other things. The lower face application is very challenging and involves a high risk of side effects that are negligible in the upper face.[3] Possible side effects include facial asymmetry, i.e., stroke-like effects, where one side of mouth is higher than the other, and dysphagia (difficulty swallowing or with speech). The effects may last for from two-to-four weeks to three months or longer. For this off-label use, the physician must discuss these neurological side effects in order to obtain informed consent. Some patients will opt out of the procedure, even if the risk of these side effects is small and the effects are temporary. In the event a patient suffered side effects from this off-label use of Dysport, Respondent customarily offered a free touch- up.

34. Dr. Zaks opined that Patient A's concerns after experiencing side effects imply that Respondent did not discuss the side effects before injecting the Dysport and did not obtain her informed consent. And though Respondent could have corrected the effects, which he customarily offers to do, Respondent did not follow up with or reevaluate Patient A. There is no record anyone told Patient A of what Respondent said was his standard offer to correct side effects; this also implies that Respondent never discussed the side effects with her. This is also a separate departure from the standard of care—if a patient is having significant side effects, the standard of care requires the physician or a delegated person to call the patient back the same day to discuss the patient's condition and let the patient know how to proceed. Respondent is responsible for his failure and that of his staff to return Patient A's call.

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[3] A few weeks earlier, Patient A had received forehead injections of Dysport. Informed consent for an injection in the upper face is different from that required for a lower face injection. The possible side effects for an upper face injection are simply bruising and minor headaches.

35. With respect to the charge that responded aided and abetted the unlicensed practice of medicine, Respondent was medical director of OMG OC Aesthetics and performed procedures there, such as the procedure for Patient A, but the owner of the clinic was not a licensed physician. Respondent argued that OMG OC Aesthetics was a day spa, and as medical director he performed all procedures that required a medical license, i.e., administering Botox or Dysport injections. He acknowledged, however, that the owner of the facility making Respondent's services available to customers was not a licensed physician.

RESPONDENT'S EVIDENCE

36. Respondent called no expert witnesses. He testified that the Second Amended Accusation in this matter is based on actions that took place prior to the Board placing his certificate on probation; he testified that what happened in the case of Patient A would not occur today. Respondent noted that, while he has been on probation, he has committed no acts similar to those leading to the allegations against him in case no. 04-2013-233827, and no complaints have been filed against him. Having taken coursework at PACE required under the terms of probation, he has made improvements in charting, obtaining and documenting informed consent, and office management, and has tried to improve his skills. He has logged in consistently and had uniformly negative biological fluid tests. He has been sober for two and one-half years, since being placed on probation, and has actively participated in group therapy and individual counseling.

37. Respondent offered the testimony of two character witnesses, Douglas Ewing and Greg Corbin.

38. Douglas Ewing, Respondent's father, testified that he has resided with his son in Huntington Beach for the past three years, having moved there from Arkansas, where he retired from his medical practice. He moved to California because Respondent was in a child custody dispute and was frequently not sober. He testified that he is very proud of his son remaining sober and has seen marked improvements in Respondent's relationships with his family members and his patients. Respondent

regularly sends screen shots from his cellphone to his father to demonstrate he has checked in with FSS.

39. Greg Corbin, a licensed marriage and family therapist with a master's degree in clinical psychology, is in private practice. He facilitates the weekly small group sessions for probationary physicians that Respondent attends. He adopted as his testimony the content of a letter he wrote describing his interactions with Respondent. He wrote that Respondent has, for the past two years,

> attended regular group sessions and has participated to a very high degree with the goal of improving his life experience, learning new and improved approaches to and resolving the challenges and difficulties related with permanent sobriety... [Respondent] appears committed to the program of Alcoholics Anonymous, to his own recovery and to sustained, life-long sobriety. I recommend that [Respondent] continue on probation and related testing rather than have his license to practice revoked. He has grown internally and has become committed to a clean and sober life over the past two years. He is a sincere man, who recognizes the gravity of his past mistakes and consistently acts to correct and enhance a healthy, honest and responsible life.

(Ex. C.)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The rigorous education, training, and testing requirements for obtaining a physician's license justify imposing on complainant a burden of proving the claims brought in the Second Amended Accusation by clear and convincing evidence. (Evid. Code, § 115; see *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d

853, 856; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911.) With respect to the Second Amended Petition to Revoke Probation, petitioner has the burden of proving that probation revocation is warranted by a preponderance of the evidence. "While the board is required to prove the allegations in an accusation by clear and convincing evidence, it is only required to prove the allegations in a petition to revoke probation by a preponderance of the evidence." (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441; see also Evid. Code, § 115.)

Applicable Authority

2. The Board is responsible for enforcing the disciplinary provisions of the Medical Practice Act and "suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions." (Bus. & Prof. Code, § 2004, subd. (a)). The Board's highest priority is to protect the public. (Bus. & Prof. Code, § 2229.) After a disciplinary hearing, the Board may revoke a practitioner's license, place the practitioner on probation and require payment of costs of probation monitoring, and take "any other action . . . in relation to discipline as part of an order of probation, as the [B]oard or an administrative law judge may deem proper." (Bus. & Prof. Code,§ 2227.)

3. The Board may discipline a practitioner's certificate for unprofessional conduct, which includes, among other things, any violation of the Medical Practice Act, gross negligence, repeated negligent acts, incompetence, and failure to maintain adequate and accurate records of services provided to patients. (Bus. & Prof. Code,§§ 2234, subds. (a)-(c), 2261, and 2266.)

Cause for Discipline Under the Accusation

4. Cause exists under Business and Professions Code section 2234, subdivision (b), to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent committed gross negligence when he failed to prepare or keep adequate and accurate medical records for Patient A, as set forth in Factual Findings 27 through 34 and 36 through 39.

5. Cause exists under Business and Professions Code section 2234, subdivision (c), to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent committed repeated negligent acts when he failed to prepare or keep adequate and accurate medical records for Patient A, as set forth in Factual Findings 27 through 34 and 36 through 39.

6. Cause exists under Business and Professions Code section 2266 to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent committed gross negligence when he failed to prepare or keep adequate and accurate medical records for Patient A, as set forth in Factual Findings 27 through 34 and 36 through 39.

7. Cause exists under Business and Professions Code sections 119, subdivision (b), 125, subdivision (a), 2052, 2234, subdivision (a), and 2264, and California Code of Regulations, title 16, section 1360, to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent aided and abetted the unlicensed practice of medicine by the owner of the clinic where Respondent practiced, as set forth in Factual Findings 27 through 34 and 36 through 39.

8. Cause exists under Business and Professions Code section 2234 to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent acts and omissions constitute unprofessional conduct, generally, as set forth in Factual Findings 27 through 34 and 36 through 39.

9. Cause exists under Business and Professions Code sections 2234, subdivision (e), and 2261 to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent committed dishonest and corrupt Acts or falsely represented facts to the Board, when he signed a quarterly declaration and a

letter to the Board, dated April 3, 2017, which stated that he was having issues with his "app" and that he was "checking in via the app," but did not fail to check in until May 30, 2017, as set forth in Factual Finding 17, footnote 1 and 36 through 39.

Cause for Revocation of Probation Under the Petition

10. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent on 15 occasions failed to check in for biological fluid testing and on three occasions failed to submit samples for testing, as set forth in Factual Findings 12 through 23 and 36 through 39.

11. Cause exists to revoke probation, impose the stayed disciplinary order, and revoke Respondent's certificate, in accordance with the 2016 Decision in Case No. 04-2013-233827, in that Respondent engaged in the solo practice of medicine from September 28, 2018, to May 23, 2019, in violation of probationary condition 16, as set forth in Factual Findings 24 through 26 and 36 through 39.

Disposition

12. Complainant failed to establish that Respondent has not maintained continuing sobriety while on probation, though his record of calling in and of submitting to biological fluid testing has not been spotless and he has missed three tests. As to his proper use of informed consent and medical recordkeeping, it is unclear from the evidence on this record how much his practices have improved since treating Patient A, which occurred prior to the imposition of probation on his certificate, but he has been taking the courses required by his probation conditions. Revocation in this matter, where Respondent has been substantially compliant with probation and has remained sober, would be overly punitive. The purpose of a disciplinary action such as this is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) In order to support Respondent's continued recovery and rehabilitation, consistent with the protection of patients and the public, Respondent will be ordered to serve additional time on probation and to submit to more frequent biological fluid testing.

ORDER

The stay of revocation that the Board ordered in its 2016 Decision in Case No. 04-2013-233827, and the probationary conditions imposed on Physician's and Surgeon's Certificate No. A83530, issued to Respondent Scott Douglass Ewing, M.D., are reaffirmed, with the following modifications:

1. The term of probation, currently seven years and scheduled to expire on December 16, 2023, is extended two years, to expire on December 16, 2025.

2. For the first year after the effective date of this Decision, condition number 4 shall be implemented to require biological fluid sampling as frequently as during the first year of probation.

The Decision shall become effective at 5:00 p.m. on MAR 12 2020

IT IS SO ORDERED this 11th day of February, 2020.

Ronald H. Lewis, M.D., Chair
Panel A
Medical Board of California