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

In the Matter of the Accusation Against: Gerald Lane Schneider, M.D. Physician's and Surgeon's Certificate No. G 33567 Respondent.	Case No. 800-2019-058412

DECISION

The attached Stipulated Surrender of License 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 March 3, 2023.

IT IS SO ORDERED February 24, 2023.

MEDICAL BOARD OF CALIFORNIA

Reji Varghese
Interim Executive Director

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
TESSA L. HEUNIS
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **GERALD LANE SCHNEIDER, M.D.** **3549 Accomac Avenue** **San Diego, CA 92111** **Physician's and Surgeon's Certificate No. G 33567** Respondent.	Case No. 800-2019-058412 OAH No. 2022090391 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Tessa L. Heunis, Deputy Attorney General.

2. Gerald Lane Schneider, M.D. (Respondent) is represented in this proceeding by attorney Robert Frank, Esq., whose address is: 110 West A Street, Suite 1200, San Diego, CA 92101.

3. On or about January 31, 1977, the Board issued Physician's and Surgeon's Certificate No. G 33567 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-058412 and will expire on October 31, 2023, unless renewed.

JURISDICTION

4. On July 13, 2022, Accusation No. 800-2019-058412 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on or about July 13, 2022. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2019-058412 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2019-058412. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

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

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

CULPABILITY

8. 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. 800-2019-058412 and that his Physician's and Surgeon's Certificate No. G 33567 is therefore subject to discipline.

9. Respondent hereby surrenders his Physician's and Surgeon's Certificate No. G 33567 for the Board's formal acceptance.

10. Respondent agrees that if he ever petitions for reinstatement of his Physician's and Surgeon's Certificate No. G 33567, or if an accusation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2019-058412 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California or elsewhere.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate No. G 33567 without further process.

CONTINGENCY

11. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Board "shall delegate to its executive director the authority to adopt a ... stipulation for surrender of a license."

12. Respondent understands that, by signing this stipulation, he enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate No. G 33567 without further notice to, or opportunity to be heard by, Respondent.

13. This Stipulated Surrender of License and Disciplinary Order shall be subject to the approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for his consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

14. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the

Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in his discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

15. This Stipulated Surrender of License and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

16. The parties agree that copies of this Stipulated Surrender of License and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

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

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 33567, issued to Respondent Gerald Lane Schneider, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. G 33567 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2019-058412 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $28,367.75 prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2019-058412 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Robert Frank, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate G 33567. I enter into this Stipulated

Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 1/17/2023

GERALD LANE SCHNEIDER, M.D.
Respondent

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

DATED: 1-20-23

ROBERT FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Schneider Stipulated Surrender.docx

Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: _____ _____
GERALD LANE SCHNEIDER, M.D.
Respondent

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

DATED: _____ _____
ROBERT FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: February 2, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2019-058412

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **GERALD LANE SCHNEIDER, M.D.** **3549 Accomac Avenue** **San Diego, CA 92111** **Physician's and Surgeon's Certificate No. G 33567,** Respondent.	Case No. 800-2019-058412 **A C C U S A T I O N**

PARTIES

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

2. On or about January 31, 1977, the Board issued Physician's and Surgeon's Certificate Number G 33567 to Gerald Lane Schneider, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2023, unless renewed.

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PRIOR DISCIPLINE

3. In a prior disciplinary action entitled *In the Matter of the Accusation Against Gerald Lane. Schneider, M.D.,* Case No. 10-2011-218024, the Board issued a decision and order, effective September 26, 2013, in which Respondent's Physician's and Surgeon's Certificate No. G 33567 was revoked. The revocation was stayed, however, and Respondent's Physician's and Surgeon's Certificate No. G 33567 was placed on probation for a period of seven (7) years with certain terms and conditions.

JURISDICTION

4. 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.

5. 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.
>
> ...

6. Section 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes ...

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7. Section 118 of the Code states:

...

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

...

8. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

...

STATUTORY PROVISIONS

9. 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.

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

(f) Any action or conduct that would have warranted the denial of a certificate.

...

10. 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.

11. Section 2052 of the Code states:

(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a public offense ...

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

12. Section 2264 of the Code states:

The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in

the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.

13. Section 2415 of the Code states:

(a) Any physician and surgeon ... who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.

...

(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2421) pertaining to renewal of licenses.

...

14. Section 2400 of the Code states:

Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. ...

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1356.6, states:

...

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

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

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

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(3) Monitoring. The following monitoring shall be available for volumes greater than 150 and less than 2,000 cubic centimeters of total aspirate and shall be required for volumes between 2,000 and 5,000 cubic centimeters of total aspirate:

(A) Pulse oximeter

(B) Blood pressure (by manual or automatic means)

(C) Fluid loss and replacement monitoring and recording

(D) Electrocardiogram

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

(5) Discharge and Postoperative-care Standards.

(A) A patient who undergoes any liposuction procedure, regardless of the amount of total aspirate extracted, shall not be discharged from professionally supervised care unless the patient meets the discharge criteria described in either the Aldrete Scale or the White Scale. Until the patient is discharged, at least one staff person who holds a current certification in advanced cardiac life support shall be present in the facility.

...

COST RECOVERY

16. 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.

DEFINITIONS

17. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member of good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

FACTUAL ALLEGATIONS

18. Except where otherwise stated, at all relevant times the Respondent was a licensed physician and surgeon, board-certified in plastic surgery and specializing in liposuction and other cosmetic procedures performed without – or under local – anesthesia.

19. Pursuant to the Decision in Case No. 10-2011-218024, the Respondent's license to practice medicine in California was suspended from approximately October 12, 2013, through January 9, 2014, and then remained on probation through September 2020. The terms of that probation included the requirement that the Respondent submit quarterly declarations under penalty of perjury.

20. If the Respondent practiced medicine in California for less than 40 hours in a calendar month, he was required by the terms of his probation to notify the Board within 15 calendar days. Any such period would be regarded as non-practice and would not apply to the reduction of the probationary term.

21. The terms of Respondent's probation required him to have a chaperone when seeing female patients and keep a log in which he recorded (1) patient initials, address and telephone number; (2) medical record number; and (3) date of service.

22. On or about January 10 and 11, 2014, the Respondent completed a course on "Medical Ethics and Professionalism."

Pacific Cielo Surgery Center/Cielo Cosmetic Surgery Center/Del Mar Cosmetic Contouring

23. In or around early 2014,[1] Dario Moscoso (Moscoso), an unlicensed person, posted an advertisement for a medical director for his business, Pacific Cielo Surgery Center and Medical Spa (Pacific Cielo) at 18029 Calle Ambiente, Suite 507, Rancho Santa Fe. Respondent answered the advertisement.

24. Moscoso reportedly informed Respondent that he was not happy with the provider with whom he had been working. He asked Respondent whether Respondent could perform liposuction under local anesthesia, to which the Respondent replied in the affirmative.

[1] Conduct and events occurring outside the statute of limitations period is for background and informational purposes only and is not alleged as a basis for disciplinary action.

25. Respondent reportedly agreed to be the medical director for Pacific Cielo.

26. In the Respondent's quarterly declaration for January through March 2014, the Respondent stated that his primary place of practice was Pacific Cielo. In his accompanying statement, he explained:

> In late February, I was invited by Pacific Cielo, a surgical center in Rancho Santa Fe to investigate their facility as a provider. I made several visits in late February and early March strictly as an observer before being invited to participate in their patient referral program. Since that time, I performed six surgeries under local anesthetic totaling over 24 hours of work."

He also estimated that he had "spent a total time of 20 hours observing other physicians and training in the unique aspects of the Pacific Cielo practice for a total time commitment in excess of 40 hrs/month, including job search and independent reading..."

27. In a deposition attended by the Respondent on or about March 10, 2021 (Respondent's deposition), he said that, initially, there was one other physician performing nonsurgical procedures. He recalled that she was in the office twice when he was there but then did not return, and there were no other physicians working at Pacific Cielo.

28. In an interview during the Board's investigation of this matter on or about January 20, 2022 (the subject interview), the Respondent did not recall any other physicians working at Cielo.

29. In his quarterly submission to the Board for the period April through the end of June, 2014, the Respondent declared that he "continued to work approximately 8 to 12 hours per week at Pacific Cielo ..."

30. In the same quarterly submission, dated June 30, 2014, Respondent also reported that the name "Pacific Cielo" had been changed to "Cielo Cosmetic Surgery" (Cielo). This name change had been made by Moscoso.

31. The Respondent purportedly entered into a Management Services Agreement (MSA) with Moscoso, under the latter's alleged fictitious business name of Cielo Spa. The parties to the agreement are named as "Dario Moscoso Dba: Cielo Spa ('Company')" and "Gerry Schneider MD, Inc. Dba Cielo Cosmetic Surgery ('Group')" and the effective date of the MSA is said to be June 1, 2014 (the Cielo MSA):

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(a) Moscoso was never the owner of the fictitious business name "Cielo Spa." Instead, the fictitious business name "Pacific Cielo" was registered by him on or about June 16, 2014.

(b) In the definitions section of the Cielo MSA, "Company" is defined as "Pacific Cielo, Inc., a California corporation." Elsewhere, the Cielo MSA provides that "Company shall receive and deposit all Practice Revenue collected in Pacific Cielo[']s name and on behalf of Group into the Accounts which shall at all times remain in Pacific Cielo's name." No corporation with the name Pacific Cielo can be found registered with the California Secretary of State.

(c) The professional corporation "Gerry Schneider MD, Inc." was incorporated on or about June 5, 2014, by the Respondent with the aid of Legal Zoom, after the alleged effective date of the Cielo MSA.

(d) Neither the Respondent nor his professional corporation ever owned a fictitious business name (also known as a "DBA").

(e) The Cielo MSA specified the location of the "Gerry Schneider MD, Inc. DBA Cielo Cosmetic Surgery" outpatient facility as 18029 Calle Ambiente, Suite 507, Rancho Santa Fe.

(f) In the Cielo MSA, under the heading "Group Name and Phone Numbers," the group name was referred to as "Cielo Surgery Center" (as opposed to "Cielo Cosmetic Surgery"). This name was said to be owned by "Company" (Moscoso), who granted a revocable license to "Group" to use the name.

(g) A fictitious name permit was issued by the Board to Respondent's professional medical corporation, on or about August 20, 2014, for "Cielo Cosmetic Surgery" (FNP 543893), with the address of record 18029 Calle Ambiente Ste 507, PO Box 9738, Rancho Santa Fe, CA 92067.

32. At some point between April 2015 and July 2016, Moscoso again changed the name of his surgery center and/or spa, to "Del Mar Cosmetic and Contouring" (aka "Del Mar Body Contouring and Plastic Surgery" aka "Del Mar Contouring Surgery") (Del Mar). Moscoso leased new premises for Del Mar at 12395 El Camino Real, Suite 209, in Carmel Valley, San Diego.

33. On his quarterly declaration dated April 2, 2015, Respondent stated he continued to work at "Cielo Cosmetic Surgery," now at its new address in San Diego.

34. Respondent continued to report that he was working for "Cielo Cosmetic Surgery" in his quarterly declarations dated July 21, 2015, October 1, 2015, January 14, 2016, May 17, 2016, and July 2, 2016.

35. In the explanatory note attached to his quarterly declaration dated January 14, 2016, the Respondent stated that, in the period October 1 through December 31, 2015, he had worked "variable hours 4 to 16 per week at Cielo Cosmetic Surgery, 18029 Calle Ambiente, Ste. 507, in Rancho Santa Fe." In truth and in fact, Respondent had worked at Del Mar during this period.

36. In the explanatory note attached to his quarterly declaration dated September 28, 2016, the Respondent disclosed that he was working at "Cielo Cosmetic Surgery also known as Del Mar Cosmetic Contouring ..."

37. In his quarterly declarations dated January 3, 2017, and April 3, 2017, Respondent reported working at "Cielo Cosmetic Surgery, now called Del Mar Contouring Clinic..."

38. Respondent worked with Moscoso at Del Mar until December 31, 2019, when Moscoso closed the business.

39. Respondent did not seek or acquire a fictitious name permit for Del Mar. [2]

40. No new MSA was entered into between the Respondent (personally or through his professional corporation) and Moscoso (personally or through any business entity or fictitious business name) with regard to Moscoso's newly-named business at its new location.

41. Respondent never had any ownership interest in Del Mar, Pacific Cielo, or Cielo, and understood these businesses to be wholly owned by Moscoso, an unlicensed person or entity.

42. Moscoso frequently performed the initial and/or post-operative consultation of patients without the Respondent being present.

43. Moscoso frequently wore a white coat similar to that typically worn by a physician. At the subject interview, Respondent stated he "imagine[d] [Moscoso] might've" worn a white coat when he was alone with a patient and Respondent was not present.

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[2] The only other fictitious name permit issued by the Board to the Respondent or his professional corporation was "Thermi San Diego Plastic Surgery" (FNP 546767) on or about January 13, 2017. Its practice location was 12395 El Camino Real, Suite 209, in Carmel Valley, San Diego, and it expired on or about January 31, 2019.

44. Moscoso frequently asked the patients to undress for the consultations and/or touched the unclothed patients on their bodies with his ungloved hand. At the subject interview, Respondent stated that he suspected that patients had been unclothed during their consultations with Moscoso but did not know that Moscoso was also touching them.

45. Moscoso would, on occasion, take photos of unclothed patients when he met with them alone. At the subject interview, Respondent said he could not be certain whether or not this had happened. Respondent confirmed that it was unusual for a female patient, who is getting plastic surgery, to be alone with a man during the initial consultation.

46. The only contact number (and point of contact) for patients of Cielo and Del Mar was that of Moscoso's mobile phone.

47. Typically, at the initial consultation, Moscoso would discuss and set the date for the procedure, determine the cost of the procedure and take a money deposit from the patient. Respondent routinely met the patient for the first time on the day of the procedure.

48. Moscoso would collect payment from the patient and give the Respondent twenty-five percent (25%) of the payment.

49. Respondent had no involvement with the billing and/or accounting procedures of the practice, all of which was handled by Moscoso.

50. Moscoso was solely in charge of marketing for Pacific Cielo, Cielo, and Del Mar.

51. Moscoso maintained both an Instagram and Facebook account for Del Mar and the moniker "surgeon" appeared on one or more of these accounts. At the subject interview, Respondent said he had been made aware of this by his girlfriend.

52. In roughly mid-2019, Moscoso demanded from Respondent the return of his key to Del Mar, and Respondent no longer had access to the premises without Moscoso.

53. After Moscoso closed Del Mar at the end of December 2019, Respondent no longer had access to patient records, which were either kept or discarded by Moscoso.

54. Respondent performed liposuction and fat transfers on patients at Del Mar, using local anesthesia and oral tranquilization.

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55. At all relevant times, Respondent did not have hospital privileges at a local general acute-care hospital or a written transfer agreement with such a hospital or with a licensed physician who has admitting privileges at such a hospital.

56. At all relevant times, Respondent was not certified in advanced cardiac life support (ACLS), and no ACLS-certified person was present and monitoring the patients at Del Mar.

57. At all relevant times, Respondent did not have a written emergency care plan for his patients at Del Mar.

58. At all relevant times, adequate and appropriate equipment, oxygen, and medication, were not onsite at Del Mar and available to handle the procedure being performed and/or any medical emergency that may arise in connection with that procedure. This includes, but is not limited to, an electrocardiogram, oxygen saturation monitor, oxygen for supplementation, IV (intravenous) fluids and/or equipment for replacement and/or monitoring of fluid loss.

Viva Wellness.

59. In his quarterly declaration for July through September, 2015, the Respondent reported also having started work at Viva Wellness with Michael Tachuk, M.D., in addition to his work at Del Mar.

60. Respondent continued to report working at Viva Wellness until his quarterly declaration dated September 28, 2016, wherein he reported having terminated his practice at Viva Wellness on September 2, 2016.

61. In a letter dated October 14, 2016, the Respondent informed the Board that he "left [Viva Wellness] because of disagreement with Dr. Tachuk over the sovereignty of [his] medical practice and issues related to financial records/accounting." In his typed, three page letter, the Respondent explained the problems he had experienced in trying to obtain his patient charts from the Viva Wellness practice in the ensuing weeks. Respondent stated, further, that he was "reporting this to the Board for purposes of completing [his] obligation to maintain records on the patients that [he had] seen and why [he] may be unable to do so for reasons beyond [his] control."

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62. In December 2016, Respondent reported working only at Cielo. By March 2017, the Respondent again reported working at Viva Wellness, saying he was 'consulting' on the rare occasion.

63. On or about January 20, 2022, in an interview with the Respondent during the Board's investigation (the Board interview), he stated that he had been at Viva Wellness to do "injections ... and a small amount of consulting." When asked when and how long he had worked at Viva Wellness, the Respondent replied "I think I probably was there in 2016 and maybe 2017 and stopped... Two years, three years?"

64. During the Board interview (in January 2022), Respondent stated that he had stopped practicing altogether on December 31, 2019, and confirmed that he had "done no practice whatsoever since that time."

65. In his deposition, the Respondent stated that he had stopped practicing "mid-February 2020." The reasons he gave for stopping included his personal choice as well as that the office closed due to the pandemic.

66. The final entry in Respondent's chaperone log is February 12, 2020.

67. Respondent underwent back surgery on or about February 13, 2020, and had scheduled medical leave from Viva Wellness for roughly six weeks. On or about April 17, 2020, the Respondent spoke with an investigator for the Medical Board, and confirmed his extended convalescence away from home.

68. A prescriber CURES report for the Respondent shows eleven (11) prescriptions written by him filled during January 2020 and five (5) filled during February 2020, with the final prescription written by Respondent in 2020 filled on February 13, 2020.

69. In his quarterly declarations covering the period from October 2018 through the end of June 2020, the Respondent listed Viva Wellness as his primary place of practice. On the declarations dated April 6, 2020, and July 1, 2020, the Respondent stated he had worked at Viva Wellness 40 hours per month in January, February, March, April, May and June 2020.

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Patient A:[3]

70. Patient A is a female born in 1983.

71. In September 2018, Patient A saw an Instagram post for Del Mar. She contacted Moscoso and made arrangements to have the Brazilian butt lift (BBL) procedure done.

72. The Brazilian butt lift consists of liposuction of the torso and transfer of this fat to the buttocks.

73. At least fifty percent (50%) of transferred fat does not survive.

74. The areas from where the fat is harvested should be able to tolerate the fat removal without significant deformity, which makes the back and flanks prime locations for harvest. The abdomen is less desirable due to post-partum skin laxity. Harvesting fat from the abdomen often leads to increased deformity in the abdomen, increasing the hanging of the abdominal pannus and the supraumbilical skin fold.

75. Patient A had a significant abdominal pannus with excess fat in both the abdomen and the back/flanks. She desired fat removal and a buttock augmentation.

76. On or about October 6, 2018, Patient A completed the patient intake form and also signed an informed consent form. On the same day, Patient A met with Respondent, who performed an initial consultation, followed by liposuction of Patient A's abdomen and a BBL.

77. Immediately before the procedure, Moscoso cleaned the area(s) on Patient A's body that were to be worked on.

78. Respondent performed the procedure on Patient A and extracted 1,950 ml of fat and fluid from her abdomen, using local anesthesia and oral tranquilization.

79. Between 500 and 600 cubic centimeters (or milliliters) of fat was transferred to Patient A's left and right buttocks.

80. After the procedure, Respondent left the room. Moscoso applied wound dressings and helped Patient A get dressed.

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[3] All patient names are known to the parties but not disclosed in these proceedings to protect patient privacy.

81. Respondent's chaperone log reflects that he met with Patient A on October 5, 2018. His consultation note is dated October 6, 2018. The date on Respondent's procedure note is difficult to read and has been transcribed as October 16, 2018.

82. Respondent's chart for Patient A[4] includes documentation of a blood pressure and pulse taken, namely, 150/88, pulse 96. This is crossed out and a different reading of 128/82, pulse 90 is written. These readings and alterations do not have a time of day associated with them.

83. There is no documentation in Patient A's chart of any vital signs obtained during or after the surgical procedure.

84. Respondent's chart for Patient A contains no documentation of Patient A's Aldrete or White Scale score prior to discharge.

Patient B:

85. Patient B is an adult female.

86. In or around February or March 2019, Patient B responded to a Facebook advertisement for "Del Mar Cosmetic Contouring," offering a sale price for eliminating body fat and/or transferring it to other parts of the body. Patient B contacted Moscoso by telephone.

87. On or about March 9, 2019, Patient B attended a first consultation with Moscoso at Del Mar. Moscoso was wearing a white coat similar to that worn by a physician.

88. Both when speaking to Moscoso on the phone and seeing him at Del Mar, Patient B believed Moscoso to be a surgeon.

89. At her consultation with Moscoso, Patient B was asked to undress and don a surgical gown. While discussing the procedure with her, Moscoso touched Patient B on her naked body with his ungloved hand. Moscoso also took photographs of Patient B during this consultation.

90. Patient B returned to Del Mar on or about March 23, 2019, for her scheduled procedure.

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[4] Provided to him by Moscoso, after a request by the Board for patient records in this investigation.

91. After Moscoso had checked her in, Respondent arrived and marked on Patient B's body the areas on which she was going to have surgery performed. He then left the room.

92. Moscoso took Patient B to the procedure room, asked her to lie down, and prepared Patient B for the procedure. After a while, Respondent started the procedure but was ultimately unable to complete it as planned due to Patient B's extreme discomfort.

93. Patient B returned to Del Mar a few days later, to obtain more pain medication. When she returned, Moscoso brought her into a room and again had her disrobe in order to see how she was healing.

Patient C:

94. Patient C is an adult female, who heard about Del Mar and the Facebook advertisement from Patient B.

95. Patient C accompanied Patient B to Del Mar on or about March 9, 2019.

96. On or about March 9, 2019, Patient C had a consultation with Moscoso, for which she was asked to undress. Moscoso discussed the procedure with Patient C and touched her naked body with his ungloved hand. Moscoso was wearing a white coat similar to that worn by a physician.

97. Patient C wanted to have fat transferred from her body to her buttocks and also to her breasts. Moscoso told her to which areas this could be done. He explained that there would not be sufficient fat to transfer to her breast area.

98. During the initial consultation, Moscoso made markings on a sheet of paper headed "Del Mar Cosmetic Contouring Surgery" and "Body Chart-Female, Initial Consult Pre-operative." The paper had drawings of the front and back of the female form. Moscoso also wrote "1500 cc" and indications of the cost of the procedure, among other markings, on the paper.

99. Patient C did not immediately schedule the procedure but called a few days later to do so. The procedure was eventually scheduled for April 13, 2019.

100. On or about April 13, 2019, Patient C arrived at Del Mar to find the practice deserted. She called Moscoso and he apologized, saying he had forgotten about the appointment. He offered Patient C a discount and offered to reschedule the procedure, saying he would get in

contact with Patient C. Moscoso did not contact Patient C, who eventually managed to get hold of Moscoso, and a new procedure date was scheduled.

101. Patient C returned to Del Mar on or about May 11, 2019, for her scheduled procedure.

102. After Moscoso had checked her in, Respondent arrived and marked on Patient C's body the areas on which she was going to have surgery performed.

103. Moscoso took Patient C to the procedure room, asked her to lie down, and prepared Patient C for the procedure.

104. After a while, Respondent entered the room and started the procedure. Patient C recalls that Respondent removed fat from her back and flanks and injected it into her breasts and buttocks.

Patient D:

105. Patient D is an adult female.

106. In November 2018, Patient D saw and responded to an Instagram advertisement offering a special for liposuction and a BBL. Patient D corresponded with Moscoso, discussed financial details, and scheduled a date for the consultation and procedure.

107. On or about December 6, 2018, Patient D and her husband met Moscoso and went into an exam room. Patient D undressed and Moscoso examined her, touching her naked body with his ungloved hands.

108. Respondent then arrived and performed the procedure on the same day, on or about December 6, 2018.

109. Respondent's chaperone log has an entry for Patient D, showing the date of service as November 17, 2018. There is no entry dated December 6, 2018.

110. On or about January 31, 2019, Patient D returned alone to Del Mar for her post-operative appointment. She met Moscoso, who examined her again while she was undressed. Respondent was not present.

111. During the post-operative appointment, Moscoso suggested radiofrequency treatment for a particular area and subsequently administered radiofrequency treatments on three separate occasions.

112. Moscoso wore a white coat similar to that worn by a physician on some or all of Patient D's visits to Del Mar.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

113. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, and California Code of Regulations, title 16, section 1356.6, in that he committed gross negligence in his care and treatment of Patient A, Patient B, Patient C, and Patient D which includes, but is not limited to, the following:

114. On or about October 6, 2018, Respondent committed gross negligence in his care and treatment of Patient A in performing liposuction on Patient A while not having appropriate, suitable, and/or required safety measures, equipment and/or monitoring available.

115. On or about March 23, 2019, Respondent committed gross negligence in his care and treatment of Patient B in performing, and/or attempting to perform, liposuction on Patient B while not having appropriate, suitable, and/or required safety measures, equipment and/or monitoring available.

116. On or about May 11, 2019, Respondent committed gross negligence in his care and treatment of Patient C in performing liposuction on Patient C while not having appropriate, suitable, and/or required safety measures, equipment and/or monitoring available.

117. On or about December 6, 2018, Respondent committed gross negligence in his care and treatment of Patient D in performing liposuction on Patient D while not having appropriate, suitable, and/or required safety measures, equipment and/or monitoring available.

118. Respondent committed gross negligence in permitting Moscoso to dress and/or advertise in a way that could mislead patients into believing him to be a medical professional and/or permitting Moscoso to meet with unclothed female patients alone and/or take photographs of said unclothed patients in Respondent's absence.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

119. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code and California Code of Regulations, title 16, section 1356.6, in that he committed repeated negligent acts in his care and treatment of Patient A, Patient B, Patient C, and Patient D, which includes, but is not limited to, the following:

120. Paragraphs 114 through 118, above, are hereby realleged and incorporated by this reference as if fully set forth herein.

121. Respondent failed to document Patient A's Aldrete or White Scale score prior to her departure from Del Mar after her procedure on or about October 6, 2018.

122. Respondent failed to clearly and accurately document the date of Patient A's consultation and procedure.

123. Respondent failed to transfer sufficient fat to achieve any significant buttock augmentation on Patient A.

124. Respondent harvested fat from Patient A's abdomen as opposed to her back and/or flanks, and/or failed to perform an abdominoplasty.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

125. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266 of the Code, in that he failed to maintain adequate and accurate records of his care and treatment of Patient A, as more particularly alleged in paragraphs 18 through 58 and 70 through 84, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Medicine)

126. Respondent is further subject to disciplinary action under sections 2227 and 2234, of the Code, as defined by sections 2052, 2264, 2234, subdivisions (a) and (f), and 2400 of the Code, in that he aided and abetted the unlicensed practice of medicine by Moscoso, as more particularly

alleged in paragraphs 18 through 58 and 70 through 112, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

127. Respondent is further subject to disciplinary action under sections 2227 and 2234 of the Code, as defined by section 2234, subdivisions (a), (e), and (f), in that he engaged in an act or acts of dishonesty that is/are substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged in paragraphs 18 through 69, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

128. Respondent is further subject to disciplinary action under section 2234 of the Code in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct that is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 18 through 127, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 33567, issued to Respondent Gerald Lane Schneider, M.D.;

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

3. Ordering Respondent Gerald Lane Schneider, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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4. Ordering Respondent Gerald Lane Schneider, M.D., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.1; and

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

DATED: JUL 13 2022

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