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

In the Matter of the Accusation Against:	)	
David Aaron Feldmar, M.D.	)	**Case No. 800-2016-028878**
Physician's and Surgeon's Certificate No. A 87326	)	
Respondent	)	

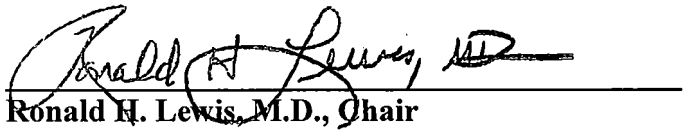
DECISION

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 18, 2019.

IT IS SO ORDERED: November 18, 2019.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.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: DAVID AARON FELDMAR, M.D. 8907 Wilshire Boulevard, Suite 100 Beverly Hills, California 90211-1928 Physician's and Surgeon's Certificate No. A 87326, Respondent.	Case No. 800-2016-028878 OAH No. 2019031088 **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 ("Board"). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Rebecca L. Smith, Deputy Attorney General.

2. Respondent David Aaron Feldmar, M.D. ("Respondent") is represented in this proceeding by attorneys Peter Osinoff, whose address is 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071 and Arthur H. Barens, whose address is 10209 Santa Monica Boulevard, Los Angeles, California 90067.

3. On or about May 26, 2004, the Board issued Physician's and Surgeon's Certificate No. A 87326 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-028878, and will expire on October 31, 2021, unless renewed.

JURISDICTION

Accusation No. 800-2016-028878 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 February 20, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

4. A copy of Accusation No. 800-2016-028878 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-028878. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement 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. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in the First, Third and Fifth Causes for Discipline in Accusation No. 800-2016-028878.

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

CONTINGENCY

10. 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.

11. 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.

12. 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:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 87326 issued to Respondent David Aaron Feldmar, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months on the following terms and conditions.

1. EDUCATION COURSE. Within sixty (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 forty (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 sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations ("CCR") section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the 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 fifteen (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.

3. PROHIBITED PRACTICE. During probation, Respondent is prohibited from supervising allied health practitioners in cosmetic procedures for one (1) year. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the

Respondent is prohibited from supervising allied health practitioners in cosmetic procedures for one (1) year. 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; 2) 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.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

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

5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

6. 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.

7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(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 thirty (30) calendar days prior to the dates of departure and return.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than 30 calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

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

12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Peter Osinoff and Arthur H. Barens. 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: 10/8/19

DAVID AARON FELDMAR, M.D.
Respondent

I have read and fully discussed with Respondent David Aaron Feldmar, 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: 10/10/19

PETER OSINOFF
ARTHUR H. BARENS
Attorneys for Respondent

ENDORSEMENT

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

DATED: 10/10/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-028878

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 20, 2019
BY: ANALYST

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

In the Matter of the Accusation Against: DAVID AARON FELDMAR, M.D. 8907 Wilshire Boulevard, Suite 100 Beverly Hills, California 90211-1928 Physician's and Surgeon's Certificate No. A 87326, Respondent.	Case No. 800-2016-028878 **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 May 26, 2004, the Medical Board issued Physician's and Surgeon's Certificate Number A 87326 to David Aaron Feldmar, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2019, unless renewed.

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 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.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Section 2234 of the Code, states:

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

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

"(b) 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.

"..."

6. Section 2242 of the Code states, in pertinent part:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"..."

7. Section 4026 of the Code states: "Furnish" means to supply by any means, by sale or otherwise.

8. Section 4022 of the Code states, in pertinent part:

"Dangerous drug' or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "RX only," or words of similar import.

"...

"(c) Any other drug or device that by federal or state law can be lawfully dispensed on prescription or furnished pursuant to Section 4006."

9. 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."

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10. Section 2051 of the Code states:

"The physician's and surgeon's certificate authorizes the holder to use drugs or devices in or upon human beings and to sever or penetrate the tissue of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions."

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, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

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

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

12. Section 2285 of the Code states:

"The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

"(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

"(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

"(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

"(d) Any medical school approved by the division or a faculty practice plan connected with the medical school."

FACTUAL ALLEGATIONS

13. Respondent is a plastic surgeon. In 2016, he was doing business as Art & Science Plastic Surgery,[1] located at 8907 Wilshire Boulevard, Suite 100, Beverly Hills, California 90211. At that time, he employed O.K., a licensed vocational nurse. O.K. performed aesthetic procedures, including neurotoxin and filler injections. At that time, Respondent also subleased space to another plastic surgeon, Dr. A.P., who also saw patients at Art & Science Plastic Surgery.

14. On April 29, 2016, C.V., an investigator with the Department of Consumer Affairs Division of Investigation, and G.V., a supervising investigator with the Department of Consumer Affairs, Division of Investigation, performed an undercover operation ("U.C.") wherein they visited Art & Science Plastic Surgery for a pre-scheduled medical appointment.[2]

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[1] Art & Science Plastic Surgery has never been issued a Fictitious Name Permit by the Board.

[2] On April 12, 2016, Investigator C.V. contacted (213) 700-0678 by text, posing as someone wanting lip fillers and Botox. Investigator C.V. subsequently received a series of replies throughout the following days from an unidentified individual stating that the next available appointment was April 29, 2016 at 11:00 a.m. Investigator C.V. was instructed to go to Art & Science Plastic Surgery, 8907 Wilshire Boulevard, Los Angeles, California 90211, for the appointment. She was also provided pre-procedure instructions to reduce the risk of bruising and swelling.

15. Upon her arrival, C.V. was instructed by the front desk clerk to complete the following forms: Art & Science Plastic Surgery Patient Information/Questionnaire; Art & Science Plastic Surgery HIPAA Information and Consent Form; Art & Science Plastic Surgery Photographic Release; Art & Science Plastic Surgery Informed Consent for Botox/Dysport Botulinum Toxin Type A; Art & Science Plastic Surgery Disclosure and Consent – Restylane, Juvederm, Hydrelle, Voluma, Belotero Balance, and/or Radiesse Injections; and Patient-Physician Arbitration Agreement. C.V. completed the forms as instructed, returned them to the front desk clerk and then remained in the waiting room to be called for her appointment.

16. C.V. was then called for her appointment. O.K. approached C.V. and identified herself as the nurse who would be providing the treatment. O.K. then escorted C.V. and G.V. to an examination room.

17. Once in the examination room, O.K. looked at the paperwork that C.V. had previously completed and then asked C.V. what she wanted to have done. C.V. stated that she was interested lip augmentation and Botox on her forehead. O.K. examined C.V., asked a series of health questions and then explained the most beneficial treatments. O.K. pointed out several areas of C.V.'s face that could use aesthetic treatments, included Botox to her forehead, fillers to augment her lips and other fillers around her nose, under her eyes and on her cheeks to minimize lines and give her face a more youthful appearance. O.K. explained the procedures, what products she would use, the purpose of the products, the potential side effects and the costs for the products. She identified the products to be used as Botox,[3] Juvederm,[4] Resylane,[5] and Radiesse.[6]

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[3] Botox is an acetylcholine release inhibitor and a neuromuscular blocking agent. It is a dangerous drug pursuant to Business and Professions Code section 4022, and can only be dispensed upon a prescription.

[4] Juvederm is a sterile, biodegradable, non-pyrogenic, viscoelastic, clear, colorless, homogeneous, gel implant. It is a dangerous device pursuant to Business and Professions Code section 4022, and can only be sold by or on the order of a physician or licensed practitioner.

[5] Resylane is a hyaluronic acid injectable gel. It is a dangerous device pursuant to Business and Professions Code section 4022, and can only be sold by or on the order of a physician or licensed practitioner.

[6] Radiesse is an opaque, sterile, non-pyrogenic, semi-solid, cohesive implant, whose principle component is synthetic calcium hydroxylapatite suspended in a gel carrier of sterile water for

The costs were $300 for Botox on her forehead; $550 for Juvederm to her lips; $550 for Radiesse around her eye/nose area; and $600 for Restylane on her cheeks. O.K. also explained her experience in doing aesthetics, including that she had been doing aesthetics for over 7 years, treating on average 10 patients a day, 5 days a week.

18. O.K. then indicated that if C.V. was ready to start the procedures, O.K. would apply the numbing cream to the areas being treated since it would take 20-30 minutes for the cream to take effect. C.V. stated that she was nervous about having the procedures done and requested time to speak with G.V. privately. O.K. exited the room to allow C.V. and G.V. to converse privately.

19. When O.K. returned to the examination room, she was accompanied by another female whom O.K. identified as "Dr. A.P." O.K. told C.V. that she wanted C.V. to see Dr. A.P.'s lips in order to get an idea of the end results of aesthetic treatments.

20. Dr. A.P. stood by the doorway and stated that she recently had her lips augmented. Dr. A.P. stated that O.K. was a very skilled nurse and had the ability to either subtly or obviously augment C.V.'s lips. Dr. A.P. did not ask C.V. any questions about her health history. Dr. A.P. then exited the examination room.

21. C.V. then told O.K. that she was ready to proceed with the procedures. Specifically, the recommended lip augmentation and the filler injections.

22. O.K. applied a numbing cream to C.V.'s face. O.K. indicated that they would need to wait 20 to 30 minutes before the fillers would be injected. O.K. then stepped out of the room and returned with several items, including syringes. O.K. prepared the syringes with the fillers, including Botox and Juvederm.

23. O.K. picked up one of the prepared syringes and indicated that she would start on C.V.'s lips with the Juvederm. O.K. approached C.V. with the syringe and once she was about to inject C.V.'s lips, C.V. instructed O.K. to stop and immediately identified herself as Investigator C.V. At this time, Supervising Investigator G.V. also revealed his true identity.

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injection. It also contains glycerin and sodium carboxymethylcellulose. It is a dangerous device pursuant to Business and Professions Code section 4022, and can only be sold by or on the order of a physician or licensed practitioner.

24. Investigators C.V. and G.V. explained the purpose of their visit: that O.K. was practicing medicine without a license. O.K. denied that she was working independently and identified Dr. A.P. and Respondent as her supervising physicians.

25. O.K. insisted that although she was the one to ask Investigator C.V. a series of health questions, perform the examination and recommend the treatment plan, she consulted with Dr. A.P. when she stepped out of the exam room. Dr. A.P. agreed that Investigator C.V. was a suitable candidate for aesthetic services. She further insisted that with all patients she treats, they are first examined by Dr. A.P. or Respondent and she is then instructed to carry out the treatment plan.

26. O.K. then called Dr. A.P. and Respondent to the examination room. Both Dr. A.P. and Respondent identified themselves as O.K.'s supervising physicians. O.K. then stated to Dr. A.P., "I talked to you about her care and you agreed that I could perform the procedures." Dr. A.P. stated that O.K. briefed her about the care and Dr. A.P. delegated the performance of the treatment to O.K. Dr. A.P. also stated that when she entered the room, she performed the initial examination. Dr. A.P. also added that by looking at Investigator C.V.'s face, she observed that the investigator was a good candidate for fillers and Botox.

27. Prior to leaving the examination room, Investigator C.V. confiscated the following items:

- A prescription topical ointment jar: 450 B-L-T (20%, 8%, 6%) Cream prescribed to Respondent with an expiration date of February 23, 2016;
- One box containing Juvederm Ultra Plus XC;
- One box containing Botox Cosmetic for injection (100 units/vial);
- One box containing Radiesse Volume Advantage (1.5 cc);
- One box containing Restylane-L injectable Gel with Lidocaine (1 ml);
- Accessory Kit;
- One empty box labeled Botox Cosmetic (100 units/vial);
- Three 30-unit syringes filled with clear liquid;
- One Juvederm Ultra Plus XC 1.0 ml syringe filled with clear liquid;

- Three syringe needles; and
- Medical Chart for C.V.

STANDARD OF CARE

28. The standard of care requires that when a physician employs a nurse practitioner to perform esthetic injections, the physician must supervise the nurse. This supervision by the physician includes reviewing the patient's history and concerns, conducting an initial physical examination, discussing the best treatment options to offer with the nurse and obtaining informed consent from the patient prior to proceeding with the treatment. The physician must have policies and procedures in place to ensure proper protocol and treatment of emergency complications.

FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Practice of Medicine)

29. By reason of the facts set forth above in paragraphs 13 through 28, Respondent is subject to disciplinary action pursuant to sections 2264, and 2234, subdivision (a), as defined by section 2052, subdivision (b), of the Code, in that he aided and abetted the unlicensed practice of medicine, as more particularly alleged hereinafter:

a. Respondent failed to supervise O.K. during Investigator C.V.'s April 29, 2016 medical visit at Art & Science Plastic Surgery.

30. Respondent's acts and/or omissions set forth in paragraphs 13 through 28, above, whether proven individually, jointly, or in any combination thereof, constitute aiding or abetting of any unlicensed person to engage in the practice of medicine in violation of sections 2264, and 2234, subdivision (a), as defined by section 2052, subdivision (b), of the Code. Therefore, cause for discipline exists.

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SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

31. By reason of the facts set forth above in paragraphs 13 through 29, Respondent is subject to disciplinary action pursuant to section 2234, subdivision (b), of the Code, in that he committed gross negligence in the care and treatment of patient C.V., as more particularly alleged hereinafter:

a. Respondent allowed O.K. to evaluate and recommend treatment to patient C.V. without a prior consultation and without his giving the patient informed consent.

b. Respondent failed to examine patient C.V., prior to allowing O.K. to recommend and render treatment to patient C.V..

32. Respondent's acts and/or omissions set forth in paragraphs 13 through 29, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence in violation of section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

33. By reason of the facts set forth above in paragraphs 13 through 31, Respondent is subject to disciplinary action pursuant to section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in the care and treatment of patient C.V..

34. Respondent's acts and/or omissions set forth in paragraphs 13 through 31, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts in violation of section 2234, subdivision (c) of the Code. Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without Examination)

35. By reason of the facts set forth above in paragraphs 13 through 33, Respondent is subject to disciplinary action pursuant to section 2242, of the Code, in that he prescribed, dispensed, or furnished dangerous drugs without an appropriate prior examination and medical indication.

36. Respondent's acts and/or omissions set forth in paragraphs 13 through 33, above, whether proven individually, jointly, or in any combination thereof, constitute prescribing, dispensing or furnishing dangerous drugs without an appropriate prior examination in violation of section 2242, of the Code. Therefore, cause for discipline exists.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain a Fictitious Name Permit)

37. By reason of the facts set forth in footnote 1, Respondent is subject to disciplinary action pursuant to section 2285 of the Code.

38. In 2016 Respondent was doing business as Art & Science Plastic Surgery. Respondent has not been issued a Fictitious Name Permit by the Board. Use of a fictitious name without a Board issued Fictitious Name Permit constitutes unprofessional conduct.

39. Respondent's acts and/or omissions set forth in footnote 1, and paragraphs 37 and 38, above, whether proven individually, jointly or in any combination thereof, constitutes unprofessional conduct in violation of section 2285 of the Code. Therefore cause for discipline exists.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 87326, issued to David Aaron Feldmar, M.D.;

2. Revoking, suspending or denying approval of David Aaron Feldmar, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering David Aaron Feldmar, 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:
February 20, 2019

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

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