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

In the Matter of the Accusation Against:	)	
Nicholas Andrew Rogers, M.D.	)	**Case No. 800-2017-039785**
Physician's and Surgeon's Certificate No. A 112189	)	
Respondent	)	

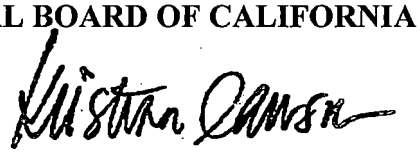
DECISION

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 April 15, 2020.

IT IS SO ORDERED March 16, 2020.

MEDICAL BOARD OF CALIFORNIA



By: _____
Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6475
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: NICHOLAS ANDREW ROGERS, M.D. 1245 Wilshire Boulevard, Suite 916 Los Angeles, California 90017 Physician's and Surgeon's Certificate No. A 112189, Respondent.	Case No. 800-2017-039785 OAH No. 2019030880 **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. Christine J. Lally ("Complainant") is the Interim 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 Nicholas Andrew Rogers, M.D. ("Respondent") is represented in this proceeding by attorneys Peter Osinoff and Derek O'Reilly-Jones, whose address is 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071.

3. On or about April 30, 2010, the Board issued Physician's and Surgeon's Certificate No. A 112189 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-039785, and will expire on September 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-039785 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 25, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-039785 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-039785. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 800-2017-039785 and that he has thereby subjected his license to disciplinary action.

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

CONTINGENCY

11. 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.

12. 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.

13. 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

A. PUBLIC REPRIMAND.

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 112189 issued to Respondent Nicholas Andrew Rogers, M.D. is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with Respondent's care and treatment of Patient 1 as set forth in Accusation No. 800-2017-039785, is as follows:

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On December 21, 2017, you committed acts constituting aiding and abetting the unlicensed practice of medicine in violation of Business and Professions Code sections 2264, and 2234, subdivision (a), as defined by section 2052, subdivision (b), in your care and treatment of patient 1, by allowing C.M. to triage Patient 1 and perform a vaginal swab outside of your presence. In addition, you committed repeated negligent acts in violation of Business and Professions Code section 2234, subdivision (c), by also failing to properly manage your prescription pad. Further, you failed to maintain adequate and accurate medical records relating to the care and treatment provided to Patient 1 in violation of Business and Professions Code section 2266.

B. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, 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 twenty (20) hours. 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 twenty (20) hours of CME in satisfaction of this condition.

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 educational program(s) or course(s), or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

If Respondent fails to enroll, participate in, or successfully complete the educational program(s) or course(s) within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until enrollment or

participation in the educational program(s) or course(s) has been completed. Failure to successfully complete the educational program(s) or course(s) outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

C. **MEDICAL RECORD KEEPING COURSE.** Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education ("CME") requirements for renewal of licensure.

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

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

If Respondent fails to enroll, participate in, or successfully complete the medical record keeping course within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until enrollment or participation in the medical record keeping course has been completed. Failure to successfully complete the medical record keeping course outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

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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 Derek O'Reilly-Jones. 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: 2/25/2020

NICHOLAS ANDREW ROGERS, M.D.
Respondent

I have read and fully discussed with Respondent Nicholas Andrew Rogers, 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: 02/25/2020

PETER OSINOFF
DEREK O'REILLY-JONES
Attorney for Respondent

ENDORSEMENT

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

DATED: 2/25/2020

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. 800-2017-039785

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6475
Facsimile: (213) 897-9395
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb. 25 20 19
BY D. Richards ANALYST

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

In the Matter of the Accusation Against: Nicholas Andrew Rogers, M.D. 1245 Wilshire Boulevard, Suite 916 Los Angeles, California 90017 Physician's and Surgeon's Certificate No. A 112189, Respondent.	Case No. 800-2017-039785 **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 April 30, 2010, the Medical Board issued Physician's and Surgeon's Certificate Number A 112189 to Nicholas Andrew Rogers, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 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.

"...

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

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

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

"..."

6. Section 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."

7. 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, 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."

8. 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."

9. 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."

FACTUAL ALLEGATIONS

10. Respondent, an obstetrician and gynecologist, was not present in his medical office on December 21, 2017 when Patient 1 presented for an initial gynecology consultation.[1] Respondent's medical assistant, C.M., informed the patient that Respondent was not available to perform an examination. Patient 1 reports that C.M. asked if she would like to reschedule the examination with Respondent or proceed with C.M. performing the examination. C.M. reports that she informed Patient 1 that the examination would need to be rescheduled and that in response, Patient 1 complained to C.M. of a vaginal issue and requested a vaginal swab and birth control prescription.[2]

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[1] For privacy purposes, the patient in this Accusation is referred to as Patient 1.

[2] Patient 1 claims that C.M. told her that she was a physician assistant. CM claims that she told Patient 1 that she was Respondent's assistant, a medical assistant.

11. C.M. consulted with Respondent by telephone and then performed a vaginal swab. C.M. reports that after collecting the specimen, she instructed Patient 1 to return to the office to see Respondent for the results and a full examination. Patient 1 requested and was given a prescription for birth control pills. The prescription was written on Respondent's prescription pad. Patient 1 reports that C.M. wrote the prescription, signed it and handed it to her. C.M. reports that Respondent's prescription pad was maintained at the front desk and the prescription was written by the front desk medical assistant, E.C. The front desk medical assistant E.C. reports that she did not provide Patient 1 with the prescription. E.C. claims that she did not have access to Respondent's prescription pads, that she never wrote prescriptions on Respondent's prescription pads and that she never signed Respondent's signature on his prescription pads. Respondent reports that he kept his prescription pad in his office unlocked but not pre-signed and that it is not his signature on Patient 1's birth control prescription.

12. Patient 1's medical records from Respondent's office reflect that she presented on December 21, 2017 for an initial gynecological consultation. She was 32-year-old, with no reported pregnancies or births. Her birth control medication was Estarylla.[3] She denied any complaints or medical problems. She denied any tobacco, alcohol or drug use. She had no known allergies and was not taking medications. Her height, weight, body mass index, vital signs and last menstrual period were documented. With respect to laboratory studies, the record reflects that a vaginal swab for infection was performed. The following orders were listed: Leukurrhea panel, candida vaginitis panel, bacterial vaginosis panel. With respect to the narrative portion of the record, it was noted that the patient was in for consultation, given the option to return for a full consultation with Respondent or get a vaginal swab and return for pap smear by Respondent. Patient requested the vaginal swab since she was there and did not want to return another day. It was further noted that the vaginal swab was performed by C.M., Respondent's medical assistant, that the patient signed an agreement for the vaginal swab and that the consultation would not be billed to her insurance. The patient was instructed to return in one

[3] There is no reference in the medical record as to how long Patient 1 was taking Estarylla or who prescribed it to her.

week for results and appointment with Respondent. The record was electronically signed by Respondent on January 30, 2018. A handwritten notation on the record reflects "vaginal swab was cancel [sic] due to patient complaint."

13. On January 9, 2018, Respondent prepared the following "To whom it may concern" correspondence which is maintained as part of Patient 1's medical records:

> "[Patient 1] presented to the office on 12/21/2017 requesting [a] well woman exam. At the time I was out of the office and unavailable to immediately return to the office. The patient was counseled by my medical assistant that a well woman exam was not possible at the time due to my unavailability. The patient still requested an exam since she had taken the time to come to the office and after consulting with me over the phone, the medical assistant offered her a vaginal swab and follow up visit for the well woman exam. A vaginal swab was collected by the medical assistant [C.M.], and sent to the lab. After consulting with me over the phone, a prescription was written for the patient. At no time did the patient have an encounter with a [physician assistant], I do not have physician assistants working at my practice. The visit will be billed according to the level of care and not as a well woman visit."

STANDARD OF CARE

14. The standard of care for physicians supervising medical assistants requires that the supervising physician be present for any and all clinical examinations as well as performing tests that involve penetration of tissue for obtaining bodily specimens (i.e., vaginal swabs).

15. The standard of care requires that physicians keep prescription pads in a safe and secure place, which limits access to the pads as well as reduces the potential for theft and tampering.

16. The standard of care requires that physicians maintain accurate and adequate medical records setting forth the identity of the individual providing care and treatment as well as ordering diagnostic and laboratory testing.

FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Practice of Medicine)

17. By reason of the facts set forth above in paragraphs 10 through 16, 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. On December 21, 2017, Respondent allowed C.M. to triage Patient 1 and perform a vaginal swab outside of his presence.

18. Respondent's acts and/or omissions set forth in paragraphs 10 through 17 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.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

19. By reason of the facts set forth above in paragraphs 10 through 17, 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 1, as more particularly alleged hereinafter:

a. On December 21, 2017, Respondent allowed C.M. to triage Patient 1 and perform a vaginal swab outside of his presence.

b. Respondent failed to properly manage his prescription pad. On December 21, 2017, Respondent permitted the issuance of a birth control prescription to Patient 1. The patient received a birth control prescription on Respondent's prescription pad at the time of that visit. Respondent confirms that it is not his signature on the prescription issued to Patient 1.

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20. Respondent's acts and/or omissions set forth in paragraphs 10 through 19, 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.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

21. Respondent is subject to disciplinary action under section 2266 of the Code for failing to maintain adequate and accurate records relating to the care and treatment provided to Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 10 through 15 and 19, above, as though 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 A 112189, issued to Nicholas Andrew Rogers, M.D.;

2. Revoking, suspending or denying approval of Nicholas Andrew Rogers, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Nicholas Andrew Rogers, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: February 25, 2019

Christine L. Tally for
KIMBERLY KIRCHMAYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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