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

In the Matter of the Accusation Against: Gary S. Feldman, M.D. Physician's & Surgeon's Certificate No G58766 Respondent	Case No. 800-2018-043041

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 SEP 0 2 2020

IT IS SO ORDERED AUG 0 3 2020

MEDICAL BOARD OF CALIFORNIA
By:

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
BRIAN ROBERTS
Deputy Attorney General
State Bar No. 282868
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6614
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: **GARY S. FELDMAN, M.D.** **20750 Ventura Blvd., Suite 210** **Woodland Hills, CA 91364** **Physician's and Surgeon's Certificate No. G 58766,** Respondent.	Case No. 800-2018-043041 OAH No. 2020020909 **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 Brian Roberts, Deputy Attorney General.

///

///

2. Respondent Gary S. Feldman, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071.

3. On or about September 29, 1986, the Board issued Physician's and Surgeon's Certificate No. G 58766 to Gary S. Feldman, M.D. (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. 800-2018-043041, and will expire on January 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-043041 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 July 9, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-043041 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. 800-2018-043041. Respondent has also carefully read, fully discussed with his 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 understands and agrees that the charges and allegations in Accusation No. 800-2018-043041, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2018-043041, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 58766 to disciplinary action.

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

CONTINGENCY

13. 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.

14. 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.

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

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED THAT the Physician's and Surgeon's Certificate issued to Gary S. Feldman, M.D., is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with Respondent's conviction of a substantially related crime and unprofessional conduct as set forth in Accusation No. 800-2018-043041.

B. PROFESSIONAL PROGRAM (ETHICS COURSE)

IT IS FURTHER ORDERED THAT, within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the 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 shall be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

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

Failure to successfully complete the Professionalism Program outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. 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: June 11th 2020 G. Feldman MD.

GARY S. FELDMAN, M.D.
Respondent

I have read and fully discussed with Respondent Gary S. Feldman, 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: 6/12/2020

PETER R. OSINOFF, ESQ.
Attorney for Respondent

///

///

///

ENDORSEMENT

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

DATED: 6/12/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General



BRIAN ROBERTS
Deputy Attorney General
Attorneys for Complainant

LA2019501677
63349938.docx

Exhibit A

Accusation No. 800-2018-043041

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
BRIAN ROBERTS
Deputy Attorney General
State Bar No. 282868
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6614
Facsimile: (213) 897-2810
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 9 2019
BY ANDREA CERENIA ANALYST

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

In the Matter of the Accusation Against: **Gary S. Feldman, M.D.** **20750 Ventura Blvd., Suite 210** **Woodland Hills, CA 91364** **Physician's and Surgeon's Certificate No. G 58766,** Respondent.	Case No. 800-2018-043041 **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 September 29, 1986, the Medical Board issued Physician's and Surgeon's Certificate Number G 58766 to Gary S. Feldman, 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 January 31, 2020, 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 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.

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

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

"(d) Incompetence.

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

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this

chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

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

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

///

8. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law."

9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the

qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

FACTUAL SUMMARY

10. On August 10, 2018, in the case entitled *The People of the State of California v. Gary Feldman*, case number 8VW03068, in the Superior Court of California, County of Los Angeles, Respondent, upon his plea of nolo contendere, was convicted of battery upon an intimate partner, in violation of Penal Code section 243(e)(1), a misdemeanor. The remaining criminal charge was dismissed as part of Respondent's plea agreement with the Los Angeles District Attorney's Office. Respondent was placed on three years of supervised probation with the following terms and conditions:

A. Serve one day in the Los Angeles county jail.

B. Perform 200 hours of community service.

C. Do not own, use or posses dangerous or deadly weapons, including firearms or other concealable weapons.

D. Do not use or threaten to use force or violence against any person.

E. Obey any protective order.

F. Pay fine and fees.

G. Obey all laws and orders of the court.

H. Complete a 52-week domestic violence treatment program.

11. The circumstances leading to the above-referenced conviction are as follows:

A. On or about March 21, 2018, at approximately 2:25 p.m., officers from the Los Angeles Police Department were approached by the victim in the 3900 block of Hopevale Drive.

///

B. The victim told officers that she had been dating Respondent for approximately 3 years and had no children in common with him.

C. The victim stated that she was home alone when Respondent arrived at approximately 1:50 p.m. Respondent demanded to see the victim's cellphone to check her call log.

D. While viewing the victim's call log, Respondent became aware that the victim called a male friend of hers the previous night and he became irate.

E. Respondent demanded to know why the victim contacted the male friend. The victim attempted to walk away from the argument but Respondent grabbed the victim in a bear hug, lifted her from the floor, and shook her side to side, yelling, "You bitch, you bitch. Tell me the truth. You are cheating on me." Respondent then proceeded to punch the victim four to six times in the abdomen.

F. The victim was able to get away, and as she ran, Respondent stated, "I will kill you! Go ahead and call Paul and I will kill him too!" The victim was in fear for her life and contacted the police because of the threats.

G. Officers attempted to make contact with Respondent; however, Respondent was barricaded inside of his home. SWAT was called to the scene to assist with the investigation.

H. SWAT repeatedly directed Respondent to exit the location and submit to arrest. Respondent ignored the requests of SWAT for approximately 2 hours. During this time, neighbors and businesses were evacuated from the area due to safety concerns.

I. Respondent eventually surrendered and submitted to arrest.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

12. By reason of the facts set forth in paragraphs 10 and 11, Respondent Gary S. Feldman, M.D. is subject to disciplinary action under Section 2236, subdivision (a), and Section 490 of the Code, as well as California Code of Regulations, title 16, Section 1360, in that Respondent has been convicted of crimes substantially related to the qualifications, function or duties of a physician and surgeon.

13. Respondent's acts and/or omissions as set forth in paragraphs 10 and 11, whether proven individually, jointly, or in any combination thereof, constitute convictions of crimes substantially related to the qualifications, function or duties of a physician and surgeon pursuant to Section 2236, subdivision (a), and Section 490 of the Code, as well as California Code of Regulations, title 16, Section 1360.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. By reason of the facts set forth in paragraphs 10 and 11, Respondent Gary S. Feldman, M.D. is subject to disciplinary action under Section 2234, subdivision (a) of the Code, in that Respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon, constituting unprofessional conduct.

15. Respondent's acts and/or omissions as set forth in paragraphs 10 and 11, whether proven individually, jointly, or in any combination thereof, constitute convictions of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon, constituting unprofessional conduct.

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 58766, issued to Gary S. Feldman, M.D.;

2. Revoking, suspending or denying approval of Gary S. Feldman, M.D.'s authority to supervise physician assistants, pursuant to Section 3527 of the Code and advanced practice nurses;

3. Ordering Gary S. Feldman, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

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

///

///

DATED: July 9, 2019

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

LA2019501677
53494787.docx