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

In the Matter of the Accusation Against: **David T. Butler, M.D.** **Physician's and Surgeon's Certificate No. A 45891** **Respondent.**	**Case No. 800-2019-062935**

DECISION

The attached Stipulated Surrender of License and 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 June 30, 2021.

IT IS SO ORDERED June 23, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

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ROB BONTA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
THOMAS OSTLY
Deputy Attorney General
State Bar No. 209234
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3871
Attorneys for Complainant

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

In the Matter of the Accusation Against: **DAVID T. BUTLER, M.D.** **7201 Carlwood Drive** **Austin TX 78759** **Physician's and Surgeon's Certificate No. A 45891** Respondent.	Case No. 800-2019-062935 OAH No. 2012030241 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

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

2. DAVID T. BUTLER, M.D. (Respondent) is represented in this proceeding by attorney John D. Bishop, Esq., whose address is: 5000 Birch Street, Suite 7000 Newport Beach, CA 92660-8151.

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3. On or about March 27, 1989, the Board issued Physician's and Surgeon's Certificate No. A 45891 to DAVID T. BUTLER, 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. 800-2019-062935 and is in delinquent status, having expired on October 31, 2020.

JURISDICTION

4. Accusation No. 800-2019-062935 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 August 14, 2020. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2019-062935 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-062935. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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 understands that the charges and allegations in Accusation No. 800-2019-062935, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender 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 Surrender of License and 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 Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 45891, issued to Respondent DAVID T. BUTLER, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline

against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2019-062935 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney John D. Bishop, Esq.. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5/28/2021

DocuSigned by:
[signature]
DAVID T. BUTLER, M.D.
Respondent

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

DATED: 5/28/2021

DocuSigned by:
John Bishop
JOHN D. BISHOP, ESQ.
Attorney for Respondent

DocuSign Envelope ID: 5BCE3FFD-BC4E-4E5B-A2F5-0373C47C4A6E

ENDORSEMENT

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

DATED: May 28, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California JANE
ZACK SIMON
Supervising Deputy Attorney General

/s/ Thomas Ostly

THOMAS OSTLY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2019-062935

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
THOMAS OSTLY
Deputy Attorney General
State Bar No. 209234
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3871
Facsimile: (510) 622-2270
Email: Thomas.Ostly@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **David T. Butler, M.D.** **7201 Carlwood Drive** **Austin, TX 78759** **Physician's and Surgeon's Certificate No. A 45891,** Respondent.	Case No. 800-2019-062935 **A C C U S A T I O N**

PARTIES

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

2. On or about March 27, 1989, the Medical Board issued Physician's and Surgeon's Certificate Number A 45891 to David T. Butler, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2020, unless renewed.

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JURISDICTION

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

A 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.

B Section 2305 of the Code states:

The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

C Section 141 of the Code states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the

disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On October 2, 2019, the Disciplinary Panel (Panel) of the Texas Medical Board (Texas Board), issued an Order which made the findings of fact, including, but not limited to, Respondent had inappropriate sexual contact with multiple patients, divulged sensitive medical information of his patients, and while having inappropriate sexual interactions with patients, prescribed those same patients stimulants, narcotics and muscle relaxers, all with severe risks for misuse.

5. The Texas Board then made several Orders, including but not limited to,

A. Respondent shall not see, examine, treat, prescribe to, provide consultation for, or otherwise practice medicine on female patients, including telemedicine.

B. Respondent shall not see, examine, treat, prescribe to, provide consultation for, or otherwise practice medicine on male patients who are under the age of 18, including telemedicine.

C. Respondent shall surrender Respondent's Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate, and accomplish the cancellation of these registrations.

D. That Respondent shall not possess, administer, or prescribe controlled substances in Texas other than prescriptions written to him by a licensed provider for personal use.

E. That Respondent shall submit to and obtain an independent, multidisciplinary medical evaluation.

F. That Respondent shall submit to Monitoring of Continued Care and Treatment. Specifically, during any continued care and treatment, the Board shall monitor Respondent 's

compliance with treatment and rehabilitation, either directly through the treating provider or through an independent monitoring psychiatrist designated by the Executive Director.

6. A copy of the Order of Temporary Suspension issued by the Disciplinary Panel of the Texas Medical Board is attached as Exhibit A. A copy of the Agreed Order between Respondent and the Texas Medical Board is attached as Exhibit B.

7. Respondent's conduct and the action of the Texas Medical Board, as set forth in the preceding paragraphs, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the Code.

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 45891, issued to David T. Butler, M.D.;

2. Revoking, suspending or denying approval of David T. Butler, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering David T. Butler, 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: AUG 14 2020

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

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EXHIBIT A

LICENSE NO. K-4866

IN THE MATTER OF	BEFORE THE DISCIPLINARY
THE LICENSE OF	PANEL OF THE
DAVID TANKSLEY BUTLER, M.D.	TEXAS MEDICAL BOARD

ORDER OF TEMPORARY SUSPENSION
(WITHOUT NOTICE OF HEARING)

On October 2, 2019, came to be heard before the Disciplinary Panel (Panel) of the Texas Medical Board (Board), composed of Chair Sherif Zaafran, M.D., Manuel Quinones, M.D., and Robert Gracia, members of the Board duly in session, the matter of the Application for Temporary Suspension or Restriction (Without Notice of Hearing) of the license of David Tanksley Butler, M.D.(Respondent). Jerry Bergman represented Board staff.

FINDINGS OF FACT

1. Respondent is a physician whose specialty is family practice. Respondent's current practice address on file with the Board is 11940 Jollyville Road, Suite 115-South, Austin, TX 78759.

2. Patient 1 has filed several complaints against Respondent alleging inappropriate sexual contact and behavior; and inappropriate prescribing.

3. Prior to Respondent's Informal Settlement Conference, Board staff received audio recordings of Respondent from Patient 1. Board staff had the tapes transcribed and determined that during the audio recordings Respondent admitted to several violations of the Act.

4. Patient 1 was treated by Respondent from 2010 to 2018; and was Respondent's personal trainer from approximately 2011 to 2018.

5. During that time, on one occasion, Respondent inappropriately groped Patient 1's breast during an exam.

6. On several occasions Respondent displayed inappropriate sexual behavior and made inappropriate sexual comments towards Patient 1: including telling her he wanted to watch her urinate during her urinalysis: asking her to come to his office after hours; telling her to pay the "co-pay" insinuating she show him her breasts: and discussing inappropriate sexual contact he had

with other female patients.

7. Respondent's behavior is corroborated through text messages from 2017, to Patient 1, where Respondent made inappropriate sexual comments to Patient 1; including showing pictures of Patient 1 to another male; discussing other patients with Patient 1 to get her "motor running"; discussing paying Patient 1 stripper money or as an escort; spanking Patient 1; and showing Patient 1 nude pictures of other females.

8. At the same time that Respondent was sending sexually inappropriate text messages to Patient 1, Respondent was sending text messages to Patient 1 discussing refills on prescriptions of Norco, Adderall, Ambien and Soma.

9. Patient 1's medical and pharmacy records confirm that after she sent those text messages, she received prescriptions of Xanax, Norco (a narcotic), Adderall (a stimulant), Ambien (a controlled prescription medication for sleep), and Soma (a muscle relaxer), all with severe risks for misuse.

10. On Audio 1, Patient 1 confronted Respondent about inappropriately grabbing her breasts, Respondent replies that he would do it again.

11. On Audio 1, Respondent states that he inappropriately inserted three fingers into Patient 2's vagina during an annual exam in 2017. Respondent states that Patient 2 was 17 at the time.

12. On Audio 1, Respondent gives Patient 2's first name and states he saw her in his office recently on March 28, 2018.

13. Based on that information, Board staff subpoenaed medical records for Patient 2. Medical records confirmed Patient 2's name; that she had been a patient of Respondent since infancy; that Patient 2 was seen by Respondent on March 28, 2018; and that she was seen by Respondent for an annual exam in August 2017, when she was 17.

14. Patient 3 first saw Respondent on December 28, 2004, when she was 22 years old. Respondent treated her through at least June 1, 2018.

15. On Audio 4, Respondent states that Patient 3 came to his office for prescription refills. While there, Respondent took off Patient 3's top and bra, and "played with" her breasts.

16. On Audio 4, Respondent states that later that same day, Patient 3 masturbated while texting him.

17. Respondent told Patient 1 that he had sexual intercourse with Patient 3 at his office.

18. Respondent engaged in inappropriate sexual behavior/comments about Patient 3; including showing Patient 1 nude photos of Patient 3; discussing private medical information about Patient 3 with Patient 1; discussing sexually inappropriate behavior about Patient 3 with Patient 1.

19. At the same time that Respondent had an inappropriate sexual relationship with Patient 3, he also prescribed her Xanax, Ambien, Percocet, Phenergan with Codeine, Toradol, Demerol, Cymbalta, Wellbutrin, Promethazine, and other prescriptions.

20. In his response to allegations against him regarding Patient 3, Respondent admitted that his relationship inappropriately crossed professional physician-patient boundaries.

21. On Audio 4, Respondent states that while at his office, he engaged in oral sex with Patient 4.

22. Medical records, including Physician Monitoring Program (PMP) records, show that a patient-physician relationship did exist between Respondent and Patient 4.

23. At the same time that Respondent had inappropriate sexual contact with Patient 4, Respondent prescribed her Xanax, Phentermine, Hydrocodone, and Valium.

24. On Audio 4, Respondent states that Patient 5 masturbated in front of him.

25. Medical records, including Physician Monitoring Program (PMP) records, show that a patient-physician relationship did exist between Respondent and Patient 5.

26. At the same time that Respondent engaged in inappropriate sexual contact with Patient 5, Respondent prescribed her Oxycodone, Fentanyl, Hydrocodone, Xanax, Morphine, Tramadol, Carisoprodol, Ritalin, Valium, Nucynta, and Ambien.

27. On Audio 3, Respondent states that he has inappropriate pictures of Patient 6.

28. Respondent told Patient 1 that he had sexual intercourse with Patient 6.

29. Medical records, including Physician Monitoring Program (PMP) records, show that a patient-physician relationship did exist between Respondent and Patient 6.

30. At the same time that Respondent engaged in inappropriate sexual contact with Patient 6, Respondent prescribed her Xanax and Ambien.

31. Respondent told Patient 1 that he had sexual intercourse with Patient 7.

32. Medical records, including Physician Monitoring Program (PMP) records, show that a patient-physician relationship did exist between Respondent and Patient 7.

33. At the same time that Respondent engaged in inappropriate sexual contact with Patient 7, Respondent prescribed her Xanax and Promethazine-Codeine syrup.

34. On Audio 4, Respondent states that he "made out" with Patient 8.

35. Medical records, including Physician Monitoring Program (PMP) records, show that a patient-physician relationship did exist between Respondent and Patient 8.

36. At the same time that Respondent engaged in inappropriate sexual contact with Patient 8, Respondent prescribed her Tramadol and Clonazepam.

37. On October 23, 2013, Patient 9 filed a complaint with the Board against Respondent.

38. Patient 9's allegations against Respondent were similar to the incident involving Patient 2. Patient 9 alleged that Respondent inappropriately touched her breasts and rubbed her clitoris during a pap smear. The case was dismissed by the Board in 2014. The similarities between the 2013 case and these allegations show a pattern of inappropriate sexual contact with female patients by Respondent.

39. On Audio 3, Respondent discusses giving prescriptions to Patient 10, to give to his girlfriend for an STD, without her knowledge.

40. Respondent told Patient 1 that he prescribed medication to Patient 10 to treat a sexually transmitted disease, with the knowledge that Patient 10 was going to give the medication to a female without her knowing that she had a sexually transmitted disease.

41. Medical records, including Physician Monitoring Program (PMP) records, show that a patient-physician relationship did exist between Respondent and Patient 10.

42. Respondent treated Patient 11 from 2015, to 2018.

43. Respondent engaged in an inappropriate sexual relationship with Patient 11 during that time.

44. Patient 11 observed Respondent inappropriately give Toradol to Patient 3, 5 and 7, outside his place of business.

45. Evidence based on the above Findings of Fact, the Panel, including at least one physician licensed to practice medicine in this state, finds that Respondent is a continuing threat to the public welfare.

46. Based on the above Findings of Fact, the Panel finds that Respondent is a continuing threat to the public welfare which requires immediate effect of this Order of Temporary Suspension on the date rendered.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Panel concludes the following:

1. Section 164.059 of the Act authorizes the temporary suspension or restriction of a person's medical license upon a determination by a Disciplinary Panel that the person would, by the person's continuation in practice, constitute a continuing threat to the public welfare.

2. Section 164.059(c) of the Act authorizes the temporary suspension or restriction of a person's medical license without notice of hearing if (a) the Board immediately provides notice of the suspension or restriction to the license holder, and (b) a hearing on the temporary suspension or restriction before a disciplinary panel of the Board is scheduled for the earliest possible date after ten (10) days' notice of hearing.

3. Based on the evidence presented and the Findings of Fact set forth herein, the Disciplinary Panel finds that Respondent violated the following Sections of the Act:

a. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited by §164.052 of the Act.

b. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, as further defined by Board Rules 190.8(2)(E), engaging in sexual contact with a patient; 190.8(2)(F), engaging in sexually inappropriate behavior or comments directed towards a patient; 190.8(2)(G), becoming financially or personally involved with a patient in an inappropriate manner; 190.8(2)(K), behaving in an abusive or assaultive manner towards a patient or patient's family that interferes with patient care; 190.8(2)(N), failure to maintain the confidentiality of a patient; 190.8(2)(P), behaving in a disruptive manner towards licensees, hospital personnel, other medical personnel, patients, family members or others that interferes or could be reasonably expected to adversely impact the quality of care rendered to a patient; and 190.8(2)(R), commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction: (i) any felony, (ii) any offense in which assault or battery, or the attempt of either is an essential element, and (v) any misdemeanor involving moral turpitude.

4. Based on the evidence presented and the above Findings of Fact and Conclusions of Law, the Panel determines that Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Panel ORDERS that:

1. Respondent's Texas Medical License No. K-4866 is hereby TEMPORARILY SUSPENDED.

2. This Order of Temporary Suspension (WITHOUT NOTICE OF HEARING) is effective on the date rendered.

3. Notice of this Order of Temporary Suspension (WITHOUT NOTICE OF HEARING) shall be given immediately to Respondent.

4. A hearing on the Application for Temporary Suspension (WITH NOTICE OF HEARING) will hereby be scheduled before a Disciplinary Panel of the Board at a date to be determined as soon as practicable, at the offices of the Board, unless such hearing is specifically waived by Respondent.

5. This Order of Temporary Suspension (WITHOUT NOTICE OF HEARING) shall remain in effect until such time as a hearing on the Application for Temporary Suspension (WITH NOTICE OF HEARING) is conducted and a Disciplinary Panel enters an order or until superseded by a subsequent order of the Board.

Signed and entered this 2nd, day of October, 2019.

Sherif Zaafran, M.D., Chair
Disciplinary Panel
Texas Medical Board

STATE OF TEXAS
COUNTY OF TRAVIS

I, Christie Rodgers, certify that I am an official assistant custodian of records for the Texas Medical Board and that this is a true and correct Copy of the original, as it appears on the file in this office.

Witness my official hand and seal of the BOARD.

This 7th, Day of January, 2020

Christie Rodgers
Assistant Custodian of Records

EXHIBIT B

LICENSE NO. K-4866

IN THE MATTER OF THE LICENSE OF DAVID TANKSLEY BUTLER, M.D.	BEFORE THE TEXAS MEDICAL BOARD

AGREED ORDER

On the 6 day of December, 2019, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of David Tanksley Butler, M.D. (Respondent).

On November 15, 2019, Respondent appeared in person, with counsels, Franklin Hopkins and David Little, at an Informal Show Compliance Proceeding and Settlement Conference (ISC) in response to a letter of invitation from the staff of the Board. The Board's representatives were George De Loach, D.O., a member of the Board, and Annette Raggette, a member of a District Review Committee (Panel). Jerry Bergman represented Board staff.

BOARD CHARGES

Board staff charged that Respondent had inappropriate relationships with female patients, that he inappropriately prescribed to those patients, that he failed to meet the standard of care in treating several patients, that he failed to adhere to the established guidelines for the treatment of pain; and that he failed to maintain the confidentiality of patients.

BOARD HISTORY

Respondent has previously been the subject of disciplinary action by the Board.

On October 2, 2019, an Order of Temporary Suspension (without notice) was entered against Respondent after a Disciplinary Panel of the Board determined that his continuation in the practice of medicine would pose a continuing threat to the public welfare, based on Respondent's inappropriate sexual contact/behavior and inappropriate prescribing.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings and Conclusions of Law and enters this Agreed Order.

FINDINGS

The Board finds the following:

1. General Findings:
   a. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the Act) or the Rules of the Board.
   b. Respondent currently holds Texas Medical License No. K-4866. Respondent was originally issued this license to practice medicine in Texas on April 4, 1998.
   c. Respondent is primarily engaged in family practice; Respondent is board certified by the American Board of Family Medicine; a member of the American Board of Medical Specialties.
   d. Respondent is 62 years of age.
2. Specific Panel Findings:
   a. Respondent displayed unprofessional conduct by engaging in inappropriate personal relationships with several female patients. Respondent made inappropriate sexual remarks to at least one patient, and made remarks about other patients to one patient, thereby violating professional boundaries.
   b. Respondent failed to maintain the confidentiality of several female patients by sharing confidential information about them with another patient.
   c. Respondent prescribed medications, including controlled substances, to patients with whom he was personally involved.
   d. Respondent non-therapeutically prescribed controlled substances and/or dangerous drugs to several patients without medical justification.
   e. Respondent failed to properly evaluate, diagnose and treat several patients under his care, including improperly prescribing controlled substances.
   f. Respondent failed to implement pain agreements, conduct periodic reviews, and to properly monitor pain patients.
   g. Respondent failed to maintain adequate medical records during his treatment of several patients.

3. Mitigating Factors:

In determining the appropriate sanctions in this matter, the Panel considered the following mitigating factors:

a. Respondent has taken subsequent remedial measures.

b. Respondent has taken the Vanderbilt Prescribing Controlled Substances course and the Professional Boundaries, Inc., (PBI) Prescribing course.

c. Respondent was forthright, accountable and showed insight into the violations.

d. Respondent has changed his practice habits and dismissed several patients that had personal relationships with him.

e. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies the information given above. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under Section 164.052 of the Act.

3. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on violation of Board Rules 165.1(a), failure to maintain adequate medical records and 170.3 failure to adhere to those established guidelines and requirements for the treatment of pain.

4. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent for failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rules 190.8(1)(A), failure to treat patient according to the generally accepted standard of care; and 190.8(1)(C), failure to use proper diligence in one's professional practice.

5. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based upon Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public, as further defined by Board Rules 190.8(2)(E), engaging in sexual contact with a patient; 190.8(2)(F), engaging in sexually inappropriate behavior or comments directed towards a patient. 190.8(2)(G), becoming financially or personally involved with a patient in an inappropriate manner; and 190.8(2)(N), failing to maintain the confidentiality of a patient.

6. Section 164.053(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing, administering, or dispensing in a manner inconsistent with public health and welfare, dangerous drugs as defined by Chapter 483, Health and Safety Code; or controlled substances scheduled in Chapter 481 Health and Safety Code; or controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. § 801 et seq.).

7. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule.

8. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

ORDER

Based on the above Findings and Conclusions of Law, the Board ORDERS that the suspension of Respondent's license is hereby lifted, and Respondent shall be subject to the following terms and conditions:

1. Respondent shall not see, examine, treat, prescribe to, provide consultation for, or otherwise practice medicine on female patients, including telemedicine.

2. Respondent shall not see, examine, treat, prescribe to, provide consultation for, or otherwise practice medicine on male patients who are under the age of 18, including telemedicine.

3. If Respondent has not already surrendered Respondent's controlled substance certificates or otherwise had such certificates cancelled, Respondent shall surrender within seven days of the entry of this Order, Respondent's Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate, and shall promptly sign the appropriate DEA

forms to accomplish the cancellation of these registrations. Respondent shall provide to the Director of Compliance objective evidence of surrender or cancellation within seven days after the date of surrender.

Respondent shall not reregister or otherwise obtain Controlled Substances Registrations until Respondent has received written authorization from the Board. Authority to register for Controlled Substances Registration Certificates may be granted only after Respondent makes written petition and a personal appearance before the Board, a committee of the Board, or authorized Board representatives. The granting of such authority is discretionary with the Board and shall not control any decision by DEA in regard to granting or denying any application by Respondent for the return of controlled substance registrations."

4. Respondent shall not possess, administer, or prescribe controlled substances in Texas other than prescriptions written to him by a licensed provider for personal use.

5. **Independent Medical Evaluation**: Upon entry of this Order, the Executive Director of the Board will designate a physician who is board certified in psychiatry to serve as the Board's evaluating psychiatrist. Respondent shall submit to and obtain an independent, multidisciplinary medical evaluation.

(a) The independent medical evaluation shall be conducted as directed by the Board, including, at a minimum:

(1) Social history and background information;

(2) History of present illness;

(3) Mental status exam;

(4) Review of records and other pertinent information;

(5) Current DSM multiaxial diagnosis,

(6) Neurological examination,

(7) Psychological testing performed by individual qualified to administer and interpret such testing,

(8) A physical examination if deemed appropriate by the treating psychiatrist. This may be referred to a qualified physician; and

(9) Recommendations regarding continued care and treatment based on the above.

(b) The Compliance Division of the Board shall furnish a copy of this Order, all relevant material from the Board's investigative file, and any other relevant information, to the evaluating psychiatrist and any other evaluating provider, who shall make a full report to the Compliance Division of the Board regarding the evaluating psychiatrist's evaluation of Respondent and recommendations.

(c) Respondent shall pay all fees charged by the evaluating psychiatrist and all other providers related to this Ordering paragraph.

(d) Respondent shall follow all recommendations made by the evaluating psychiatrist and other providers regarding continued care and treatment.

(e) Respondent's failure to cooperate with the evaluating psychiatrist or failure to follow the evaluating psychiatrist's recommendations shall constitute a violation of this Order.

(f) If the evaluating psychiatrist recommends continued care and treatment, the Executive Director shall notify Respondent to submit, within 30 days, letters from up to three providers who agree to serve as Respondent's approved treating provider.

(1) The letters from proposed treating provider(s) shall state that they:

a. have been provided a copy of this Order;

b. agree to provide treatment to Respondent; and

c. agree to provide periodic reports regarding Respondent's compliance with treatment and rehabilitation to (a) the Compliance Division of the Board or (b) an independent monitoring psychiatrist.

(2) A proposed treating provider may not be approved unless the proposed provider agrees to provide periodic reports either to the Compliance Division of the Board or to an independent monitoring psychiatrist.

(3) The Executive Director may reject all of the proposed providers and require the submission of additional letters, or approve one or more to be the approved provider.

(4) Respondent shall begin the recommended care and treatment within 30 days after notification of approval of the treating provider.

(5) Respondent shall pay all fees charged by the treating provider.

(6) Respondent shall follow all recommendations made by the treating provider regarding continued care and treatment.

(7) Board staff may furnish to the treating provider any Board information that it determines, in its discretion, may be helpful or required for the treatment of Respondent.

(8) The treating provider shall provide periodic written reports no less than quarterly, on March 15, June 15, September 15, and December 15 of each year, during Respondent's treatment, either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist. Periodic reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis. The Board or an independent monitoring psychiatrist may request clarification of periodic reports and may request additional reports.

(9) The treating provider may require Respondent to participate in alcohol and/or drug screens and shall immediately report any positive results either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist.

(10) The treating provider shall immediately report, either directly to the Compliance Division of the Board or to an independent monitoring psychiatrist, any unilateral withdrawal from treatment by Respondent.

(11) Respondent shall execute any and all releases for medical records and authorizations necessary to effectuate the provisions of this Order.

(12) Respondent's failure to cooperate with the treating provider or failure to follow the treating provider's recommendations shall constitute a violation of this Order.

6. **Monitoring Continued Care and Treatment:** During any continued care and treatment, the Board shall monitor Respondent's compliance with treatment and rehabilitation, either directly through the treating provider or through an independent monitoring psychiatrist designated by the Executive Director.

(a) If the approved treating provider agrees to provide reports directly to the Compliance Division of the Board, with the consent of Respondent, the Executive

Director may authorize a treating psychiatrist to serve in the dual capacity as treating psychiatrist for Respondent and monitoring psychiatrist for the Board.

(b) If the approved treating psychiatrist does not agree to provide periodic reports to the Compliance Division of the Board, or if Respondent does not consent, or if the Executive Director requires an independent monitoring psychiatrist, the Executive Director shall designate a physician who is board certified in psychiatry to serve as the Board's independent monitoring psychiatrist. Respondent shall pay all fees charged by an independent monitoring psychiatrist.

(c) An independent monitoring psychiatrist may require Respondent to present for a personal interview up to twice each year during treatment.

(d) Respondent shall authorize the treating psychiatrist to provide information necessary for monitoring by the Board, either directly to the Compliance Division of the Board or through an independent monitoring psychiatrist. The information shall be limited to the minimum information necessary to ensure adequate assessment of Respondent's compliance with treatment, rehabilitation, and compliance with the terms of this Order.

(e) An independent monitoring psychiatrist shall provide periodic written reports to the Compliance Division of the Board no less than semi annually, on March 15 and September 15 of each year, during Respondent's treatment. The monitoring reports shall include: (a) current diagnosis; (b) treatment regimen; (c) treatment compliance; (d) follow-up recommendations; and (e) prognosis.

(f) Board staff may furnish to the monitoring psychiatrist any Board information that it determines, in its discretion, may be helpful or required for the effective monitoring of Respondent's compliance with treatment, rehabilitation, and compliance with this Order.

(g) Respondent's failure to cooperate with the monitoring psychiatrist shall constitute a violation of this Order.

7. Respondent shall be subject to the following terms and conditions for four consecutive monitoring cycles (defined below). Respondent's practice shall be monitored by a physician (monitor), in accordance with §164.001(b)(7) of the Act. The Compliance Division of the Board shall designate the monitor and may change the monitor at any time for any reason.

The monitor shall have expertise in a similar specialty area as Respondent. The Compliance Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records (selected records). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order (reporting period). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

b. The monitor shall perform the following duties:

   a. Personally review the selected records;

   b. Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent's practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and

   c. Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent's practice.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division. If the chart monitor recommends that Respondent restrict or suspend his or her practice of medicine, Respondent shall be required to personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. Such appearance shall be for the purpose of consideration of the chart monitor's recommendations of restriction or suspension and held in accordance with 22 TEX. ADMIN. CODE, §187.44. Based upon the panel's findings and recommendations, the Board may modify this Order so that Respondent's practice

is restricted or suspended, in accordance with the chart monitor's recommendations, or take any other action that may be appropriate to resolve the issues presented.

d. The monitor may recommend that Respondent complete a competency evaluation. A monitor's recommendation for a competency evaluation must be reviewed by the Chair of the Disciplinary Process and Review Committee (DPRC) for the purpose of making a determination of whether a competency evaluation is warranted. The Chair may approve or deny the monitor's recommendation. If the Chair approves the recommended competency evaluation, then the following terms shall apply and shall be a requirement of this Order:

1. Within 10 calendar days of being notified by the Compliance Division of the Board that the Chair has approved the monitor's recommendation, Respondent must contact a program approved by the Board and schedule an assessment of at least two days in length to determine Respondent's competence and ability to practice medicine.
2. Respondent shall authorize the approved program to send a written report regarding Respondent's performance and results of the competency evaluation directly to the compliance officer.
3. Upon completion of the competency evaluation, and based upon its results, Respondent must personally appear before a panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least 10 calendar days before the requested appearance date. The panel may make recommendations for appropriate action, including that Respondent follow all the program recommendations, comply with other necessary re-training or re-education measures, and may impose any other restrictions or suspension of Respondent's practice. Section 187.44 of this title (relating to Probationer Show Compliance Proceedings) applies to such appearances.
4. The Board may temporarily restrict or suspend Respondent's license based upon the results of the competency evaluation or Respondent's failure to follow any and all requirements set forth in subsection (c) of this section.

Chapter 187, Subchapter F of this title (relating to Temporary Suspension and Restriction Proceedings) applies to such proceedings.

e. The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

f. A "monitoring cycle" begins when the Compliance Division selects patient records for review, and concludes when Respondent receives the monitor's report for that group of records and has made payment for the costs of that monitoring cycle.

8. At all times while Respondent is under the terms of this Order, Respondent shall give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health care entities in Texas where Respondent has privileges, has pending an application for privileges, applies for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance Division of the Board following entry of this Order, Respondent shall provide to the Compliance Division of the Board documentation, including proof of delivery that the Order was delivered to all such facilities.

9. Pursuant to Board Rule 189.15, the time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) this Order is stayed or enjoined by Court Order; or (c) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine and such cessation in practice is NOT due to a suspension of Respondent's license. Respondent shall immediately notify the Board in writing in the event that Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days. Upon Respondent's return to active practice or return to Texas, Respondent shall notify the Board in writing. Upon return to Texas or active practice, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling. Tolling shall be in accordance with Board Rule 189.15.

10. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

11. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

12. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that 10 days notice of a Respondent Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 45-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

13. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

14. This Agreed Order constitutes a restriction on Respondent's license and Respondent shall not be permitted to supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or supervise a surgical assistant.

15. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

(SIGNATURE PAGES FOLLOW)

I, DAVID TANKSLEY BUTLER, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 19 NOV, 2019.

DAVID TANKSLEY BUTLER, M.D.
Respondent

STATE OF TEXAS §
§
COUNTY OF BASTROP §

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 19th day of November, 2019.

KATHARYN SUZANNE BURKHALTER
Notary Public, State of Texas
Comm. Expires 02-09-2023
Notary ID 130110510

Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 6 day of December, 2019.

Sherif Z. Zaafran, M.D., President
Texas Medical Board

STATE OF TEXAS
COUNTY OF TRAVIS

I, Christie Rodriguez, certify that I am an official assistant custodian of records for the Texas Medical Board and that this is a true and correct Copy of the original, as it appears on the file in this office.

Witness my official hand and seal of the BOARD.

This 7th, Day of January, 2020

Assistant Custodian of Records