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

In the Matter of the Accusation and Petition to Revoke Probation Against:	)	
	)	
	)	
Richard Berton Mantell, M.D.	)	MBC File # 800-2017-032406
	)	
	)	
Physician's & Surgeon's Certificate No. A 39992	)	
	)	
	)	
Respondent.	)	

ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "EFFECTIVE DATE" PORTION OF DECISION

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "effective date" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the effective date will conform to the Board's issued effective date.

IT IS HEREBY ORDERED that the effective date contained on the Decision Order Page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "July 28, 2017".

June 30, 2017

Michelle Anne Bholat MD

Michelle Anne Bholat,
Chair
Panel B

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

In the Matter of the Accusation and Petition to Revoke Probation Against:	)	
RICHARD BERTON MANTELL, M.D.	)	Case No. 800-2017-032406
Physician's and Surgeon's Certificate No. A39992	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 5, 2017.

IT IS SO ORDERED June 28, 2017.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
CHRISTINE A. RHEE
Deputy Attorney General
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Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **RICHARD BERTON MANTELL, M.D.** **34022 Blue Lantern Street** **Dana Point, CA 92629-2501** **Physician's and Surgeon's Certificate No. A39992,** Respondent.	Case No. 800-2017-032406 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board). She brought this action solely in her official capacity as such, and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee, Deputy Attorney General.

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///

2. Richard Berton Mantell, M.D. (Respondent) is represented in this proceeding by attorney Peter Osinoff, Esq., whose address is 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071-1562.

3. On or about June 30, 1983, the Board issued Physician's and Surgeon's Certificate No. A39992 to Respondent. The Physician's and Surgeon's Certificate No. A39992 was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 800-2017-032406, and will expire on May 31, 2019, unless renewed.

4. In a previous disciplinary action entitled, *In the Matter of the Accusation Against Richard Berton Mantell, M.D.*, Case No. 09-2012-223599, the Board issued a Decision and Order, effective July 15, 2016, in which Respondent's Physician's and Surgeon's Certificate No. A39992 was revoked, revocation stayed, and placed on probation for five (5) years with certain terms and conditions and 15 days actual suspension. That decision is now final and is incorporated by reference as if fully set forth herein.

JURISDICTION

5. On June 7, 2017, Accusation and Petition to Revoke Probation No. 800-2017-032406 was filed before the Board and is currently pending against Respondent. A true and correct copy of Accusation and Petition to Revoke Probation No. 800-2017-032406 and all other statutorily required documents were properly served on Respondent on June 7, 2017. A true and correct copy of Accusation and Petition to Revoke Probation No. 800-2017-032406 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENTS AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation and Petition to Revoke Probation No. 800-2017-032406. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and 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 and Petition to Revoke Probation; 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 and Petition to Revoke Probation No. 800-2017-032406, agrees that cause exists for action under Business and Professions Code section 822, and hereby surrenders his Physician's and Surgeon's Certificate No. A39992 for the Board's formal acceptance.

10. Respondent understands that by signing this stipulation, he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate No. A39992 without notice to, or opportunity to be heard by, Respondent.

CONTINGENCY

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

12. Respondent understands that, by signing this stipulation, he enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate No. A39992 without further notice to, or opportunity to be heard by, Respondent.

13. This Stipulated Surrender of License and Disciplinary Order shall be subject to the approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and

Disciplinary Order after receiving it. The parties further agree that Respondent shall be given, at minimum, 30 calendar days from the signing of this Stipulated Surrender of License and Disciplinary Order to the effective date of the Disciplinary Order in order to close his private practice. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

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

ADDITIONAL PROVISIONS

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

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

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A39992, issued to Respondent Richard Berton Mantell, M.D., is surrendered and accepted by the Medical Board of California.

1. This stipulation shall become a part of Respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a physician and surgeon in the State of 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. As required by Business and Professions Code section 823, reinstatement of Respondent's Physician's and Surgeon's Certificate No. A39992 shall be governed by the procedures in Article 12.5 of Chapter 1 of Division 2 of the Business and Professions Code.

5. 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 license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2017-032406 shall be deemed to be true, correct and fully admitted by Respondent when the Board determines whether to grant or deny the petition.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of

California, all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2017-032406 shall be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read and fully understand this Stipulated Surrender of License and Disicplinary Order. I have fully discussed it with my attorney, Peter Osinoff, Esq., and I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A39992. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: June 12, 2017

RICHARD BERTON MANTELL, M.D.
Respondent

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

DATED: 6/12/17

PETER OSINOFF, ESQ.
Attorney for Respondent

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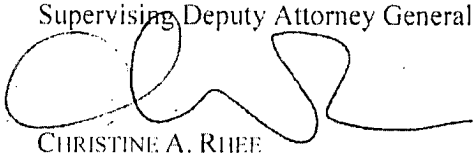
ENDORSEMENT

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: 6/12/17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General



CHRISTINE A. RHEE
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation and Petition to Revoke Probation No. 800-2017-032406

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 7 20 17
BY _____ ANALYST

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **RICHARD BERTON MANTELL, M.D.** **34022 Blue Lantern Street** **Dana Point, CA 92629-2501** **Physician's and Surgeon's Certificate No. A39992,** Respondent.	Case No. 800-2017-032406 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about June 30, 1983, the Board issued Physician's and Surgeon's Certificate No. A39992 to Richard Berton Mantell, M.D. (Respondent). The Physician's and Surgeon's Certificate No. A39992 was in full force and effect at all times relevant to the charges brought herein, and will expire on May 31, 2019, unless renewed.

DISCIPLINARY HISTORY

3. In a previous disciplinary action entitled, *In the Matter of the Accusation Against Richard Berton Mantell, M.D.*, Case No. 09-2012-223599, the Board issued a Decision and Order, effective July 15, 2016, in which Respondent's Physician's and Surgeon's Certificate No. A39992 was revoked, revocation stayed, and placed on probation for five (5) years with certain terms and conditions and 15 days actual suspension. That decision is now final and is incorporated by reference as if fully set forth herein. A true and correct copy of that Decision and Order is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

JURISDICTION

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

5. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

6. Section 822 of the Code states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

7. Section 2227 of the Code states, in pertinent part:

"(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.

"..."

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SECTION 822 CAUSE FOR ACTION

(Mental Illness Affecting Competency)

8. Respondent's Physician's and Surgeon's Certificate No. A39992 is subject to action under section 822 of the Code in that his ability to practice medicine safely is impaired because he has cognitive impairments affecting competency, as more particularly alleged hereinafter:

9. Respondent is a sixty-three year old physician and surgeon with a private practice specializing in weight management.

10. In a previous disciplinary action entitled, *In the Matter of the Accusation Against Richard Berton Mantell, M.D.*, Case No. 09-2012-223599, the Board issued a Decision and Order, effective July 15, 2016, in which Respondent's Physician's and Surgeon's Certificate No. A39992 was revoked, revocation stayed, and placed on probation for five (5) years with certain terms and conditions and 15 days actual suspension. Included as a condition of probation was a requirement that Respondent complete a clinical training or educational program equivalent to the Physician Assessment Clinical Education Program (PACE) at the University of California - San Diego School of Medicine. Respondent was also required to comply with all of the clinical education program's recommendations.

11. In compliance with the Board's Decision and Order in Case No. 09-2012-223599, Respondent participated in Phase I of the PACE Program on or about October 11, 2016 through October 12, 2016. The PACE Program recommended that Respondent undergo a neuropsychological fitness for duty evaluation upon completion of the two days of intensive testing and evaluation.

12. In further compliance with the Board's Decision and Order in Case No. 09-2012-223599, to comply with the PACE Program and its recommendations, Respondent participated in a fitness for duty neuropsychological examination that was supervised and reviewed by D.M.S., Psy.D., ABPP-CN (Dr. S.) on or about February 14, 2017. This comprehensive evaluation, which consisted of a clinical interview, review of legal records, and neuropsychological testing, revealed that Respondent had several deficiencies, including, but not limited to, the following:

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(a) Respondent experienced significant decline in the areas of perceptual reasoning, processing speed, and overall IQ.

(b) Respondent scored in the mildly to moderately-impaired range when compared to his demographic group (based upon educational level, gender, and ethnicity) in intellectual functioning, motor functioning, visuospatial/organizational functioning, attention and processing speed, language, memory, executive functioning, perceptual reasoning and mental spatial organization. Respondent's test results demonstrated severe impairment regarding perceptual reasoning and mental spatial organization.

(c) Respondent's deficits in visuospatial/perceptive processing could not be explained by normal age-related decline.

13. Upon completion of the evaluation, on or about February 21, 2017, Dr. S. reported her diagnostic impressions of Respondent to the Board and concluded that Respondent's neuropsychological impairments precluded him from being able to safely practice medicine.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Successfully Complete Clinical Training Program)

14. At all times after the effective date of Respondent's probation in Case No. 09-2012-223599, Condition 8 stated:

"8. CLINICAL TRAINING PROGRAM. Within sixty (60) calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (Program). Respondent shall successfully complete the Program not later than six (6) months after respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

"The Program shall consist of a Comprehensive Assessment program comprised of a two (2) day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice in which respondent was alleged

to be deficient, and at minimum, a forty (40) hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

"Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

"At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. Determination as to whether respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

"If respondent fails to enroll, participate in, or successfully complete the clinical training program 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. The respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical training program have been completed. If the respondent did not successfully complete the clinical training program, the respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period."

15. At all times after the effective date of Respondent's probation in Case No. 09-2012-223599, Condition 18 stated:

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

16. Respondent's probation in Case No. 09-2012-223599, is subject to revocation because he failed to successfully complete Probation Condition 8, as more particularly alleged in paragraphs 9 through 13, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

PRAYER

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

1. Revoking probation and carrying out the discipline that was stayed in Case No. 09-2012-223599, thereby revoking Physician's and Surgeon's Certificate No. A39992, issued to Respondent Richard Berton Mantell, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A39992, issued to Respondent Richard Berton Mantell, M.D.;

3. Revoking, suspending or denying approval of Respondent Richard Berton Mantell, M.D.'s authority to supervise physician assistants pursuant to section 3527 of the Code, and advance nurse practitioners;

4. Ordering Respondent Richard Berton Mantell, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: June 7, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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EXHIBIT A

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

In the Matter of the Accusation Against:	)	
RICHARD BERTON MANTELL, M.D.	)	Case No. 09-2012-223599
Physician's and Surgeon's Certificate No. A 39992	)	
Respondent	)	

ORDER CORRECTING CLERICAL ERROR IN "CASE NUMBER" ON ORDER PAGE

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "case number" on the Order page of the Decision in the above-entitled matter and that such clerical error should be corrected so that the case number is correct.

IT IS HEREBY ORDERED that the case number on the Order page in the above-entitled matter be and hereby amended and corrected nunc pro tunc as of the date of entry, to read as follows.

Case No. 09-2012-223599

IT IS SO ORDERED: June 17, 2016.

MEDICAL BOARD OF CALIFORNIA

Howard Krauss, M.D., Chair
Panel B

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

In the Matter of the Accusation Against:	)	
RICHARD BERTON MANTELL, M.D.	)	Case No. 09-2012-223559
Physician's and Surgeon's Certificate No. A 39992	)	
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 July 15, 2016.

IT IS SO ORDERED: June 16, 2016.

MEDICAL BOARD OF CALIFORNIA

Howard Krauss, M.D., Chair
Panel B

KAMALA D. HARRIS
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
JOSEPH F. MCKENNA III
Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **RICHARD BERTON MANTELL, M.D.** **34022 Blue Lantern Street** **Dana Point, California 92629** **Physician's and Surgeon's Certificate No. A39992** Respondent.	Case No. 09-2012-223599 OAH No. 2015-080494 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Joseph F. McKenna III, Deputy Attorney General.

2. Respondent Richard Berton Mantell, M.D., is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: 3699 Wilshire Blvd., 10th Floor, Los Angeles, California, 90010.

3. On June 30, 1983, the Medical Board of California issued Physician's and Surgeon's Certificate No. A39992 to Richard Berton Mantell, 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. 09-2012-223599, and will expire on May 31, 2017, unless renewed.

JURISDICTION

4. On May 14, 2015, Accusation No. 09-2012-223599 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against respondent. On May 14, 2015, a true and correct copy of Accusation No. 09-2012-223599 and all other statutorily required documents were properly served on respondent by certified mail at his address of record on file with the Board which was: 34022 Blue Lantern Street, Dana Point, California, 92629. Respondent timely filed his Notice of Defense contesting the Accusation on May 26, 2015. A true and correct copy of Accusation No. 09-2012-223599 is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 09-2012-223599. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in Accusation No. 09-2012-223599; the right to be represented by counsel at his own expense; 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, having been fully advised of same by his attorney of record, Peter R. Osinoff, Esq.

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

CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 09-2012-223599 and that he has thereby subjected his Physician's and Surgeon's Certificate No. A39992 to disciplinary action.

9. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 09-2012-223599 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding, or any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

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

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the

exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

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

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

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A39992 issued to respondent Richard Berton Mantell, M.D., is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions.

1. ACTUAL SUSPENSION. As part of probation, respondent is suspended from the practice of medicine for fifteen (15) days beginning the sixteenth (16th) day after the effective date of this decision.

2. CONTROLLED SUBSTANCES – PARTIAL RESTRICTION. Respondent shall immediately surrender his current Drug Enforcement Administration (DEA) permit to the DEA for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this Disciplinary Order. Under this Disciplinary Order, respondent is only authorized to order, prescribe, dispense, administer, furnish or possess controlled substances listed in Schedules III, IV and V of the Act. Within fifteen (15) calendar days after the effective date of this Decision, respondent shall submit proof that he has surrendered his DEA permit to the Drug Enforcement Administration for cancellation and re-issuance. Within fifteen (15) calendar days after the effective date of issuance of a new DEA permit, respondent shall submit a true copy of the permit to the Board or its designee.

3. CONTROLLED SUBSTANCES – MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection

and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

4. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

5. PRESCRIBING PRACTICES COURSE. Within sixty (60) calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program 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 prescribing practices course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in Accusation No. 09-2012-223599, 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.

6. 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 equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program 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 Accusation No. 09-2012-223599, 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.

7. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. 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 Accusation No. 09-2012-223599, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

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

8. CLINICAL TRAINING PROGRAM. Within sixty (60) calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California – San Diego School of Medicine (Program). Respondent shall successfully complete the Program not later than six (6) months after respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two (2) day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice in which respondent was alleged to be deficient, and at minimum, a forty (40) hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the

scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. Determination as to whether respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

If respondent fails to enroll, participate in, or successfully complete the clinical training program 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. The respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical training program have been completed. If the respondent did not successfully complete the clinical training program, the respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

9. MONITORING – PRACTICE. Within thirty (30) calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a billing monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision, Stipulated Settlement and Disciplinary Order, Accusation No. 09-2012-223599, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of the Decision, Stipulated

Settlement and Disciplinary Order, Accusation No. 09-2012-223599, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision, Stipulated Settlement and Disciplinary Order, and Accusation No. 09-2012-223599, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within sixty (60) calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If respondent fails to obtain approval of a monitor within sixty (60) calendar days of the effective date of this Decision, 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 cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine, and whether respondent is practicing medicine safely. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within ten (10) calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, 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 cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

10. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Stipulated Decision and Disciplinary Order and Accusation No. 09-2012-223599 to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

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

11. SUPERVISION OF PHYSICIAN ASSISTANTS AND/OR NURSE PRACTITIONERS. During probation, respondent is prohibited from supervising physician assistants and/or nurse practitioners.

12. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

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

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

14. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

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

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

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

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

In the event respondent's period of non-practice while on probation exceeds eighteen (18) calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

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

18. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke

Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A39992. 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: May 12th, 2016 Richard Berton Mantell MD

RICHARD BERTON MANTELL, M.D.
Respondent

I have read and fully discussed with respondent Richard Berton Mantell, 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: 5/10/16

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: May 18, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 09-2012-223599

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Attorney General of California
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 14 20 15
BY _____ ANALYST

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

In the Matter of the Accusation Against: RICHARD BERTON MANTELL, M.D. 34022 Blue Lantern Street Dana Point, CA 92629-2501 Physician's and Surgeon's Certificate No. A39992, Respondent.	Case No. 09-2012-223599 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, and not otherwise.

2. On or about June 30, 1983, the Medical Board of California issued Physician's and Surgeon's Certificate Number A39992 to Richard Berton Mantell, M.D. (respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought herein and will expire on May 31, 2017, unless renewed.

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, 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 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded which may include a requirement that the licensee complete relevant educational courses, or have such other action taken in relation to discipline as the Board deems proper.

5. 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."

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6. 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, or 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.

"(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.

"..."

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

8. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

9. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in

Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"..."

10. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine ... which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

11. 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."

12. 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."

13. Section 3501 of the Code states:

"(1) 'Board' means the Physician Assistant Board.

"...

"(4) 'Physician assistant' means a person who meets the requirements of this chapter and is licensed by the board.

"(5) 'Supervising physician' means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

"(6) 'Supervision' means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a

physician assistant.

"(7) 'Regulations' means the rules and regulations as set forth in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

"...

"(10) 'Delegation of services agreement' means the writing that delegates to a physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.

"(11) 'Other specified medical services' means tests or examinations performed or ordered by a physician assistant practicing in compliance with this chapter or regulations of the Medical Board of California promulgated under this chapter.

"(b) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations adopted under this chapter."

14. Section 3502 of the Code states:

"(a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations adopted under this chapter when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant.

"...

"The supervising physician and surgeon shall be physically available to the physician assistant for consultation when such assistance is rendered. ...

"(c)(1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the physician

assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:

"(A) A protocol governing diagnosis and management shall, at a minimum, include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be provided to the patient.

"(B) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow up care.

"(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.

"(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.

"(2) The supervising physician and surgeon shall review, countersign, and date a sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant. The physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

"(3) Notwithstanding any other provision of law, the Medical Board of California or board may establish other alternative mechanisms for the adequate supervision of the physician assistant.

"..."

15. Section 3502.1 of the Code states:

"(a) In addition to the services authorized in the regulations adopted by the

Medical Board of California, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

"(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

"(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

"(b) 'Drug order,' for purposes of this section, means an order for medication that is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to 'prescription' in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their

supervising physicians and surgeons, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

"(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician and surgeon before it is filled or carried out.

"(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

"(2) A physician assistant may not administer, provide, or issue a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or

issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.

"(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

"(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and telephone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant and shall otherwise comply with the provisions of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, the requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances registration number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

"(e) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

"(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the

United States Drug Enforcement Administration (DEA).

"(g) The board shall consult with the Medical Board of California and report during its sunset review required by Division 1.2 (commencing with Section 473) the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient."

16. Section 2069 of the Code, states:

"(a)(1) Notwithstanding any other law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon ... A medical assistant may also perform all these tasks and services upon the specific authorization of a physician assistant ...

"(2) The supervising physician and surgeon may, at his or her discretion, in consultation with the ... physician assistant, provide written instructions to be followed by a medical assistant in the performance of tasks or supportive services. These written instructions may provide that the supervisory function for the medical assistant for these tasks or supportive services may be delegated to the ... physician assistant within the standardized procedures or protocol, and that tasks may be performed when the supervising physician and surgeon is not onsite, if either of the following apply:

"...

"(B) The physician assistant is functioning pursuant to regulated services defined in Section 3502, including instructions for specific authorizations, and is approved to do so by the supervising physician and surgeon.

"(b) As used in this section and Sections 2070 and 2071, the following definitions apply:

"(1) 'Medical assistant' means a person who may be unlicensed, who

performs basic administrative, clerical, and technical supportive services in compliance with this section and Section 2070 for a licensed physician and surgeon ... or group thereof, for a medical or podiatry corporation, for a physician assistant ... as provided in subdivision (a), or for a health care service plan, who is at least 18 years of age, and who has had at least the minimum amount of hours of appropriate training pursuant to standards established by the board. The medical assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the required training. A copy of the certificate shall be retained as a record by each employer of the medical assistant.

"(2) 'Specific authorization' means a specific written order prepared by the supervising physician and surgeon ... or the physician assistant ... as provided in subdivision (a), authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record, or a standing order prepared by the supervising physician and surgeon ... or the physician assistant ... as provided in subdivision (a), authorizing the procedures to be performed, the duration of which shall be consistent with accepted medical practice. A notation of the standing order shall be placed on the patient's medical record.

"(3) 'Supervision' means the supervision of procedures authorized by this section by the following practitioners, within the scope of their respective practices, who shall be physically present in the treatment facility during the performance of those procedures:

"(A) A licensed physician and surgeon.

" ...

"(C) A physician assistant ... as provided in subdivision (a).

"(4)(A) 'Technical supportive services' means simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a licensed physician and surgeon ... or a physician assistant ... as provided in subdivision (a).

"(c) Nothing in this section shall be construed as authorizing any of the following:

"(1) The licensure of medical assistants.

"(2) The administration of local anesthetic agents by a medical assistant.

"...

"(4) A medical assistant to perform any clinical laboratory test or examination for which he or she is not authorized by Chapter 3 (commencing with Section 1200).

"(5) A ... physician assistant to be a laboratory director of a clinical laboratory, as those terms are defined in paragraph (8) of subdivision (a) of Section 1206 and subdivision (a) of Section 1209.

"(d) A ... physician assistant shall not authorize a medical assistant to perform any clinical laboratory test or examination for which the medical assistant is not authorized by Chapter 3 (commencing with Section 1200). A violation of this subdivision constitutes unprofessional conduct.

"..."

17. California Code of Regulations, title 16, section 1399.540, states:

"(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

"(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services

pursuant to more than one delegation of services agreement.

"(c) The board or Medical Board of California or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.

"(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician."

18. California Code of Regulations, title 16, section 1399.541, states:

"Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.

"In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

"(a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.

"(b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy, occupational therapy, respiratory therapy, and nursing services.

"(c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.

"(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life

of the patient.

"(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.

"(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.

"(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.

"(h) Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a)-(f), inclusive, of Section 3502.1 of the Code.

"...

"(2) A physician assistant may also act as first or second assistant in surgery under the supervision of a supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means the physician is physically accessible and able to return to the patient, without any delay, upon the request of the physician assistant to address any situation requiring the supervising physician's services."

19. California Code of Regulations, title 16, section 1399.545, states:

"(a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.

"(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

"(c) A supervising physician shall observe or review evidence of the

physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

"(d) The physician assistant and the supervising physician shall establish in writing transport and back-up procedures for the immediate care of patients who are in need of emergency care beyond the physician assistant's scope of practice for such times when a supervising physician is not on the premises.

"(e) A physician assistant and his or her supervising physician shall establish in writing guidelines for the adequate supervision of the physician assistant which shall include one or more of the following mechanisms:

"(1) Examination of the patient by a supervising physician the same day as care is given by the physician assistant;

"(2) Countersignature and dating of all medical records written by the physician assistant within thirty (30) days that the care was given by the physician assistant;

"(3) The supervising physician may adopt protocols to govern the performance of a physician assistant for some or all tasks. The minimum content for a protocol governing diagnosis and management as referred to in this section shall include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be given the patient. For protocols governing procedures, the protocol shall state the information to be given the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted from, or referenced to, texts or other sources. Protocols shall be signed and dated by the supervising physician and the physician assistant. The supervising physician shall review, countersign, and date a minimum of 5% sample of medical records of patients treated by the physician assistant functioning under these protocols within thirty (30) days. The physician

shall select for review those cases which by diagnosis, problem, treatment or procedure represent, in his or her judgment, the most significant risk to the patient;

"(4) Other mechanisms approved in advance by the board.

"(f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision."

20. Section 2285 of the Code states:

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

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

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

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

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

21. Section 2286 of the Code states:

"It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing

with Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations duly adopted under those laws."

22. Section 2406 of the Code states:

"A medical corporation ... is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, podiatrists, chiropractors, acupuncturists, naturopathic doctors, physical therapists, occupational therapists, or, in the case of a medical corporation only, physician assistants, marriage and family therapists, clinical counselors, or clinical social workers, are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

"With respect to a medical corporation ... the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board."

23. Section 2410 of the Code states:

"A medical ... corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a licensee under this chapter."

24. Section 2415 of the Code states:

"(a) Any physician and surgeon ... who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing ...

under the provisions of this section.

"(b) The division or the board shall issue a fictitious-name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction that:

"(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and surgeons ...

"(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

"(3) The name under which the applicant or applicants propose to practice is not deceptive, misleading, or confusing.

"(c) Each permit shall be accompanied by a notice that shall be displayed in a location readily visible to patients and staff. The notice shall be displayed at each place of business identified in the permit.

"...

"(e) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420) pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this schedule the division may fix prorated renewal fees.

"(f) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

"(g) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the licensee's certificate to practice medicine ... is revoked.

"(h) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

"..."

25. Section 4022 of the Code states:

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

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

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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

26. Section 11153 of the Health and Safety Code states:

"(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

"(b) Any person who knowingly violates this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars ($20,000), or by both that fine and imprisonment.

"..."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

27. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by sections 2234, subdivision (b), 3501, 3502 and 3502.1, of the Code, and California Code of Regulations, Title 16, sections 1399.540, 1399.541 and 1399.545, in that he committed acts of gross negligence, as the supervising physician, by failing to properly supervise PA B.E., a physician assistant, in his care and treatment of patients P.H., P.P., L.A., W.J., K.M., A.W., E.R. and T.T., as more particularly alleged hereinafter:

28. On or about May 10, 2000, Physician Assistant License Number PA 15350 was issued by the Physician Assistant Board of California, Department of Consumer Affairs, to Physician Assistant B.E. (PA B.E.). PA B.E. was and is the sole owner and shareholder of First Choice Clinica Familiar, (FCCF) a medical clinic that he opened for business in 2011.

29. Respondent entered into a "Medical Director Agreement" (the Agreement) with FCCF on or about June 21, 2012. The Agreement described respondent's duties including, establishing "*medical practice protocols*" and completing "*all requirements necessary to qualify the Medical Corporation* [FCCF] *to conduct business in the State of California*." (Emphasis added.) The Agreement set respondent's compensation at five thousand ($5,000) dollars a month and, FCCF reserved the discretion to pay respondent a bonus after completion of one (1) year of service.

30. Respondent entered into a "Delegation of Services Agreement" (the Delegation) with PA B.E. on or about July 14, 2011. The Delegation defined the terms and conditions under which respondent would serve as a supervising physician of PA B.E. including, respondent "*shall review, audit and counter-sign within seven (7) days the medical record of any patient for whom*

[PA B.E.] *issues or carries out a drug order. For other patients* ... [respondent] *shall review, audit and countersign every medical record written by* [respondent] *within seven (7) days (no more than thirty (30) days of the encounter.)*" (Emphasis added.)

31. Pursuant to undated and unsigned "Control (sic) Substance Protocol for Responsible Prescribing," (the Protocols) the general principles of pain management were established for treating patients seeking chronic pain management at FCCF. The Protocols identified the principles of pain management, and included steps for FCCF's pain management team to follow. The Protocols highlighted one of its pain management goals indicating "records and past prescribing history is monumental with regards to present and future treatment considerations." Significantly, the Protocols make clear that "[*n*]*o patient taking a controlled substance shall be allowed to continue treatment with a history of any illicit drug or alcohol abuse history or addiction.*" (Emphasis added.) Respondent's full typewritten name appears on the last page of the Protocols under the title, "Medical Director."

32. From on or about July 14, 2011, through in or around February 2013, respondent performed his assigned duties under the Delegation, Medical Director Agreement and Protocols including, having reviewed and signed off on nearly every medical record and/or chart note for care and treatment provided by PA B.E. to the following patients:

Patient P.H.

(a) PA B.E. treated patient P.H. for knee pain. PA B.E. saw patient P.H. at FCCF approximately seven (7) times between on or about August 1, 2011, and on or about July 9, 2012. PA B.E. wrote a prescription for Norco[1] and Xanax[2] for patient P.H. that was filled on or about July 7, 2011; however, the first clinic note

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[1] Norco is a brand name for acetaminophen and hydrocodone bitartrate, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. Norco is an opioid pain medication that is used to relieve moderate to severe pain.

[2] Xanax is a brand name for alprazolam (a benzodiazepine), a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

for patient P.H. is not until on or about August 1, 2011.

(b) On patient P.H.'s first documented visit at FCCF on or about August 1, 2011, a urine drug screen was performed that tested "positive" for methamphetamine,[3] but "negative" for opioids or benzodiazepines. Patient P.H. told PA B.E. that he used methamphetamine only "once in awhile" and, that he used it for social use only. Notwithstanding patient P.H.'s admitted illegal drug use during his initial documented visit with PA B.E., he prescribed patient P.H. Norco and Xanax. A second urine drug screen for patient P.H. was taken on or about October 13, 2011, and every drug tested for was documented as negative.

(c) On or about February 27, 2012, an x-ray of patient P.H.'s knee was ordered, but there was no record provided of any results. PA B.E. recorded minimal information regarding patient P.H.'s unilateral edema in his chart note, which allegedly was causing his supposed need for opioids for pain relief. At no time in PA B.E.'s care and treatment of patient P.H. did he conduct a mental status examination. Most of patient P.H.'s medical records made by PA B.E. are partially illegible.

(d) Respondent committed gross negligence, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient P.H., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to discuss each controlled substance prescription with respondent prior to issuing it to patient P.H.;

(3) PA B.E. failed to adequately evaluate patient P.H.'s unilateral edema;

(4) PA B.E. failed to appropriately document, evaluate and manage patient P.H.'s anxiety;

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[3] Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d).

(5) PA B.E. failed to adequately manage patient P.H.'s chronic pain;

(6) PA B.E. failed to adequately document patient P.H.'s medical history and/or social history;

(7) PA B.E. failed to adequately document patient P.H.'s pain history;

(8) PA B.E. failed to seek a referral for appropriate consultation for pain management;

(9) PA B.E. prescribed opioids and benzodiazepines to patient P.H., notwithstanding patient P.H.'s admitted recent illegal use of methamphetamines;

(10) PA B.E. failed to document any discussion with patient P.H. regarding the fact that, notwithstanding prescriptions for Norco and Xanax, patient P.H.'s urine drug screens were negative for these controlled substances; and

(11) Respondent failed to adequately and appropriately supervise PA B.E.'s practice of medicine with patient P.H.

Patient P.P.

(e) PA B.E. treated patient P.P. for back pain due to surgery. PA B.E. saw patient P.P. at FCCF approximately seventeen (17) times between on or about July 20, 2011, and on or about October 10, 2012. Although PA B.E.'s first documented visit with patient P.P. occurred on or about July 20, 2011, the Controlled Substances Utilization Review and Evaluation System (CURES)[4] reports indicated that PA B.E. had been prescribing controlled substances to patient P.P. since in or around May 2010. Between on or about May 5, 2010 to December 23, 2012,

[4] The CURES is a program operated by the California Department of Justice (DOJ) to assist health care practitioners in their efforts to ensure appropriate prescribing of controlled substances, and law enforcement and regulatory agencies in their efforts to control diversion and abuse of controlled substances. (Health & Saf. Code, § 11165.) California law requires dispensing pharmacies to report to the DOJ the dispensing of Schedule II, III and IV controlled substances as soon as reasonably possible after the prescriptions are filled. (Health & Saf. Code, § 11165, subd. (d).) The history of controlled substances dispensed to a specific patient based on the data contained in the CURES is available to a health care practitioner who is treating that patient. (Health & Saf. Code, § 11165.1, subd. (a).)

PA B.E. issued forty-three (43) prescriptions to patient P.P. for Oxycontin,[5] Oxycodone,[6] Alprazolam[7] and Opana ER.[8] However, no documentation exists in patient P.P.'s medical records that PA B.E. ever saw patient P.P. in connection with the issuance of these prescriptions. Patient P.P.'s medical records are largely filled with illegible notations made by PA B.E., and they lack a complete history taken of patient P.P. prior to PA B.E. prescribing him controlled substances for pain and anxiety.

(f) On or about July 20, 2011, PA B.E. conducted a cursory physical examination of patient P.P.; however, he did not document patient P.P.'s past medical history, social history, or review of systems. PA B.E. recorded a cursory history of patient P.P.'s pain history, but he did not conduct a mental status examination, drug or alcohol history, or psychiatric history of patient P.P. In fact, on or about July 20, 2011, PA B.E. prescribed Xanax for patient P.P. without any diagnosis or documentation of any discussion with patient P.P regarding his anxiety. On that same date, PA B.E. also noted that patient P.P. disclosed he was "opioid dependent" and, that he wanted to start taking methadone[9] to decrease his opioid dependence. Without having reviewed patient P.P.'s past medical records

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[5] Oxycontin is a brand name for oxycodone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

[6] Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

[7] Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

[8] Opana ER is a brand name for oxymorphome hydrochloride, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

[9] Methadone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.

or taken an adequate history on his past opioid use, and without any discussion of his history of any drug and/or alcohol use, PA B.E. prescribed methadone 60 mg to patient P.P. PA B.E. re-filled the methadone prescription multiple times over the course of his care and treatment of patient P.P.[10]

(g) Prior to prescribing methadone to patient P.P., PA B.E. did not possess a separate DEA registration for maintenance and detoxification treatment. Furthermore, PA B.E. did not adequately document or establish a treatment plan, with stated objectives for converting patient P.P. from opioids to methadone, in order to decrease patient P.P.'s dependency on opiates. PA B.E. prescribed methadone in high dosages to patient P.P. without informing him about any increased risks associated with overdose or death.

(h) On or about October 28, 2011, a notation was recorded in patient P.P.'s progress notes that indicated he was "having more pain and anxiety." However, there was no documentation of discussion or additional history and examination of patient P.P. taken to justify the diagnosis of anxiety. Notwithstanding the need for more information prior to diagnosing patient P.P. with anxiety, PA B.E. again prescribed Xanax without an adequate medical indication.

(i) During the course of PA B.E.'s treatment of patient P.P., only two (2) urine drug screens were obtained. The results from the urine drug screen performed on August 20, 2011, were "negative" for all drugs prescribed to him by PA B.E. A second urine drug screen was ordered on October 10, 2012, however, there is no notation in patient P.P.'s medical records reporting the test results. Significantly, PA B.E. did not document any discussion with patient P.P. in

[10] Under federal law, practitioners wishing to administer and dispense approved Schedule II controlled substances, namely, methadone, for maintenance and detoxification treatment must obtain a separate DEA registration as a Narcotic Treatment Program. In addition to obtaining this separate DEA registration, this type of activity also requires the approval and registration of the Center for Substance Abuse Treatment within the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services, as well as the applicable state methadone authority.

progress notes as to why his test results were negative for opiates, benzodiazepines and methadone, despite being prescribed these controlled substances by PA B.E.

(j) On or about September 30, 2011, a partially legible notation was made in patient P.P.'s progress notes that indicated his wife took his medications away from him because she did not want him taking Oxycontin. PA B.E. did not document any further discussion of the circumstances involving patient P.P.'s wife taking his medications but, instead, he again prescribed methadone and Xanax to patient P.P.

(k) On or about March 12, 2012, a partially legible notation was made in patient P.P.'s progress notes that indicated he had reported losing his methadone medication to PA B.E. PA B.E. made a partially legible notation under plan that indicated patient P.P. was "admonished not to lose his meds." Notwithstanding clear indications of possible diversion and/or abuse, including patient P.P.'s negative urine drug screen for controlled substances, alleged loss of his methadone and report that his wife previously had taken his medications away from him, PA B.E. re-filled prescriptions for Oxycodone, Xanax and methadone for patient P.P.

(l) Respondent committed gross negligence, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient P.P., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to document a diagnosis or treatment plan for anxiety prior to prescribing Xanax to patient P.P.;

(3) PA B.E. failed to adequately document or establish a treatment plan, with stated objectives for converting patient P.P. from opioids to methadone;

(4) PA B.E. failed to obtain the proper licensing for methadone maintenance therapy;

(5) PA B.E. failed to obtain a comprehensive social history and/or a complete substance abuse history for patient P.P.;

(6) PA B.E. failed to follow up on the "negative" urine drug screen with patient P.P.;

(7) PA B.E. failed to follow up on the issue of patient P.P.'s wife taking his medications away from him; and

(8) Respondent failed to adequately and appropriately supervise PA B.E.'s practice of medicine with patient P.P.

Patient L.A.

(m) PA B.E. treated patient L.A. for knee pain. PA B.E. saw patient L.A. at FCCF approximately thirteen (13) times between on or about July 15, 2011, and on or about February 5, 2013. Although PA B.E.'s first documented visit with patient L.A. occurred on or about July 15, 2011, the CURES reports in his medical records indicated that PA B.E. had already written three (3) prescriptions for controlled substances to patient L.A. in or around May 2011, and June 2011.

(n) On or about July 15, 2011, PA B.E. documented that patient L.A. had been on pain management medication for five (5) years. Some of the examination notations are illegible. PA B.E. did not document patient L.A.'s social history, past medical history and/or review of systems. In addition, PA B.E. did not document a mental status exam and/or psychiatric history for patient L.A.

(o) On or about September 15, 2012, a progress note for patient L.A. contained no recorded history, examination or vital signs; however, it included two (2) partially legible notations indicating, "Pt has police report meds stolen in jail" and "Incident report/police report filed." The only documentation in patient L.A.'s medical records of this alleged police report is a business card from the City of Riverside Police Records Division, dated September 4, 2012, containing the name of a records specialist and a file number. A handwritten note from patient L.A. on FCCF letterhead, dated September 4, 2012, also indicated that he had been admitted to a mental health facility on August 15, 2012, and that when he was discharged six (6) days later, he was missing an unspecified number of Norco

tablets from his bottle. There is a handwritten and unsigned notation on a CURES report in medical records for patient L.A., dated August 23, 2012, which stated "No more Norcos, wing (sic) down, 170 N/V." And again, on or about February 5, 2013, there is an additional notation in a progress note indicating that patient L.A. reported "a doctor at the hospital soled (sic) his meds or some of them on several visits," and that police reports had been filed. There are no police reports found in patient L.A.'s medical records in connection with this or any other alleged incident.

(p) Despite a pattern of reporting "stolen" medications on the part of patient L.A., PA B.E. again prescribed Norco and Xanax to patient L.A. following the February 5, 2013, clinical visit. Significantly, between on or about July 15, 2011, and on or about February 5, 2013, over the course of thirteen (13) patient visits, there are five (5) notations either in patient L.A.'s clinic notes or on billing slips indicating a plan, "next time," for a urine drug screen. There is no record of a urine drug screen ever being performed for patient L.A.

(q) Respondent committed gross negligence, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient L.A., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to seek appropriate consultation and/or referral for complex pain problems in light of aberrant drug seeking behavior on the part of patient L.A.;

(3) PA B.E. failed to seek appropriate consultation and/or referral for substance abuse issues in light of aberrant drug seeking behavior on the part of patient L.A.;

(4) PA B.E. failed to diagnose, document, evaluate and manage treatment plan for anxiety prior to prescribing Xanax to patient L.A.;

(5) PA B.E. failed to obtain test results for any of the five (5) urine drug

screens; and

(6) Respondent failed to adequately and appropriately supervise PA B.E.'s practice of medicine with patient L.A.

Patient W.J.

(r) PA B.E. treated patient W.J. for foot pain. PA B.E. saw patient W.J. at FCCF approximately fifteen (15) times between on or about July 16, 2011, and on or about November 29, 2012.

(s) On or about July 16, 2011, at the initial visit, PA B.E. documented that patient W.J. had diabetes and was taking insulin. The assessment/diagnosis section in the progress note listed diabetic neuropathy, skin structure disease, social anxiety disorder, and panic attacks. However, PA B.E. did not document any information regarding patient W.J.'s social history, review of systems, psychiatric history, and/or mental status exam.

(t) On or about August 7, 2011, a progress note indicated that patient W.J.'s chief complaint was pain management of his legs. The examination section was mostly illegible. The medications section included "Xanax" and "Norco," but it did not indicate dosages or amounts for these controlled substances. The assessment section indicated "severe diabetic neuropathy" and "anxiety." The treatment/plan section indicated "urine drug [illegible word] next visit."

(u) On or about February 14, 2012, a progress note indicated that patient W.J.'s medications had been confiscated by the police. The progress note also included the handwritten notation "No Refills," which was circled and next to the examination notes section. A handwritten note signed by patient W.J., dated February 14, 2012, and prepared on FCCF letterhead, indicated that he was arrested by "Aladdin Bail Company" on or about January 24, 2012, and "the bounty men took my medication: Norco, Xanax, Soma [illegible]." Patient W.J.'s letter requested a refill prescription. PA B.E. received a refill authorization request for Norco faxed from Target pharmacy, dated February 22, 2012, on which PA

B.E. signed and authorized a quantity of one hundred eighty (180) Norco, and also made a handwritten notation indicating patient W.J. was given the additional prescription "because he lost partial meds."

(v) A CURES, report included in patient W.J.'s chart, was run on or about February 14, 2012, which showed that, on or about January 31, 2012, patient W.J. filled a prescription for Norco (180 quantity) and Xanax (70 quantity), which was seven (7) days after the alleged confiscation of his medication on January 24, 2012.

(w) On or about March 6, 2012, a progress note indicated that patient W.J.'s medications were again taken away from him and that the "police dept. verified that they took his meds."[11] A partially typed and partially handwritten note signed by patient W.J., dated March 6, 2012, alleged that a police officer arrested him on March 1, 2012, and then confiscated his prescription medications, including, Norco, Soma, and Xanax. The letter fails to explain the circumstances under which patient W.J. was arrested. Patient W.J.'s letter requested a refill prescription. A CURES report, included in patient W.J.'s chart, was run on or about March 6, 2012, which showed that, on or about February 14, 2012, patient W.J. filled a prescription for Norco (180 quantity) and Xanax (60 quantity), and on or about February 23, 2012, he obtained an additional refill for Norco (180 quantity).

(x) On or about April 10, 2012, at patient W.J.'s next visit, under the treatment/plan section is a handwritten notation indicating "Pt says that he did not get the 180 tabs on 3-13-12." An additional handwritten notation indicated "Pt [down arrow] meds ASAP." A CURES report, included in patient W.J.'s chart, was run on or about April 10, 2012, which showed that, on or about March 7,

[11] Under the examination notes section, a handwritten notation indicated "patient says that the police is (sic) after him and they have arrested him 2 times for nothing."

2012, W.J. refilled his Norco prescriptions (180 quantity); and again, on or about March 12, 2012, he refilled his Norco prescriptions (180 quantity). Also reflected in the CURES report were patient W.J.'s previously noted refills for Norco on or about January 31, 2012; February 14, 2012; and February 23, 2012. All of these refills were written by PA B.E.

(y) Between on or about January 1, 2012, and on or about April 10, 2012, the CURES data revealed one thousand eighty (1,080) tablets of Norco were filled under prescription for patient W.J., and all had been written by PA B.E.[12]

(z) Nowhere in patient W.J.'s medical records and/or progress notes did PA B.E. ever document any discussion or indicate a treatment plan for decreasing patient W.J.'s use of opioids or benzodiazepines; apparent issues with medication compliance and requests for refill under suspicious circumstances; and/or potential concerns over substance abuse. In addition, patient W.J.'s medical records do not include any police reports that would substantiate some or all of his claims with regards to separate incidents involving confiscation of his medications by police. Finally, at no time during PA B.E.'s care and treatment of patient W.J. was a urine drug screen ever performed.

(aa) Respondent committed gross negligence, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient W.J., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to diagnose, document, evaluate and manage treatment plan for anxiety prior to prescribing Xanax to patient W.J.;

(3) PA B.E. failed to develop a clear plan to manage misuse of the prescribed opioids by, and then continued to prescribe controlled substances to, patient W.J. without a documented plan or rationale;

[12] At this rate, patient W.J. would have been averaging approximately eleven (11) tablets of Norco every day.

(4) PA B.E. failed to assess and document patient W.J.'s progress and/or lack of progress with opioid therapy, any adverse effects of opioid therapy, and/or any positive responses to opioid therapy;

(5) PA B.E. failed to stop prescribing controlled substances and refer patient W.J. to a substance abuse program, in light of the contradictions between his self-reporting, lack of documentation, and CURES data; and

(6) Respondent failed to adequately and appropriately supervise PA B.E.'s practice of medicine with patient W.J.

Patient K.M.

(bb) PA B.E. treated patient K.M. for jaw pain. PA B.E. saw patient K.M. at FCCF approximately eighteen (18) times between on or about July 16, 2011, and on or about December 14, 2012. On or about July 16, 2011, at patient K.M.'s initial visit, she reported constant severe pain to PA B.E. and rated her pain "ten" (10) on a scale of one to ten (1 to 10). Patient K.M. reported that she had a history of pain management for her jaw and PA B.E. noted in the progress note that "it took her 4 years to get rid of pain." PA B.E. also documented in the progress note that patient K.M. had a morphine pump and that she was seeing Dr. I for management of the morphine pump. However, PA B.E. did not document any discussion with patient K.M. as to whether the morphine pump was for her ongoing therapy, what the current dose was, or whether she had received any recent refills. PA B.E. also did not document any discussion about any prior oral opioid prescribing, or whether Dr. I was aware that she was being prescribed oral opioids in addition to the morphine pump. In fact, PA B.E. never once during the entire period of his care and treatment of patient K.M. document a report or correspondence from, or any conversation with Dr. I, regarding his treatment of patient K.M. via the morphine pump.[13]

[13] A CURES report confirmed the dispensing of morphine powder, 500 mg, by Dr. I on or about June 9, 2011.

(cc) On the initial intake visit, on or about July 16, 2011, PA B.E. did not document any discussion about the description of the pain quality, onset of pain, duration of prior therapies, past medical history, social history, psychiatric history, or review of systems. PA B.E. documented in the pain diagram bilateral facial pain only. PA B.E.'s physical exam of patient K.M. was devoid of any head and/or facial examination, with the exception of Pupils Equal, Round, Reactive to Light and Accommodation (PERRLA), which indicated that only a cursory eye exam was performed. PA B.E. did not conduct and/or document a mental status examination of patient K.M. The progress note contained a diagnosis of fibromyalgia, but there was no documented examination of the musculoskeletal system. The treatment/plan section indicated "urine drug screen" and, prescriptions for methadone, Norco and Xanax were issued.

(dd) On or about August 12, 2011, a progress note again noted that patient K.M. was using a morphine pump and that she had seen several pain management providers. PA B.E. did not document any discussion on whether the pump was functional and delivering morphine to patient K.M. Under the treatment/plan section, it indicated, "needs drug screen NV."

(ee) On or about August 19, 2011, patient K.M. reported that her car had been towed which resulted in the confiscation of her medication. The progress note contained a notation that patient K.M. had eighteen (18) surgeries to her face and that she had a morphine pump for eleven (11) years. The progress note also contained a notation for the prescription of Norco and Xanax, but no indication of the number of tablets. A CURES report showed that patient K.M. subsequently filled her prescription for the Norco (180 quantity), Xanax (90 quantity) and Valium (90 quantity). Under the treatment/plan section, the only notation is "HTN therapy."

(ff) On or about September 14, 2011, a progress note included a handwritten notation indicating that patient K.M. told PA B.E. that her "daughter got put in

prison for stealing her meds." Under the treatment/plan section, the only notation is "HTN therapy." A billing slip for this visit indicated "Urine next time." A CURES report showed that patient K.M. subsequently filled her prescription from PA B.E. for Norco (180 quantity), methadone (300 quantity) and Valium (90 quantity).

(gg) On or about October 7, 2011, a progress note included a handwritten notation indicating "Pt is very depressed. She is out of her morphine pump and Dr. [I] didn't refill it." PA B.E. made no notation under the treatment/plan section. There was no follow up comment on the urine drug screen that had been planned from the prior visit.

(hh) A CURES report in patient K.M.'s medical records indicated that morphine powder had been prescribed by Dr. I and was dispensed on or about October 7, 2011. A CURES report showed that patient K.M. subsequently filled her prescription from PA B.E. for Norco (180 quantity), methadone (300 quantity) and Valium (90 quantity).

(ii) On or about October 22, 2011, a progress note that was mostly illegible, included a notation regarding the morphine pump that was also illegible. Under the treatment/plan section, a handwritten notation indicated only "urine drug screen next visit." However, PA B.E. did not document any plan for treatment. A CURES report showed that patient K.M. subsequently filled a prescription from PA B.E. for Norco (180 quantity), methadone (300 quantity) and Valium (90 quantity).

(jj) On or about November 25, 2011, a progress note included a handwritten notation indicated "Pt has been on these meds for too long." However, PA B.E.'s notation did not specify which medications. PA B.E. added another notation indicating "Pt says 'I can't lower any meds now please!'" Under the treatment/plan section, a handwritten notation indicated "pt has seen hundreds of doctors for pain management." However, again, PA B.E. did not document any

plan for treatment. A CURES report showed that patient K.M. subsequently filled her prescription from PA B.E. on or about November 29, 2011, for Norco (180 quantity), methadone (300 quantity), and Valium (90 quantity).

(kk) A urine drug screen dated on or about November 25, 2011, indicated that patient K.M.'s urine had tested "negative" for all prescribed drugs.

(ll) On or about January 27, 2012, a progress note documented patient K.M.'s chief complaint was "TMJ." However, the progress note did not document a face and head examination. The other examination notations were mostly illegible. The notations for assessment were illegible, and there was no treatment or plan documented in the progress note for this visit.

(mm) On or about March 10, 2012, a progress note again documented patient K.M.'s chief complaint was "TMJ." Again, PA B.E.'s examination notes are illegible. PA B.E.'s assessment indicated "1) severe TMJ; 2) Maxillary [illegible]; 3) morphine pump." However, PA B.E. did not document a treatment plan in the progress notes. A handwritten notation in the margin of the progress note for this visit indicated, "call in script for norco & valium."

(nn) On or about May 16, 2012, a partially legible progress note documented patient K.M.'s clinical visit. The handwritten notations under examination were partially legible and, a mostly illegible notation regarding history indicated something about "Valium." No treatment plan was documented for this visit.

(oo) In or around June 2012, patient K.M. drafted two (2) separate letters and submitted them to the FCCF clinic on FCCF letterhead, which described two (2) separate incidents of how she recently lost her medication, including a theft of her medication from her car trunk and losing her medications in the toilet at Walgreens. There is an undated FCCF clinic note indicating "Pt 5 days early" and "police report reviewed." No additional comment or notation was included in the clinic note. A CURES report in patient K.M.'s chart showed that on or about May 21, 2012, she filled her prescription for Norco (126 quantity), Xanax (60 quantity),

and methadone (300 quantity); and again, on or about June 13, 2012, she filled her prescription for methadone (300 quantity), Xanax (60 quantity), and Norco (165 quantity).

(pp) On or about July 11, 2012, a progress note again documented patient K.M.'s chief complaint was "TMJ." Again, PA B.E. did not document a description of pain location and/or patient K.M.'s response to therapy. The examination notations are illegible. PA B.E.'s assessment only indicated "1) severe TMJ; 2) Anxiety 3) fibromyalgia." Under the treatment/plan section, it only indicated, "Pt has too much pain." A handwritten notation in the margin of the progress note for this visit indicated, "No refills." A CURES report in patient K.M.'s chart showed that on or about July 11, 2012, she filled her prescription from PA B.E. for Norco (165 quantity), Xanax (60 quantity), and methadone (300 quantity). On or about July 13, 2012, a prescription refill request was faxed by Walgreen's for diazepam to FCCF. A handwritten notation made by PA B.E. in patient K.M.'s medical records denied the refill, with the notation "No valium pt is on high quantity of Xanax. too dangerous."

(qq) On or about August 3, 2012, a progress note documented patient K.M.'s chief complaint was "TMJ." PA B.E.'s assessment indicated "1) severe TMJ; 2) Anxiety." The examination notes documented that "every bite of food she takes is very severely painful." A handwritten notation further indicated that "Pt want to go up on meds. Pt informed no." Under the treatment/plan section for this visit, PA B.E. only documented "pt informed we will not go up on anything." The bill for this visit indicated "D/S next visit!"

(rr) On or about September 7, 2012, patient K.M. was seen by another physician assistant at FCCF. The documented information in the progress note was essentially the same as the information previously documented by PA B.E. for patient K.M.'s prior visits to FCCF.

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(ss) On or about October 9, 2012, a clinic note containing a "Medical Assistant Intake" section was completed by "MA [M]." This same clinic note included a printed notation entitled "Report Created With Dragon Medical Voice System," but there was no dictated note attached to the note and it is not signed by a physician or physician assistant. However, a bill for the visit was paid by patient K.M. on that same date. A urine drug screen for patient K.M., dated on or about October 9, 2012, indicated her urine tested positive for methamphetamine, and negative for opioids and benzodiazepines.

(tt) On or about October 15, 2012, patient K.M. was seen by another physician assistant at FCCF. The documented information in the progress note was essentially the same as the information previously documented by PA B.E. for patient K.M.'s prior visits to FCCF. The treatment/plan section indicated "PTN denies meth use, states has HTN meth use would kill me. Explained that she would have to be [illegible] on next visit." An undated and mostly blank progress note, without a patient name or vital signs, indicated that patient K.M. was "Not seen" and under the treatment/plan section, "see discharge letter." An unsigned discharge letter dated on or about December 14, 2012, was addressed to patient K.M. and indicated that she was being discharged from FCCF for receiving medications from more than one (1) provider.

(uu) Respondent committed gross negligence, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient K.M., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to document a comprehensive history and examination prior to initiating and/or continuing high dose chronic opioid therapy for patient K.M.;

(3) PA B.E. failed to document any contact and/or consult with the provider of patient K.M.'s intrathecal therapy, Dr. I, regarding her care and treatment, and

the potential risks of concurrent use of opioids for long-term chronic pain management;

(4) PA B.E. failed to adequately document treatment plans with stated objectives for patient K.M.'s chronic pain management over eighteen (18) visits;

(5) PA B.E. failed to document any assessment of progress, responses and/or adverse effects of patient K.M.'s long-term opioid therapy for chronic pain management;

(6) PA B.E. failed to adequately document or follow-up and/or monitor patient K.M.'s multiple lost prescriptions, and a urine drug screen that tested negative for the controlled substances prescribed to patient K.M.;

(7) PA B.E. failed to address with patient K.M. the fact that her two (2) urine drug screens tested negative for her prescribed medications;

(8) PA B.E. failed to make appropriate referral for patient K.M. for substance abuse evaluation in light of evidence of possible diversion and possible substance abuse;

(9) PA B.E. failed to diagnose, document, evaluate and manage treatment plan for anxiety prior to prescribing Xanax to patient K.M.; and

(10) Respondent failed to adequately and appropriately supervise PA B.E.'s practice of medicine with patient K.M.

Patient A.W.

(vv) PA B.E. treated patient A.W. for low back pain and knee pain. PA B.E. saw patient A.W. at FCCF approximately five (5) times between on or about November 14, 2011, and on or about August 17, 2012. During the course of treatment, PA B.E. prescribed Norco and Xanax to patient A.W. Patient A.W. told PA B.E. that she had taken Vicodin[14] for pain in the past, but it was not effective

[14] Vicodin is a brand name for acetaminophen and hydrocodone bitartrate, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. Vicodin is an opioid pain medication that is used to relieve moderate to severe pain.

in relieving her pain.

(ww) On or about December 13, 2011, a lumbar x-ray of patient A.W. was ordered, but there is no record that this examination ever occurred. A urine drug screen documented from patient A.W.'s initial visit on or about November 14, 2011, indicated "negative" results for opioids. A urine drug screen documented from patient A.W.'s last visit on or about August 17, 2012, indicated "negative" results for opioids, but tested "positive" for "THC."[15] PA B.E.'s handwritten clinic notes for patient A.W. are mostly illegible.

(xx) Respondent committed gross negligence, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient A.W., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to document a comprehensive history and examination prior to initiating and/or continuing high dose chronic opioid therapy for patient A.W.;

(3) PA B.E. failed to adequately document treatment plans with stated objectives for patient A.W.'s chronic pain management over five (5) visits;

(4) PA B.E. failed to document any assessment of progress, responses and/or adverse effects of patient A.W.'s long-term opioid therapy for chronic pain management;

(5) PA B.E. failed to adequately evaluate and manage patient A.W.'s back pain;

(6) PA B.E. failed to adequately document or follow-up and/or monitor patient A.W.'s multiple lost prescriptions, and a urine drug screen that tested

[15] THC, or Tetrahydrocannabinol, commonly known as marijuana, is a Schedule I controlled substance pursuant to Health and Safety Code section 11054, subdivision (d). Significantly, Patient A.W. did not have a medical marijuana card that permitted her to use marijuana based on a recommendation made by a licensed medical doctor for a diagnosed physical condition.

negative for the controlled substances prescribed to patient A.W.;

(7) PA B.E. failed to address with patient A.W. the fact that her two (2) urine drug screens tested negative for her prescribed medications;

(8) PA B.E. failed to make appropriate referral for patient A.W. for substance abuse evaluation in light of evidence of possible diversion and possible substance abuse; and

(9) Respondent failed to adequately and appropriately supervise PA B.E.'s practice of medicine with patient A.W.

Patient E.R.

(yy) PA B.E. treated patient E.R. for bruised ribs. PA B.E. saw patient E.R. at FCCF approximately seven (7) times between on or about August 5, 2011, and on or about August 20, 2012. Although PA B.E.'s first documented visit with patient E.R. occurred on or about August 5, 2011, the CURES reports indicated that PA B.E. had been prescribing controlled substances to patient E.R. since in or around August, 2010.[16] However, there is no mention in the clinic notes from the first documented visit on or about August 5, 2011, of any prior prescribing by PA B.E. During patient E.R.'s first documented visit on or about August 5, 2011, PA B.E. recorded a cursory pain history, but did not document any past medical history, review of systems, psychiatric history, or social history. PA B.E. did not document a mental status exam or history for patient E.R. that would account for a prescription of a Xanax for treatment of anxiety. PA B.E. did order x-rays of patient E.R.'s ribs; however, there is no record that this examination ever occurred.

(zz) A urine drug screen documented from patient E.R.'s visit on or about August 20, 2012, indicated "negative" test results for opioids and benzodiazepines, but tested "positive" for "THC." Notwithstanding the urine drug screen's negative test results for opiates and benzodiazepines, PA B.E. again issued patient E.R.

[16] On or about August 6, 2010, patient E.R. filled a prescription issued by PA B.E. for hydrocodone and alprazolam.

prescriptions for hydrocodone and alprazolam.

(aaa) A printed CURES report for patient E.R., dated on or about October 30, 2012, contained a handwritten notation regarding opioid prescriptions issued by a provider other than PA B.E., indicating, "Discharged from clinic. Pt was warned about this! Stick with Dr. [Y]." PA B.E. did not document in a clinic note or elsewhere in patient E.R.'s medical records any further explanation as to why a CURES report was obtained.

(bbb) Respondent committed gross negligence, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient E.R., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to diagnose, document, evaluate and manage treatment plan for anxiety prior to prescribing Xanax to patient E.R.;

(3) PA B.E. failed to document a comprehensive history and examination prior to initiating and/or continuing high dose chronic opioid therapy for patient E.R.;

(4) PA B.E. failed to adequately document treatment plans with stated objectives for patient E.R.'s chronic pain management over seven (7) visits;

(5) PA B.E. failed to document any assessment of progress, responses and/or adverse effects of patient E.R.'s long-term opioid therapy for chronic pain management; and

(6) Respondent failed to adequately and appropriately supervise PA B.E.'s practice of medicine with patient E.R.

<u>Patient T.T.</u>

(ccc) On or about December 7, 2012, Investigator T.M., an investigator for the Medical Board of California, posing as patient T.T., conducted an undercover visit at FCCF. Patient T.T. was seen for one (1) visit and initially met with FCCF's weight-loss coordinator to discuss the different weight-loss options

offered at FCCF. PA B.E. then met with patient T.T. and further discussed with her the different weight-loss options offered at FCCF. PA B.E. briefly discussed diet and the importance of exercise with patient T.T. PA B.E. then prescribed phentermine[17] to be taken weekly by patient T.T. Significantly, PA B.E. never asked patient T.T. about her medical history including, among other things, what, if any, medications she was currently taking; whether she smoked cigarettes or drank alcohol; whether she had any past or present addiction problems; whether she had any past or present mental health issues; or whether she had any past attempts with weight loss through use of controlled substances.

(ddd) On or about March 27, 2013, Investigator T.M. went to FCCF on an unannounced visit and obtained copies of her medical records from PA B.E. A review of the medical records she obtained that day revealed that respondent's signature did not appear anywhere on the chart notes from her office visit at FCCF.

(eee) On or about April 9, 2013, a Medical Board investigator mailed a request to FCCF for a certified copy of patient T.T.'s records, after which FCCF complied. Curiously, on the certified copies turned over by FCCF, respondent's signature now appeared on patient T.T.'s chart note with the date "12/10/12" next to his signature. According to this later produced chart note, respondent allegedly reviewed and counter-signed it three (3) days after patient T.T.'s office visit at FCCF.

(fff) Respondent committed gross negligence, as the supervising physician,

[17] Phentermine is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a stimulant and an appetite suppressant that is prescribed to patients for the management of exogenous obesity. Phentermine is a sympathomimetic amine and can increase blood pressure and pulse of patients. Therefore, caution is to be exercised in prescribing phentermine for patients with even mild hypertension and, dosage should be individualized to obtain an adequate response with the lowest effective dose. Lastly, phentermine is related chemically and pharmacologically to amphetamines, a drug of extensive abuse; therefore, the possibility of abuse should be monitored when phentermine is prescribed as part of a weight reduction program.

by failing to properly supervise PA B.E.'s care and treatment of patient T.T., which included, but was not limited to, the following:

(1) PA B.E. failed to comply with FCCF's Protocols;

(2) PA B.E. failed to perform and document an adequate history prior to prescribing Phentermine, a controlled substance;

(3) PA B.E. performed no physical examination of patient T.T. other than recording her blood pressure and weight;

(4) PA B.E. failed to discuss the major potential risks of using a controlled substance for weight loss treatment;

(5) PA B.E. failed to get approval from a supervising physician before prescribing a controlled substance for weight loss treatment; and

(6) Respondent falsified patient T.T.'s medical record when he signed and back-dated her chart note, indicating that it had been reviewed by him on or about "12/10/12."

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

33. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by sections 2234, subdivision (c), 3501, 3502 and 3502.1, of the Code, and California Code of Regulations, Title 16, sections 1399.540, 1399.541 and 1399.545, in that he committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E. in his care and treatment of patients P.H., P.P., L.A., W.J., K.M., A.W., E.R., and T.T., as more particularly alleged hereinafter:

34. From on or about July 14, 2011, through in or around February, 2013, respondent performed his duties under the Delegation, Medical Director Agreement and Protocols including, having reviewed and signed off on nearly every medical record and/or chart note for care and treatment provided by PA B.E. to the following patients:

Patient P.H.

(a) Paragraphs 27 through 31, and 32, subdivisions (a) through (d), above,

are hereby incorporated by reference and realleged as if fully set forth herein.

(b) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient P.H., which included, but was not limited to, the following:

(1) PA B.E. failed to adequately document his assessment of patient P.H.'s progress and/or whether any adverse effects to treatment had occurred;

(2) PA B.E. failed to adequately document a complete history and/or examination related to patient P.H.'s pain complaint at the initiation of opioid therapy;

(3) PA B.E. failed to adequately document a complete history and/or examination related to patient P.H.'s reported history of anxiety; and

(4) PA B.E. failed to maintain legible medical records.

Patient P.P.

(c) Paragraphs 27 through 31, and 32, subdivisions (e) through (l), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(d) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient P.P., which included, but was not limited to, the following:

(1) PA B.E. failed to adequately document patient P.P.'s pain history;

(2) PA B.E. failed to adequately document a physical examination;

(3) PA B.E. failed to document any prior prescribing of controlled substances to patient P.P. by PA B.E. for care and treatment that he had provided prior to on or about July 20, 2011;

(4) PA B.E. failed to document any past medical history, review of systems, or social history;

(5) PA B.E. failed to document a mental status examination and/or psychiatric history that would account for a prescription for benzodiazepines;

(6) PA B.E. failed to document the results from the second urine drug

screen; and

(7) PA B.E. failed to maintain legible medical records.

Patient L.A.

(e) Paragraphs 27 through 31, and 32, subdivisions (m) through (q), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(f) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient L.A., which included, but was not limited to, the following:

(1) PA B.E. failed to document a complete history and examination prior to prescribing opioids to patient L.A. for treatment of chronic pain;

(2) PA B.E. failed to document a complete history and examination of patient L.A. prior to prescribing benzodiazepines for treatment of anxiety;

(3) PA B.E. failed to document any prior prescribing of controlled substances to patient L.A. by respondent for care and treatment that he provided prior to on or about July 15, 2011;

(4) PA B.E. failed to document patient L.A.'s responses to ongoing opioid therapy for intractable pain;

(5) PA B.E. failed to adequately document any follow up with patient L.A. regarding "stolen medications" and "police reports;" and

(6) PA B.E. failed to maintain legible medical records.

Patient W.J.

(g) Paragraphs 27 through 31, and 32, subdivisions (r) through (aa), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(h) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient W.J., which included, but was not limited to, the following:

(1) PA B.E. failed to document a complete pain history, including, conducting a complete pain examination of the painful area of patient W.J.;

(2) PA B.E. failed to document patient W.J.'s social history and/or review of systems;

(3) PA B.E. failed to document patient W.J.'s psychiatric history and/or perform a mental status examination prior to the prescribing of controlled substances for pain and/or anxiety;

(4) PA B.E. failed to adequately document a history and examination of patient W.J. prior to prescribing him controlled substances for the treatment of pain and/or anxiety; and

(5) PA B.E. failed to maintain legible medical records.

Patient K.M.

(i) Paragraphs 27 through 31, and 32, subdivisions (bb) through (uu), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(j) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient K.M., which included, but was not limited to, the following:

(1) PA B.E. failed to perform and document a comprehensive history of pain, social history, or review of systems;

(2) PA B.E. failed to document whether patient K.M. had been previously prescribed opioids and/or benzodiazepines prior to issuing a prescription for controlled substances; and

(3) PA B.E. failed to maintain legible medical records.

Patient A.W.

(k) Paragraphs 27 through 31, and 32, subdivisions (vv) through (xx), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(l) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient

A.W., which included, but was not limited to, the following:

(1) PA B.E. failed to perform and document a comprehensive history of pain, social history, or review of systems;

(2) PA B.E. failed to conduct a mental status examination and/or history regarding the diagnosis of anxiety disorder;

(3) PA B.E. failed to document whether patient A.W. had been previously prescribed opioids and/or benzodiazepines prior to issuing a prescription for controlled substances; and

(4) PA B.E. failed to maintain legible medical records.

Patient E.R.

(m) Paragraphs 27 through 31, and 32, subdivisions (yy) through (bbb), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(n) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient E.R., which included, but was not limited to, the following:

(1) PA B.E. failed to perform and document a comprehensive history of pain, social history, or review of systems;

(2) PA B.E. failed to conduct a mental status examination and/or history regarding the diagnosis of anxiety disorder;

(3) PA B.E. failed to document whether patient E.R. had been previously prescribed opioids and/or benzodiazepines prior to issuing a prescription for controlled substances; and

(4) PA B.E. failed to maintain legible medical records.

Patient T.T.

(o) Paragraphs 27 through 31, and 32, subdivisions (ccc) through (fff), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(p) Respondent committed repeated negligent acts, as the supervising physician, by failing to properly supervise PA B.E.'s care and treatment of patient T.T., which included, but was not limited to, the following:

(1) PA B.E. failed to maintain legible medical records.

THIRD CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicensed Practice of Medicine)

35. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2052, 2069, 2264, 3501, 3502 and 3502.1, of the Code, and California Code of Regulations, Title 16, sections 1399.540, 1399.541 and 1399.545, in that he aided and abetted the unlicensed practice of medicine, as more particularly alleged hereinafter:

36. Paragraphs 27 through 34, above, are hereby incorporated by reference and realleged as if fully set forth herein.

37. On or about May 6, 2011, articles of incorporation were filed in the Office of the Secretary of State of the State of California, which incorporated the entity "First Choice Clinica Familiar, A Professional Corporation," and described the purpose of FCCF as, "... to engage in the Profession of Medicine and any other lawful activities (other than the banking or trust company business) not prohibited to a corporation engaging in such profession by applicable laws and regulations."

38. On or about November 17, 2011, a statement of information was filed on behalf of FCCF with the Office of the Secretary of State of the State of California, and it identified "[PA B.E.]" as the "*Chief Executive Officer*," "*Secretary*" and "*Chief Financial Officer*" of FCCF. (Emphasis added.) It was signed by PA B.E., under the title of "*President*" of FCCF, on June 2, 2011. (Emphasis added.)

39. On or about August 30, 2012, a statement of information was filed on behalf of FCCF with the Office of the Secretary of State of the State of California, and it indicated that there had been no change in any of the information contained in the last statement of information filed with the California Secretary of State. PA B.E. completed this form under the title of "President" of FCCF.

40. In or around the summer of 2011, a business license application was filed on behalf of FCCF with the Business License Division of the City of Corona. The application was completed and signed by PA B.E. under the title of "*Owner*" of FCCF, and, wherein, he described FCCF's business activity as "*Family Medical Clinic*." (Emphasis added.) PA B.E. signed the business license application on or about June 9, 2011. According to FCCF's business license tax account information with the City of Corona, FCCF's start date for business was on or about June 30, 2011.

41. On or about October 18, 2012, the Medical Board of California confirmed that FCCF had not been issued a Fictitious Name Permit. In fact, no fictitious name permit was ever filed or obtained by FCCF from any licensing board/committee. At all times relevant to the charges and allegations in this Accusation, PA B.E. was the sole owner and shareholder of FCCF and respondent was his supervising physician at FCCF.

42. Sometime prior to on or about June 30, 2011, PA B.E. met respondent. PA B.E. was referred to respondent by some of his patients who had told him about respondent, and that they had been referred to respondent's clinic for medical marijuana. At some point, PA B.E. met with respondent, and then he subsequently hired respondent for the position of FCCF's supervising physician. Although respondent was hired as a "Supervising Physician" to directly supervise PA B.E. at FCCF, he was paid by PA B.E. to perform his role as a supervising physician at FCCF. Respondent held no ownership interest in FCCF, had no authority to hire and/or fire FCCF employees, did not set work schedules for FCCF employees, did not sign paychecks for FCCF employees, did not conduct any competency evaluations of PA B.E. or FCCF's employees, including medical assistants, related to their job performance and/or adequacy of their training, and never saw patients at FCCF.

43. Pursuant to the Delegation, respondent was to review, audit, and countersign every medical record written by PA B.E. within seven (7) days of the encounter. The Delegation did not establish a schedule under which respondent would be physically present at FCCF. Significantly, regarding controlled substances, the Delegation indicated,

"*Drug orders shall either be based on protocols established or adopted by Supervising Physician,* [respondent] *or shall be approved by Supervising Physician* [respondent] *for the specific patient prior to being issued or carried out. Notwithstanding the foregoing, all drug orders for Controlled Substances shall be approved by Supervising Physician* [respondent] *for the specific patient prior to being issued or carried out.*" (Emphasis added.) Lastly, the Delegation indicated that respondent had authorized PA B.E. to "... *perform all tasks set forth in subsections (a), (b), (c), (d), (e), (f), and (g) of Section 1399.541 of the Physician Assistant Regulations, subject to the limitations and conditions described in this Agreement or established by Supervising Physician* [respondent] *in any applicable protocols or otherwise.*" (Emphasis added.) Significantly, the Delegation did not authorize PA B.E. to supervise any other licensed or non-licensed medical staff at FCCF including, but not limited to, medical assistants working at FCCF. Lastly, the Delegation did not establish a schedule under which respondent would be physically present at FCCF.

44. Pursuant to the Protocols, the general principles of pain management were established for treating patients seeking chronic pain management at FCCF. The protocols did not authorize PA B.E. to supervise any other licensed or non-licensed medical staff at FCCF including, but not limited to, medical assistants working at FCCF. Lastly, the Protocols did not establish a schedule under which respondent would be physically present at FCCF.

45. Pursuant to the Agreement, although respondent was required to supervise FCCF's medical providers including PA B.E., nurse practitioners and/or medical assistants, the Agreement failed to include a schedule under which respondent was required to be physically present at the clinic. The Agreement indicated that respondent was only required to maintain wire or internet contact with the providers seven (7) days a week between the hours of 8:00 a.m. and 8:00 p.m. And in terms of respondent's patient interaction at FCCF, the Agreement did not require him to "directly consult with [FCCF's] patients or resolve issues involving patients or medical providers that arise out

of the normal course of business." He was only required to review and counter-sign charts twice a month.

46. At all times relevant to the charges and allegations in this Accusation, FCCF employed numerous medical assistants including, but not limited to, E.H., E.M., E.S., and M.F. PA B.E. (not respondent) was responsible for interviewing and hiring all employees at FCCF including, E.H., E.M., E.S., and M.F., was responsible for writing and signing FCCF's employee paychecks, was responsible for setting FCCF employee's work schedules and granting vacation time off, and was responsible for supervising FCCF's medical assistants. FCCF's medical assistants were allowed to routinely perform various medical services at FCCF including, but not limited to, intravenous placement on patients even though no supervising physician (i.e., respondent) was physically present at FCCF when the services were being performed.

FOURTH CAUSE FOR DISCIPLINE

(Improper Supervision of Medical Assistants)

47. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2052, 2069, 2264, 3501, 3502 and 3502.1, of the Code, and California Code of Regulations, Title 16, sections 1399.540, 1399.541 and 1399.545, in that, as the supervising physician and through PA B.E.'s practice of medicine, he failed to properly supervise medical assistants at FCCF, as more particularly alleged hereinafter:

48. Paragraphs 27 through 46, above, are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unlicensed Practice of Medicine)

49. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2052, 2069, 2264, 3501, 3502 and 3502.1, of the Code, and California Code of Regulations, title 16, sections 1399.540, 1399.541 and 1399.545, in that, as the supervising physician and through PA B.E.'s practice of medicine, he engaged in the unlicensed practice of medicine, as more particularly alleged hereinafter:

50. Paragraphs 27 through 48, above, are hereby incorporated by reference as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Prescribing Dangerous Drugs or Controlled Substances Without an Appropriate Prior Examination and/or Medical Indication)

51. Respondent is further subject to disciplinary action under sections 2227, 2234, 3501, 3502 and 3502.1, as defined by section 2242, of the Code, and California Code of Regulations, title 16, sections 1399.540, 1399.541 and 1399.545, in that, as the supervising physician and through PA B.E.'s practice of medicine, he allowed PA B.E. to prescribe, dispense and/or furnish dangerous drugs as defined by section 4022, of the Code, without an appropriate prior examination and/or medical indication, to patients P.H., P.P., L.A., W.J., K.M., A.W., E.R. and T.T., as more particularly alleged hereinafter.

52. Paragraphs 27 through 34, above, are hereby incorporated by reference and realleged as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Violation of State Statute or Regulation Regulating Dangerous Drugs or Controlled Substances)

53. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2238, 3501, 3502 and 3502.1, of the Code, section 11153 of the Health and Safety Code, and California Code of Regulations, title 16, sections 1399.540, 1399.541 and 1399.545, in that, as the supervising physician and through PA B.E.'s practice of medicine, he violated state laws and/or regulations regulating the prescribing of dangerous drugs and/or controlled substances, as more particularly alleged hereinafter:

54. Paragraphs 27 through 34, above, are hereby incorporated by reference and realleged as if fully set forth herein.

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EIGHTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

55. Respondent is further subject to disciplinary action under sections 2227, 2234, 3501, 3502 and 3502.1, as defined by section 2266, of the Code, in that, as the supervising physician and through PA B.E.'s practice of medicine, he failed to maintain adequate and accurate records regarding his care and treatment of patients P.H., P.P., L.A., W.J., K.M., A.W., E.R. and T.T., as more particularly alleged hereinafter:

56. Paragraphs 27 through 34, above, are hereby incorporated by reference and realleged as if fully set forth herein.

NINTH CAUSE FOR DISCIPLINE

(Practicing Under False or Fictitious Name Without Fictitious Name Permit)

57. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2285, 2286, 2406, 2410 and 2415, of the Code, in that, as the supervising physician and through PA B.E.'s practice of medicine, he practiced medicine under a fictitious name without a valid fictitious name permit issued by the licensing agency, as more particularly alleged hereinafter:

58. Paragraphs 27 through 50, above, are hereby incorporated by reference and realleged as if fully set forth herein.

TENTH CAUSE FOR DISCIPLINE

(False Representations)

59. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2261, of the Code, in that he knowingly made or signed a document directly or indirectly related to the practice of medicine which falsely represented the existence or nonexistence of a state of facts, as more particularly alleged hereinafter:

60. Paragraph 32, subdivisions (eee) through (fff), above, is hereby incorporated by reference and realleged as if fully set forth herein.

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ELEVENTH CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

61. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2234, subdivision (e), of the Code, in that he has engaged in an act or acts of dishonesty or corruption substantially related to the qualifications, functions, or duties of a physician, as more particularly alleged hereinafter:

62. Paragraph 32, subdivisions (ccc) through (fff), above, is hereby incorporated by reference and realleged as if fully set forth herein.

TWELFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

63. Respondent is further subject to disciplinary action under sections 2227 and 2234, of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged hereinafter:

64. Paragraphs 27 through 62, above, are hereby incorporated by reference and realleged as if fully set forth herein.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violation of a Provision or Provisions of the Medical Practice Act)

65. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he violated a provision or provisions of the Medical Practice Act, as more particularly alleged hereinafter:

66. Paragraphs 27 through 64, above, are hereby incorporated by reference and realleged as if fully set forth herein.

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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 A39992, issued to respondent Richard Berton Mantell, M.D.;

2. Revoking, suspending or denying approval of respondent Richard Berton Mantell, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering respondent Richard Berton Mantell, M.D., to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and

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

DATED: May 14, 2015

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

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