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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 4 2019
BY Sara Ensign ANALYST

BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: FEI FAN LIU, P.A. 1588 Ruby Court Diamond Bar, California 91765 Physician's Assistant Certificate No. 13731, Respondent.	Case No. 950-2015-000740 OAH Case No. 2019020745 (Lead Case) **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board (Board).

2. On January 25, 1996, the Board issued Physician's Assistant Certificate Number 13731 to Fei Fan Liu P.A. (a.k.a. Joseph Liu) (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2019, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

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

5. Section 2234 of the Code, states:

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

limited to, the following:

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

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

6. Section 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."

7. Section 1246 of the Code states in part:

"(a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon provided that he or she meets both of the following requirements:

"(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

"...

"(2) The department shall adopt regulations for certification by January 1, 2001, as a certified phlebotomy technician that shall include all of the following:

"(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

"...

"(E) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

"...

"(B) As used in this paragraph, "general supervision" means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed."

8. Section 2052 of the Code states:

"(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand

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

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"(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."

9. California Business and Professions Code Section 2069 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 or a licensed podiatrist. A medical assistant may also perform all these tasks and services upon the specific authorization of a physician assistant, a nurse practitioner, or a certified nurse-midwife.

"(2) The supervising physician and surgeon may, at his or her discretion, in consultation with the nurse practitioner, certified nurse-midwife, or 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 nurse practitioner, certified nurse-midwife, or 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:

"(A) The nurse practitioner or certified nurse-midwife is functioning pursuant to standardized procedures, as defined by Section 2725, or protocol. The standardized procedures or protocol, including instructions for specific authorizations, shall be developed and approved by

the supervising physician and surgeon and the nurse practitioner or certified nurse-midwife.

"(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 a licensed podiatrist, or group thereof, for a medical or podiatry corporation, for a physician assistant, a nurse practitioner, or a certified nurse-midwife 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 supervising podiatrist, or the physician assistant, the nurse practitioner, or the certified nurse-midwife 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 supervising podiatrist, or the physician assistant, the nurse practitioner, or the certified nurse-midwife 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.

"(B) A licensed podiatrist.

"(C) A physician assistant, nurse practitioner, or certified nurse-midwife 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 licensed podiatrist, or a physician assistant, a nurse practitioner, or a certified nurse-midwife as provided in subdivision (a).

"(B) Notwithstanding any other law, in a facility licensed by the California State Board of Pharmacy under Section 4180 or 4190, other than a facility operated by the state, technical supportive services also includes handing to a patient a prepackaged prescription drug, excluding a controlled substance, that is labeled in compliance with Section 4170 and all other applicable state and federal laws and ordered by a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife in accordance with subdivision (a). In every instance, prior to handing the medication to a patient pursuant to this subparagraph, the properly labeled and prepackaged prescription drug shall have the patient's name affixed to the package and a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a certified nurse-midwife shall verify that it is the correct medication and dosage for that specific patient and shall provide the appropriate patient consultation regarding use of the drug.

"(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.

"(3) The board to adopt any regulations that violate the prohibitions on diagnosis or treatment in Section 2052.

"(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 nurse practitioner, certified nurse-midwife, or 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 nurse practitioner, certified nurse-midwife, or 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.

"(e) Notwithstanding any other law, a medical assistant shall not be employed for inpatient care in a licensed general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code."

10. 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."

11. Section 3502 of the Code states:

"(a) Notwithstanding any other 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 medical record, for each episode of care for a patient, shall identify the physician and surgeon who is responsible for the supervision of the physician assistant.

"(b)(1) Notwithstanding any other law, a physician assistant performing medical services under the supervision of a physician and surgeon may assist a doctor of podiatric medicine who is a partner, shareholder, or employee in the same medical group as the supervising physician and surgeon. A physician assistant who assists a doctor of podiatric medicine pursuant to this

subdivision shall do so only according to patient-specific orders from the supervising physician and surgeon.

"(2) The supervising physician and surgeon shall be physically available to the physician assistant for consultation when that assistance is rendered. A physician assistant

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assisting a doctor of podiatric medicine shall be limited to performing those duties included within the scope of practice of a doctor of podiatric medicine.

"(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)(A) The supervising physician and surgeon shall use one or more of the following mechanisms to ensure adequate supervision of the physician assistant functioning under the protocols:

"(i) 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.

"(ii) The supervising physician and surgeon and physician assistant shall conduct a medical records review meeting at least once a month during at least 10 months of the year. During any month in which a medical records review meeting occurs, the supervising physician and surgeon and physician assistant shall review an aggregate of at least 10 medical records of patients treated by the physician assistant functioning under protocols. Documentation of medical records reviewed during the month shall be jointly signed and dated by the supervising physician and surgeon and the physician assistant.

"(iii) The supervising physician and surgeon shall review a sample of at least 10 medical records per month, at least 10 months during the year, using a combination of the countersignature mechanism described in clause (i) and the medical records review meeting mechanism described in clause (ii). During each month for which a sample is reviewed, at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (i) and at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (ii).

"(B) In complying with subparagraph (A), the supervising 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 law, the Medical Board of California or the board may establish other alternative mechanisms for the adequate supervision of the physician assistant.

"(d) No medical services may be performed under this chapter in any of the following areas:

"(1) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

"(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, or orthoptics.

"(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

"(4) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined in Chapter 4 (commencing with Section 1600).

"(e) This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501.

"(f) Compliance by a physician assistant and supervising physician and surgeon with this section shall be deemed compliance with Section 1399.546 of Title 16 of the California Code of Regulations.

12. Section 3527 of the Code provides that the board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license for unprofessional conduct.

13. Section 7320.5 of the Code, regarding aestheticians provides that any licensee who uses a laser in the treatment of any human being is guilty of a misdemeanor.

14. Section 2266 of the Code provides that the failure to maintain adequate and accurate records relating to the provision of medical services to a patient constitutes unprofessional conduct.

15. The following sections of Title 16 of the California Code of Regulations provide, in pertinent part, as follows:

A. Section 1399.521 states:

"In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes: (a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon. (b) Using fraud or deception in passing an examination administered or approved by the board. (c) Practicing as a physician assistant under a physician who has been prohibited by the Medical Board of California or the Osteopathic Medical Board of California from

supervising physician assistants. (d) Performing medical tasks which exceed the scope of practice of a physician assistant as prescribed in these regulations."

B. Section 1399.540. Limitation on Medical Services 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.

"...

"(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."

C. 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) of the Code.

"(i) (1) Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of a supervising physician.

"(2) A physician assistant may also act as first or second assistant in surgery under the supervision of an approved 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.

D. Section 1399.543 states:

"A physician assistant may be trained to perform medical services which augment his or her current areas of competency in the following settings:

"(a) In the physical presence of an approved supervising physician who is directly in attendance and assisting the physician assistant in the performance of the procedure;

"(b) In an approved program;

"(c) In a medical school approved by the Medical Board of California under Section 1314;

"(d) In a residency or fellowship program approved by the Medical Board of California under Section 1321;

"(e) In a facility or clinic operated by the Federal government;

"(f) In a training program which leads to licensure in a healing arts profession or is approved as Category I continuing medical education or continuing nursing education by the Board of Registered Nursing."

E. 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 him 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."

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F. Section 1366, states:

"(a) A medical assistant may perform additional technical supportive services such as those specified herein provided that all of the following conditions are met:

"(1) Each technical supportive service is not prohibited by another provision of law, including Section 2069(c) of the code, or these regulations, and is a usual and customary part of the medical or podiatric practice where the medical assistant is employed;

"(2) The supervising physician or podiatrist authorizes the medical assistant to perform the service and shall be responsible for the patient's treatment and care;

"(3) The medical assistant has completed the training specified in Sections 1366.2, 1366.3, and 1366.4 and has demonstrated competence in the performance of the service;

"(4) A record shall be made in the patient chart or other record, including a computerized record, if any, of each technical supportive service performed by the medical assistant, indicating the name, initials or other identifier of the medical assistant, the date and time, a description of the service performed, and the name of the physician or podiatrist who gave the medical assistant patient-specific authorization to perform the task or who authorized such performance under a patient-specific standing order.

"(5) The supervising physician or podiatrist may, at his or her discretion, provide written instructions to be followed by a medical assistant in the performance of tasks or supportive services. Such written instructions may provide that a physician assistant or registered nurse may assign a task authorized by a physician or podiatrist.

"(b) A medical assistant in accordance with the provisions of subsection (a) may perform additional technical supportive services such as the following:

"(1) Administer medication orally, sublingually, topically, vaginally or rectally, or by providing a single dose to a patient for immediate self-

administration. Administer medication by inhalation if the medications are patient-specific and have been or will be routinely and repetitively administered to that patient. In every instance, prior to administration of medication by the medical assistant, a licensed physician or podiatrist, or another person authorized by law to do so shall verify the correct medication and dosage. Nothing in this section shall be construed as authorizing the administration of any anesthetic agent by a medical assistant.

"(2) Perform electrocardiogram, electroencephalogram, or plethysmography tests, except full body plethysmography. Nothing in this section shall permit a medical assistant to perform tests involving the penetration of human tissues except for skin tests as provided in Section 2069 of the code, or to interpret test findings or results.

"...

"(11) Perform simple laboratory and screening tests customarily performed in a medical office.

"...

"(e) Nothing in these regulations shall be construed to modify the requirement that a licensed physician or podiatrist be physically present in the treatment facility as required in Section 2069 of the code.

"..."

G. Section 1366.1, states:

"In order to administer medications by intramuscular, subcutaneous and intradermal injection, to perform skin tests, or to perform venipuncture of skin puncture for the purposes of withdrawing blood, a medical assistant shall have completed the minimum training prescribed herein. Training shall be for the duration required by the medical assistant to demonstrate to the supervising physician, podiatrist, or instructor, as referenced in Section 1366.3(a)(2),

proficiency in the procedures to be performed as authorized by Sections 2069 or 2070 of the code, where applicable, but shall include no less than:

"(a) Ten (10) clock hours of training in administering injections and performing skin tests, and/or

"(b) Ten (10) clock hours of training in venipuncture and skin puncture for the purpose of withdrawing blood, and

"(c) Satisfactory performance by the trainee of at least ten (10) each of intramuscular, subcutaneous, and intradermal injections and ten (10) skin tests, and/or at least ten (10) venipunctures and ten (10) skin punctures.

"...

"(e) Training in (a) through (d) above, shall include instruction and demonstration in:

"(1) pertinent anatomy and physiology appropriate to the procedures;

"(2) choice of equipment;

"(3) proper technique including sterile technique;

"(4) hazards and complications;

"(5) patient care following treatment or test;

"(6) emergency procedures; and

"(7) California law and regulations for medical assistants."

H. Section 1366.2, states:

"Prior to performing any of the additional technical supportive services provided in Section 1366, a medical assistant shall receive such training as, in the judgement of the supervising physician, podiatrist or instructor, as referenced in Section 1366.3(a)(2), is necessary to assure the medical assistant's competence in performing that service at the appropriate standard of care. Such training shall be administered pursuant to either subsection (a)(1) or (a)(2) of Section 1366.3."

I. Section 1366.3, states:

"(a) Training required in Sections 1366, 1366.1 or 1366.2 may be administered in either of these settings:

"(1) Under a licensed physician or podiatrist, who shall ascertain the proficiency of the medical assistant; or under a registered nurse, licensed vocational nurse, physician assistant or a qualified medical assistant acting under the direction of a licensed physician or podiatrist who shall be responsible for determining the content of the training and the proficiency of the medical assistant except that training to administer medication by inhalation shall be provided by a licensed physician or respiratory care practitioner; or

"(2) In a secondary, postsecondary, or adult education program in a public school authorized by the Department of Education, in a community college program provided for in Part 48 of Division 7 of the Education Code, or a postsecondary institution accredited by an accreditation agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary and Vocational Education under Sections 94130 or 94311 of the Education Code. ...

"(b) The supervising physician or podiatrist, pursuant to subsection (a)(1) or the instructor pursuant to subsection (a)(2) shall certify in writing the place and date such training was administered, the content and duration of the training, and that the medical assistant was observed by the certifying physician, podiatrist, or instructor to demonstrate competence in the performance of each such task or service, and shall sign the certification. More than one task or service may be certified in a single document; separate certifications shall be made for subsequent training in additional tasks or services.

"(c) For purposes of this section only, a 'qualified medical assistant' is a medical assistant who:

"(1) is certified by a medical assistant certifying organization approved by the division;

"(2) holds a credential to teach in a medical assistant training program at a community college; or

"(3) is authorized to teach medical assistants in a private postsecondary institution accredited by an accreditation agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary and Vocational Education."

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before any board within the California Department of Consumer Affairs, the board may request the administrative law judge to direct a licentiate found to have committed a violation/violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL SUMMARY

17. Skin Perfect Medical Aesthetic, Inc., a.k.a. Skin Perfect Brothers ("Skin Perfect"), located at 1569 S. Fairway Drive, in Walnut, California, is a business jointly owned by Respondent, a physician assistant, and Dr. Yasmin Qasim, a pathologist. Skin Perfect is a day spa which offers medical services to patients. On May 6, 2011, fictitious name permit number ("FNP") 41386 was issued for Skin Perfect. The FNP listed Skin Perfect as a corporation formed on August 23, 2004. On September 27, 2015, Skin Perfect filed a Statement of Information with the California Secretary of State naming the following persons as directors: Fei-Fan Liu, Yasmin Qasim and Fei-Pi Liu (the brother of Respondent, who is also a physician assistant). Fei-Fan Liu was identified as the Chief Executive Officer, Secretary and Chief Financial Officer of Skin Perfect. From June 2015 to June 2018, Respondent Liu operated Skin Perfect while this fictitious name permit was delinquent and invalid. Skin Perfect employed approximately 25 people including licensed registered and vocational nurses, licensed physician assistants, receptionists, and aestheticians, and rendered dermatological care and cosmetic treatments to approximately 50 to 100 patients per day, typically Tuesdays through Saturdays.

18. Dr. Qasim is the medical director and joint owner of Skin Perfect. Between 2011 to the present, Dr. Qasim has been an employee of Skin Perfect, and was paid non-hourly wages, less standard employee deductions. Dr. Qasim is a pathologist, and as such, the dermatological and cosmetic treatments rendered by Respondent and others at Skin Perfect was outside of the scope of Dr. Qasim's medical specialty. Dr. Qasim is not board certified in the field of Dermatology. She did not participate in a dermatology internship, residency or fellowship. On June 18, 2009, Dr. Qasim entered a delegation of services agreement with Respondent, but did not adequately supervise Respondent. Dr. Qasim typically came to Skin Perfect only on Saturdays, but did not see patients. She did not perform procedures, except as may be necessary to demonstrate something for a new employee. She occasionally reviewed charts and provided training to employees. She did not herself supervise any treatments rendered to Skin Perfect patients. In fact, between 2011 and the present, no doctor was routinely present at Skin Perfect treating or supervising the treatment of patients. Instead, Respondent, a physician assistant, independently supervised medical treatment rendered by unlicensed individuals employed at Skin Perfect. Also from 2011 to present, Dr. Yasmin Qasim has been employed full time at other medical facilities. She typically worked at other medical facilities Monday to Friday. Her employers included Kaiser Permanente, and then later, a hospital in Long Beach, California.

19. C.H. is a medical doctor with a specialty in dermatology. C.H. is on the payroll of Skin Perfect at a fixed fee per month. He occasionally consults with and trains staff but does not supervise employees or perform routine procedures. C.H. only performed dermatology consultations as needed, coming in to assist with patients who had more complicated skin conditions. C.H. assertedly supervised Respondent, although there was no delegation of services agreement between Respondent and C.H. According to other employees, C.H. did not actually come to work on a regular basis for the past two and a half (2.5) years but is "available by phone" for questions and, according to other employees, has only come to the office about three times per year, typically to train staff.

20. As noted above, a Delegation of Services Agreement ("the Agreement") was entered into between Dr. Qasim and Respondent on June 18, 2009. The Agreement describes

Respondent's duties as obtaining history and physicals, injecting keloids, fillers, Botox and vitamins, applying chemical peels, fraxel laser, IPL, and monitoring for adverse reactions to any of those treatments. In the Agreement, Respondent agreed to physician audit review of at least 5% of his medical records. The Agreement did not authorize Respondent to supervise any medical care to be rendered by a medical assistant or any other unlicensed employee. The agreement between Respondent and Dr. Qasim was inadequate as it lacked any protocols for treatment such as what to do under different circumstances. In compensation, Dr. Qasim was issued 51,000 shares and Respondent was issued 49,000 shares in Skin Perfect. This Agreement remained in effect from June 2009 until July 2018, at which time it was updated, after Respondent became aware that Skin Perfect was under investigation. Respondent maintained a website at www.skinperfectbrothers.com. The website contained no information about any physician supervising Respondent, and promoted Respondent as the operator of the spa. In October 2018, after Respondent became aware that he was under investigation by the Board, was information regarding Dr. Qasim added to the website.

21. At Skin Perfect, Respondent performs "dermatological oriented" histories and physical exams on patients. He treats patients with acne or sunspots. Dr. Qasim was not physically present while Respondent performed most of these procedures.

22. Respondent allowed unlicensed and unqualified individuals to perform numerous medical treatments at Skin Perfect without proper and adequate supervision. These treatments included: (1) the use of an Intense Pulse Light (IPL) machine, the performance of laser hair removal, laser genesis, vein laser treatment, and fraxel laser; (2) Plasma Rich Platelets (PRP) treatments, a.k.a. a "Vampire Facelift," which involves the drawing of blood, isolating the platelets, and injecting the platelets into the patient's face; and (3) acne treatments. All of these treatments must be performed by a licensed doctor or by qualified individuals under the supervision of a licensed physician. The drawing of human blood must be performed by a properly licensed person, including a phlebotomist.

23. Employee J. S. is an unlicensed individual who, from 2011 to 2017, injected Botox, operated the IPL machine and laser equipment, performed laser hair removal, and mixed fillers

for injection. J.S. received training in laser treatments and performed laser treatments on patients, including treating patients with sun spots. J.S. is not licensed to perform any medical procedure. J.S was supervised by Respondent.

24. Employee R.P., is an aesthetician and also office manager who was trained on the laser equipment by the machine manufacturing company representatives and who, from 2011 to the present, performed laser treatments, including treating patients with sun spots, mixed filler and injected Botox into patients. R.P. was supervised by Respondent.

25. Employee T. C. is a licensed aesthetician who, from 2008 to the present, injected fillers, mixed fillers for injection and drew blood from patients for PRP treatments, from about October 2011 to present, during which time she was not licensed to perform any medical procedure, and did not have the requisite phlebotomy certification or training required to draw blood. T.C. received training in laser treatments and performed laser treatments on patients, including treating patients with sun spots. T.C. performed IV injections, acne injections, and various laser treatments while she was unqualified to do so, from October 2011 to present. T.C. was supervised by Respondent.

26. Employee W.K. is a licensed asesthetician. She was trained to give laser treatments by the office manager, R.P. From 2014 through 2017, W.K. performed laser treatments on patients. W.K. was supervised by Respondent.

27. Employee J.L. was a front desk employee who, from 2010 to 2016, was allowed to perform laser treatments on patients, including patients with sun spots. J.L. was employed by Respondent.

28. Employee K.L. was a front desk employee who, from 2012 to 2014, was allowed to perform laser treatments on patients, including patients with sun spots.

FIRST CAUSE FOR DISCIPLINE

(Aiding or Abetting Unlicensed Practice)

29. Respondent is subject to disciplinary action under sections 3502, 3527, 2234, 7320.5, 2234 subdivision (a), 2052, and 2264 of the Code and Title 16 California Code of Regulations sections 1366, 1366.1, 1366.2, 1366.3, 1399.521, 1399.540, 1399.541, 1399.543, and 1399.545,

in that he aided and abetted unlicensed persons -- T.C., R.P., J.S., W.K., J.L. and K.L -- to engage in the practice of medicine. The facts and circumstances alleged in paragraphs 17 through 28, are incorporated herein as if fully set forth.

30. Respondent aided and abetted the practice of medicine as follows:

A. He violated the Physician Assistant Practice Act in creating a medical business venture in the field of dermatology with Dr. Qasim, including treating acne and sunspots, which were outside the supervising physician's field of medicine (that is, pathology) and over time increasingly worked independently without adequate physician supervision, from October 2011 to the present, on a regular basis. He violated the Physician Assistant Practice Act in allowing medical assistants to perform tasks they were not properly trained to do, including performing treatments and procedures in the field of dermatology, treating sunspots, using lasers, and by drawing blood. Respondent practiced dermatology, when his supervising physician was not adequately trained or certified in dermatology, and not qualified to delegate these tasks.

B. He violated the Physician Assistant Practice Act in that he allowed T.C., a licensed aesthetician, and R.P. to draw blood from in or about October 2011 to the present, on a regular basis, when those persons did not have the requisite phlebotomy certification or training. In addition, he allowed employee T.C. to inject patients with fillers, to perform IV injections, acne injections, and various laser treatments which employee T.C. was unqualified to do so, from October 2011 to present, on a regular basis. Title 16, California Code of Regulations, section 1366.1 provides that: "In order to administer medications by intramuscular, subcutaneous and intradermal injection, to perform skin test, or to perform venipuncture of skin puncture for the purposes of withdrawing blood, a medical assistant shall have completed the minimal training prescribed herein. Training shall be for the duration required by the medical assistants to demonstrate to the supervising physician, podiatrist, or instructor, as referenced in Section 1366.3(a)(2)..." In addition, Code section 1246 provides that "He or she works under the supervision of a licensed physician or of a licensed registered nurse. Dr. Qasim was not at the clinic during these procedures and Respondent is not a registered nurse.

C. He allowed R.P., T.C., and J.S. to inject Botox into patients from 2012 to present, on a regular basis, while they were unqualified to do so. The FDA classifies all dermal fillers as devices. It states that "a registered nurse may dispense drugs or devices upon an order by a licensed physician and surgeon." The comparable governance of Licensed Vocational Nurses (LVN's) only covers drugs not devices. Since fillers are regulated by the FDA as devices and not medications, they cannot be legally injected by LVN's or aestheticians. Unlicensed medical assistants, licensed vocational nurses, cosmetologists, electrologists, or aestheticians may not legally perform these treatments under any circumstance with the exception that licensed vocational nurses may inject Botox. "No unlicensed persons, such as medical assistants, may inject Botox."

D. He violated the Physician Assistant Practice Act in that he allowed W.K., T.C., J.S., J.L., K.L., and R.P. to give laser treatments to patients from about 2011 to present, on a regular basis, while they were unqualified to do so. Only physicians, physician assistants under direct physician supervision, and registered nurses may use lasers or intense pulse light devices and inject Botox. Business and Professions Code section 7320.5, explicitly prohibits aestheticians from using laser treatments on human beings.

E. Specific instances of the above stated violations are as follows. Former Skin Perfect employee J.L. provided five (5) photographs that she took on about September 29, 2016. The photos are of computer appointment calendars of Skin Perfect for the week of September 17, 2016. She also provided two (2) additional photos taken on about July 13, 2016, of the July 16, 2016 appointment schedule. The schedules showed the procedures, employee name, patient name and notes that were scheduled and which are characteristic of the conduct alleged in the preceding paragraphs. Moreover, employee J.L. was present and observed the procedures being done. The details are as follows.

F. Each of the employees listed on the following chart is an aesthetician. In California, aestheticians (or estheticians), are licensed by the California Board of Barbering and Cosmetology to cleanse and treat the skin, typically giving facials, applying makeup, applying eyelashes, removing hair (by waxing or tweezing), and providing skin care, which can include

microdermabrasion services. It includes beautifying the face, neck, arms, or upper body (from the shoulders up) by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams. Aestheticians cannot penetrate the skin. The operation of aesthetic lasers in California is limited to registered nurses, nurse practitioners, physician assistants, and doctors and doctors are not permitted to delegate laser services to employees who do not meet those criteria.

G. Aestheticians are not allowed to perform – even under supervision – Spectra Laser, Laser Genesis, Ultherapy, and Fraxel Laser Skin Resurfacing.

H. Keloid injection is a treatment that is only allowed if the aesthetician is supervised.

I. A PRP blood draw is a treatment that is only allowed if the aesthetician has had documented training and is supervised.

J. IV Lite is a treatment that may not be performed by aestheticians if the procedure involves introducing any medication or material into a vein or affecting a vein in any way because aestheticians are only allowed to treat superficial skin.

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Photo #	Column	Procedure	Employee	Patient Name	Notes
1	Silkpeel/ Meso / IV T.C. 9am-6pm	Spectra Laser	T.C.	Y. H.	XX
		"	"	B. G.	
		"	"	J. P.	XX
		Laser Genesis	""	I. M.	
		IV Lite	"	M. Y. C.	
		"	"	K. L.	XX
		"	"	S. A.	
		"	"	J. N. W	
		Keloid Injection	"	M. A.	$1009.89
		IV Lite	"	M. W.	***
		PRP Blood draw	"	K. W.	
		"	"	B. L.	
		IV Lite	"	E. N.	
		Laser Genesis	R.P.	G. C. 12/13/62	
		Ultherapy	R.P.	Y. X.	$850.00
		Laser Genesis	?	B. C.	$99.99
		Consult New Laser	R.P.	J. K.	
		Consult New WL		A. W.	$3499.99
2	CoolSculpting / Other R. P. 9am-6pm	Ultherapy Full Face	R. P.	M. R.	$3600.00
		CoolSculpting small	"	R. T.	
		"	"	R. T.	
		Fraxel-Full Face	"	T. C	
	Silk Peel 3 J.S. 10am-6pm	General numbing	J. S.	M. R.	
		Spectra Laser	"	M. S.-Y.C.	
		Laser Genesis	T.C.	R. N.	$399.98
		Ultherapy Lower Face	"	M. S.	
		Ultherapy Full Neck	"	M. S.	
	Numbing Column	General Numbing	T.C. or J.S.	K. Z.	
		General Numbing	?	R. N.	
		General Numbing	T.C.	M. S.	
3	CoolSculpting / Other R. P. 9am-6pm	Spectra Laser	R.P.	S. Z.	
		Spectra Laser	"	J. D.	
		Ultherapy Full Face	"	J. L.	
		Acne Facial	"	A. Z.	
	Silk Peel 3 J.C. 10am-6pm	CoolSculpting Small	J.S.	J. N. V.	$1500.00
		"	"	J. N. V.	$1500.00
		Spectra Laser	"	A. S.	$320.00
	Numbing Column	General Numbing	R.P. or T.C.	J. L.	
		"	C. L.	R. D.	

		"	J.C.	K. A.	
		"	T.S.	J. Y. Z.	X
		"	R.P.	S. H.	
		General Numbing	T.S.	R. C.	
4	CoolSculpting / Other R.P. 9am-6pm	Sculpting Small	J.S.	R. A.	
		Sculpting Small	J.S.	R. A.	$1599.99
		Consult New Laser	J.S. or R.P.	--ima R.	
		CoolSculpting Small	J.S. or R.P.	W. J. T.	$2400.00
		CoolSculpting Small	R.P.	W J. T.	$2400.00
		Spectra Laser	"	"	
		Oxygen-Standard	"	"	
		Micropen Silver	"	T. V.	$199.20
	Numbing Column	General Numbing	T.C.	S. Y.	
		General Numbing	T.C.	X. D. C.	XX
		General Numbing	J.S.	T. V.	
		General Numbing	?	L. S.	$950.50
5		Ultherapy Lower Face	"	C. V.	
		Silk Peel Standard	"	B. C.	
		Laser Genesis	"	R. B.	$398.37
		VT-15 Minutes	"	"	$398.37
	Numbing Column	General Numbing	T.C.	S. G.	XX
		"	T.C.	G. Y.	
		"	T.C.	C. V.	

K. Former Skin Perfect employee J.L. provided two Yelp reviews that document that:

1. On about June 13, 2016 employee J.C. performed heated keloid injections, fraxel treatment and micropen treatment on patient M.A.

2. On or about April 6, 2016, employee T.C. performed laser tattoo removal on patient S.L.

L. On October 2, 2018, Dr. Qasim was interviewed by a Health Quality Enforcement Investigator. Respondent Qasim admitted that she has been employed by other employers, during the time she was responsible for supervising Skin Perfect. For a period of time, she was employed full time by another employer. For another period of time, she was employed part time by two employers. Respondent Qasim claimed that she reviewed only about two to five percent of the charts of Skin Perfect. Dr. Qasim admitted that she visited Skin Perfect on Saturdays and for one half day, during the work week.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

31. By reason of the facts set forth above in the First Cause for Discipline, Respondent is subject to disciplinary action under Code section 2234, by exceeding the scope of his license as a physician assistant and by aiding or abetting unlicensed persons R.P., T.C., J.S., J.L., K.L., and W.K. to engage in the practice of medicine.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Active Fictitious Name Permit)

32. By reason of the facts set forth above in the First Cause for Discipline, Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by 2285, in that he failed to maintain an active fictitious name permit from the Medical Board of California for his business.

DISCIPLINE CONSIDERATIONS

33. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on October 26, 2011, in a prior disciplinary action entitled *In the Matter of the Accusation Against Fei Fan Liu, P.A.* before the Physician Assistant Committee, Medical Board of California, in Case No. 1E-2009-199062, Respondent's license was revoked. However, the revocation was stayed on three (3) years probation plus terms and conditions, based on allegations of gross negligence, repeated acts of negligence, failure to maintain adequate and accurate records, providing medical services without authorization, and administration of controlled substances without advance approval by a supervising physician, regarding one patient. That decision is now final and is incorporated by reference as if fully set forth.

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PRAYER

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

1. Revoking or suspending Physician's Assistant Certificate Number 13731, issued to Fei Fan Liu, P.A.;

2. Ordering him to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and;

3. If placed on probation, ordering him to pay the Physician Assistant Board the cost of probation monitoring.

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

DATED: June 4, 2019

MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California

Complainant

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