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

In the Matter of the Accusation
Against:

SCOTT DOUGLASS EWING, M.D. Case No. 04-2013-233827
Physician's and Surgeon's
Certificate No. A83530
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 December 16, 2016.

IT IS SO ORDERED: November 17, 2016.

MEDICAL BOARD OF CALIFORNIA

Jamie Wright, J.D.
Chair, Panel A

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 Christina L. Sein, Deputy Attorney General.

2. Respondent Scott D. Ewing, M.D. (Respondent) is represented in this proceeding by attorney Mark F. Von Esch, whose address is: 810 E. Commonwealth Ave., Fullerton, CA 92831.
3. On or about June 11, 2003, the Medical Board of California issued Physician's and Surgeon's Certificate No. A83530 to Respondent. The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on October 31, 2016, unless renewed.

JURISDICTION
4. Accusation No. 04-2013-233827 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 30, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.
5. A copy of Accusation No. 04-2013-233827 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS
6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 04-2013-233827. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY
9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 04-2013-233827 and that he has thereby subjected his license to disciplinary action.
10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11. 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 Board, all of the charges and allegations contained in Accusation No. 04-2013-233827 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**

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A83530 issued to Respondent Scott D. Ewing, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years on the following terms and conditions.

1. **CONTROLLED SUBSTANCES - TOTAL RESTRICTION.** Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

   Respondent shall not issue an oral or written recommendation or approval to a patient or a patient’s primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

   If Respondent forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient’s medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient’s primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient’s primary caregiver may not rely on Respondent’s statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient’s chart that the patient or the patient’s primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient’s primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. **CONTROLLED SUBSTANCES - ABSTAIN FROM USE.** Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business...
and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner’s name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. **ALCOHOL - ABSTAIN FROM USE.** Respondent shall abstain completely from the use of products or beverages containing alcohol.

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the
Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

4. **BIOLOGICAL FLUID TESTING.** Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, Respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing
Industry Association or have completed the training required to serve as a collector for the
United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of
Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines
published by the United States Department of Transportation without regard to the type of
test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of
Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business
day of receipt and all specimens collected shall be handled pursuant to chain of custody
procedures. The laboratory shall process and analyze the specimens and provide legally
defensible test results to the Board within seven (7) business days of receipt of the
specimen. The Board will be notified of non-negative results within one (1) business day
and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise
necessary in order to test Respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair
specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-
line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows
staff access to drug test results and compliance reporting information that is available 24
hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have
knowledge of substance abuse disorders and the appropriate medical training to interpret
and evaluate laboratory biological fluid test results, medical histories, and any other
information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is
obtained while practicing, even if the Respondent holds a valid prescription for the
substance.

Prior to changing testing locations for any reason, including during vacation or other
travel, alternative testing locations must be approved by the Board and meet the requirements
above.

The contract shall require that the laboratory directly notify the Board or its designee of
non-negative results within one (1) business day and negative test results within seven (7)
business days of the results becoming available. Respondent shall maintain this laboratory or
service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any
proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or
administered to himself or herself a prohibited substance, the Board shall order Respondent to
cease practice and instruct Respondent to leave any place of work where Respondent is practicing
medicine or providing medical services. The Board shall immediately notify all of Respondent's
employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while
practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the
positive biological fluid test is in fact evidence of prohibited substance use by consulting with the
specimen collector and the laboratory, communicating with the licensee, his or her treating
physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52 (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

5. **PSYCHOTHERAPY.** Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.
Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

6. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS. Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance
abuse problem or problems; and whether Respondent is a threat to himself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he or she is fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation.

Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

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7. **SUBSTANCE ABUSE SUPPORT GROUP MEETINGS.** Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee.

   Respondent shall pay all substance abuse support group meeting costs.

   The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

   The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

8. **WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEES.**

   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 worksite monitor, the name and qualifications of one or more license physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

   The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the working
monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent’s worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent’s disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon’s Certificate number; (2) the worksite monitor’s name and signature; (3) the worksite monitor’s license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent’s work attendance; (8) any change in behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.
If the worksite 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.

9. **EDUCATION COURSE.** Within 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 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 the completion of each course, the Board or its designee may administer an examination to test Respondent’s knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

10. **MEDICAL RECORD KEEPING COURSE.** Within 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 the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

11. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent’s initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision 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 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.
12. **PROFESSIONAL BOUNDARIES PROGRAM.** Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program equivalent to the Professional Boundaries Program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program’s discretion, shall undergo and complete the Program’s assessment of Respondent’s competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The Program shall evaluate Respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire Program not later than six (6) months after Respondent’s initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on Respondent’s performance in and evaluations from the assessment, education, and training, the Program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, Respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The Program has the authority to determine whether or not Respondent successfully completed the Program.

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

If Respondent fails to complete the Program within the designated time period, Respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that Respondent failed to complete the Program.

13. **CLINICAL TRAINING PROGRAM.** Within 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-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 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.

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Respondent shall not practice medicine until Respondent has successfully completed the Program and has been so notified by the Board or its designee in writing, except that Respondent may practice in a clinical training program approved by the Board or its designee. Respondent’s practice of medicine shall be restricted only to that which is required by the approved training program.

14. **PSYCHOTHERAPY.** Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary. The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent’s license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

15. **MONITORING - PRACTICE.** Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice 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(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), 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 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 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 10 calendar days after the end of the preceding quarter.

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If the monitor resigns or is no longer available, Respondent shall, within 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 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 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.

16. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 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. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent’s practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an
appropriate practice setting within 60 calendar days of the practice setting change, 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 practice until an appropriate practice setting is established.

17. **PROHIBITED PRACTICE.** During probation, Respondent is prohibited from performing cosmetic surgery. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from performing cosmetic surgery. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient’s name, address and phone number; patient’s medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

18. **NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION.** Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff privileges.

19. **SUPERVISION OF PHYSICIAN ASSISTANTS.** During probation, Respondent is prohibited from supervising physician assistants.
20. **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.

21. **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 10 calendar days after the end of the preceding quarter.

22. **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
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 30 calendar days prior to the dates of departure and return.

23. **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.

24. **NON-PRACTICE WHILE ON PROBATION.** Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 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 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 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.

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

26. **VIOLATION OF PROBATION CONDITION FOR SUBSTANCE-ABUSING LICENSEES.** Failure to fully comply with any term or condition of probation is a violation of probation.

   A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

   (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

   (2) Increase the frequency of biological fluid testing.

   (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

   B. If Respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:
(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(l), of Title 16 of the California Code of Regulations, at Respondent's expense;

(7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) 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.

27. 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 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.
28. **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.

**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark F. Von Esch. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 4/30/16

[Signature]

SCOTT D. EWING, M.D.
Respondent

I have read and fully discussed with Respondent Scott D. Ewing, 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: 9/30/16

[Signature]

MARK F. VON ESCH
Attorney for Respondent

[Endorsement on following page]
ENDORSEMENT

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

Dated: 9/30/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

JUDITH T. ALVARADO
Supervising Deputy Attorney General

CHRISTINA L. SEIN
Deputy Attorney General

Attorneys for Complainant
Exhibit A

Accusation No. 04-2013-233827
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SCOTT D. EWING, M.D.
7989 Osuna Circle
Huntington Beach, CA 92648

Physician’s and Surgeon’s Certificate
No. A83530

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official
capacity as the Executive Director of the Medical Board of California, Department of Consumer
Affairs ("Board").

2. On or about June 11, 2003, the Medical Board issued Physician’s and Surgeon’s
Certificate Number A83530 to Scott D. Ewing, M.D. ("Respondent"). The Physician’s and
Surgeon’s Certificate will expire on October 31, 2016, unless renewed.

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

4. Section 2004 of the Code provides that the Board is responsible for the administration and hearing of disciplinary actions involving enforcement of the Medical Practice Act.

5. 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, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2228 of the Code states:

   "The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

   "(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

   "(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee’s choice.

   "(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

   "(d) Providing the option of alternative community service in cases other than violations relating to quality of care."
7. Section 2225.5 of the Code states:

“(a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient’s written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

“(f) For purposes of this section, “certified medical records” means a copy of the patient’s medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board. ...”

8. 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:

“(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. ...”

9. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. ...”

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

10. Section 2237 of the Code states:

“(a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

“(b) Discipline may be ordered in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.”

11. 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.”

ACCUSATION NO. 04-2013-233827
12. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

"(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

13. Section 2261 of the Code states:

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

14. 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."

15. Section 2271 of the Code states: "Any advertising in violation of Section 17500, relating to false or misleading advertising, constitutes unprofessional conduct."

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16. Section 651 of the Code states:

"(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

"(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

"(1) Contains a misrepresentation of fact.

"(2) Is likely to mislead or deceive because of a failure to disclose material facts.

"(3)(A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

"...

"(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

"(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

"...

"(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision."
“(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

“(h) Advertising by any person so licensed may include the following:

“...

“(5)(A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

“...

“(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.”

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

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

18. California Health and Safety Code section 123110 states, in relevant part:

“(a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be...
entitled to inspect patient records upon presenting to the health care provider a written request for
those records and upon payment of reasonable clerical costs incurred in locating and making the
records available. However, a patient who is a minor shall be entitled to inspect patient records
pertaining only to health care of a type for which the minor is lawfully authorized to consent. A
health care provider shall permit this inspection during business hours within five working days
after receipt of the written request. The inspection shall be conducted by the patient or patient's
representative requesting the inspection, who may be accompanied by one other person of his or
her choosing. ...”

FACTUAL SUMMARY – PATIENT A.B.¹

19. From 2005 through approximately 2011, Respondent performed multiple cosmetic
surgery procedures on Patient A.B. Respondent failed to provide certified copies of Patient
A.B.’s medical records, indicating at his August 22, 2014 subject interview that he had lost
Patient A.B.’s medical records. However, the circumstances of the care and treatment that
Respondent provided to Patient A.B. may be partially ascertained via interviews of both
Respondent and Patient A.B.

20. In 2005, Patient A.B. was employed as a phlebotomist by Respondent’s father, D.E., a
former California licensed physician and surgeon whose license was surrendered in 2009.
Respondent met Patient A.B. through her work with D.E. While Patient A.B. was employed by
D.E., Respondent commissioned Patient A.B. to assist him in continuing his cosmetic surgery
training by submitting to liposuction of her stomach and outer thighs. Although Patient A.B. was
not interested in cosmetic surgery, she ultimately relented, and Respondent performed liposuction
of Patient A.B.’s thighs and stomach.

21. Respondent conducted liposuction of Patient A.B.’s stomach and outer thighs, using
local anesthesia. Respondent failed to conduct and document an adequate pre-operative physical
examination and medical history or post-operative follow-up examinations. Approximately two
weeks after the procedure, Patient A.B. complained to Respondent of numbness and swelling in

¹ Initials are used to protect patient confidentiality. Names will be released pursuant to a request for discovery.
the areas where he performed liposuction. Respondent failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

22. Approximately three to four weeks after the procedure, Respondent observed Patient A.B.'s results and suggested that she undergo additional liposuction on her inner thighs. Patient A.B. again resisted the idea of undergoing cosmetic surgery, but ultimately relented to assist Respondent in obtaining additional cosmetic surgery training. Respondent again performed liposuction on Patient A.B. with local anesthesia, focusing on her inner thighs. Respondent failed to conduct and document an adequate pre-operative physical examination and medical history or post-operative follow-up examinations. Following the procedure, Patient A.B. again complained of numbness and swelling. Respondent again failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

23. Approximately three months after the procedure, Patient A.B. observed lumpy bulges and indentations on her outer thighs and experienced numbness and shooting pains. She notified Respondent of her symptoms and Respondent again failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.

24. From approximately 2005 through 2008, Patient A.B. repeatedly expressed concern for her continuing numbness, shooting pain, and lumpiness. Respondent again failed to perform a physical examination of the areas and informed Patient A.B. that the symptoms would dissipate with time.


26. In 2008, Patient A.B. underwent a third revision procedure to correct the lumpy appearance in her thighs. Using local anesthesia, Respondent inserted a wire under Patient A.B.'s skin to raise the indentations. Respondent failed to conduct and document an adequate pre-operative physical examination and medical history or post-operative follow-up examinations. Following the procedure, Patient A.B. again complained of lumpiness. Respondent again failed
to perform a physical examination of the areas and informed Patient A.B. that the symptoms
would dissipate with time.

27. In 2011, Patient A.B. underwent a fourth revision procedure to correct the lumpy
appearance of her thighs. During this procedure, Respondent performed a fat transfer on Patient
A.B.'s thighs, again using local anesthesia. Respondent extracted fat from Patient A.B.'s flanks,
cleaned the fat with saline and "what appeared to be a common kitchen strainer," and injected the
fat into the indentations on her thighs. Respondent failed to conduct and document an adequate
pre-operative physical examination and medical history or post-operative follow-up examinations.
Following the procedure, Patient A.B. complained of pain and swelling. Respondent again failed
to perform a physical examination of the areas.

FIRST CAUSE FOR DISCIPLINE

(Failure to Provide and/or Maintain Adequate Patient Records for Patient A.B.)

28. Paragraphs 19 through 27 are incorporated herein.

29. Respondent is subject to disciplinary action under Code sections 2266 [failure to
maintain adequate patient records], and/or 2225.5 [failure to provide patient records], and/or
Health and Safety ("HIS") Code section 123110(a) [failure to provide patient records], in that
Respondent failed to maintain and furnish medical records for Patient A.B. pursuant to Patient
A.B.'s October 18, 2012 request for her own medical records or the Board's 2014 request for
Patient A.B.'s certified medical records. During the August 22, 2014 subject interview,
Respondent admitted that he did not have medical records for Patient A.B.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Acts and/or False Representations for Patient A.B.)

30. Paragraphs 19 through 27 are incorporated herein.

31. Respondent is subject to disciplinary action under Code sections 2234(e) [dishonest
act] and/or 2261 [false representations], in that on January 16, 2013, Patient A.B. filed a civil
complaint entitled [Patient A.B.] v. Scott Douglas Ewing, M.D., case no. 30-2013-00624836,
before the Orange County Superior Court. In litigating this matter, Respondent filed an Ex Parte
Motion to Continue Trial Date; or Alternatively For an Order Shortening Time for Notice of
Hearing on Motion for Continuance of Trial ("Motion") on January 3, 2014. In a declaration attached to the Motion, Respondent states: "[w]ithin the last several months I have been diagnosed with Bi-Polar disorder that included a manic breakdown. Said condition resulted in having to receive both in-patient and out-patient treatment [and] has impaired my ability to operate my business and temporarily to defend or participate in this litigation." The declaration was submitted under penalty of perjury.

32. On August 22, 2014, Respondent submitted to a subject interview. When questioned about his mental health status, Respondent indicated that he had never been diagnosed with or treated for bi-polar disorder and that the representations made in the Motion were a "gross exaggeration" of what he describes as irritability and stress.

PATIENT V.S.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Dishonest Act and/or False or Misleading Advertisement for Patient V.S.)

33. Respondent is subject to disciplinary action under Code sections 2234(e) [dishonest act], and/or 651(a) [false or misleading advertising], and/or 2271 [false or misleading advertising], in that he published an advertisement for medical care that misstated his training and credentials. The circumstances are as follows:

34. Prior to August of 2013, Patient V.S. purchased a LivingSocial deal for discounted Botox treatment at Respondent’s cosmetic surgery center, Breeze Cosmetic Surgery, where Respondent practices cosmetic surgery and procedures as a solo-practitioner. The advertisement stated that the procedure would be conducted by "[a] board-certified physician with post-doctoral training in facial surgery." Respondent is not now, nor has he ever been, a board-certified physician and Respondent has no post-doctoral training in facial surgery.

FACTUAL SUMMARY – PATIENT R.Z.

35. On or about June 20, 2013, Patient R.Z. attended a cosmetic surgery consultation with Respondent at Breeze Cosmetic Surgery, seeking excision of a lump in her breast, a possible scar tissue deposit from a breast augmentation procedure she received by another doctor in 2007. At
this time, Patient R.Z. asked Respondent’s office manager, T.W., if Respondent was board-certified, to which T.W. answered affirmatively. During the consultation, Respondent indicated that R.Z. required a breast lift. Patient R.Z. indicated that she simply wanted the lump removed, but Respondent reiterated the need for a complete breast lift. Patient R.Z. ultimately relented.

36. On or about July 2, 2013, Patient R.Z. presented at Breeze Cosmetic Surgery for the breast lift, lumpectomy, and liposuction of her chin. Patient R.Z.’s blood pressure measured 135/106 and she disclosed that she was on a medical regime of Toprol\(^2\) and clonidine.\(^3\) Respondent failed to conduct and document a pre-operative electrocardiogram (“EKG”) or metabolic blood panel laboratory studies. Respondent failed to conduct or document a mammogram, ultrasound, MRI, and/or biopsy and pathologic study of Patient R.Z.’s reported breast mass. Respondent failed to conduct or document adequate pre-operative planning for a mastopexy procedure or proper intra-operative technique for a Wise pattern breast reduction to ensure proper symmetry of the breasts.

37. Respondent conducted the procedures under intravenous and local anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of her vital signs. During the procedure, Patient R.Z. complained that she could feel the scalpel, to which Respondent replied, “give her more fucking dope.” Respondent cursed throughout the course of the surgery, becoming agitated and verbally abusive to his staff. During the procedure, Respondent removed both of Patient R.Z.’s areolas, performed a lift procedure, and closed both breasts. Patient R.Z.’s left breast bled excessively during the procedure, which Respondent indicated resulted from his failure to properly reconnect her blood vessels. The entire procedure lasted approximately seven hours.

38. Following the procedure, Respondent failed to adequately conduct and document monitoring of Patient R.Z.’s vital signs. Respondent reported to Patient R.Z.’s waiting fiancé,

\(^2\) Toprol is the trade name for metoprolol, a beta-blocker that affects circulation used in the treatment of angina, hypertension, and heart attack prevention.

\(^3\) Clonidine is an anti-hypertensive, indicated in the treatment of hypertension. Clonidine has a potential sedative effect and should be used cautiously by patients undergoing surgery.
saying, "she's so sexy," in reference to Patient R.Z. Additionally, one of Respondent’s staff persons showed Patient R.Z. her own breasts, indicating that Respondent had performed her breast augmentation as well. Patient R.Z. noted that her breasts showed significant scar tissue.

39. On or about July 3, 2013, Respondent examined Patient R.Z.’s breasts. Patient R.Z. noted that the nipple on her right breast appeared abnormal. Respondent indicated that her recovery looked normal and re-bandaged her in the old bandage, indicating that he could not afford to use a clean bandage on her. Respondent failed to document an adequate post-operative physical examination.

40. On or about July 8, 2013, Patient R.Z. noticed that a wound had opened up around the areola on her right breast. She returned to Respondent’s office and Respondent indicated that her recovery was normal, instructing her to keep her breasts bandaged. Respondent failed to document an adequate physical examination.

41. On or about July 11, 2013, Patient R.Z. noticed that the areola on her right breast had begun to discharge and felt hot and painful. She also noticed that a wound had opened up around the areola on her left breast as well. Patient R.Z. returned to Respondent’s office, and Respondent stated, “Don’t fuck with them (her nipples). You’re going to make them fucking worse.” Patient R.Z. began to cry, to which Respondent responded by kissing her cheeks and telling her she would be his “poster child” of successful breast surgery. R.Z. requested antibiotics, to which Respondent responded by becoming angry and yelling “fuck!” Respondent failed to document an adequate physical examination or adequately address Patient R.Z.’s infected incision.

42. Approximately three weeks later, the areola on Patient R.Z.’s right breast peeled off. She reported to the emergency room of St. Joseph Hospital in Orange, California, where she was diagnosed with an infection and received intravenous antibiotics. Patient R.Z.’s wounds eventually healed, but she continued to experience residual pain.

43. On approximately February 14, 2014 and March 6, 2014, Respondent certified that he had no medical records for Patient R.Z.

44. On approximately July 18, 2014, Respondent produced certified medical records for Patient R.Z.
FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Gross Negligence, and/or Repeated Acts of Negligence, and/or Incompetence in the care and treatment of Patient R.Z.)

45. Paragraphs 35 through 44 are incorporated herein.

46. Respondent is subject to disciplinary action under Code sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated acts of negligence], and/or 2234(d) [incompetence], in that each of the following constitute an extreme departure from the standard of care and/or demonstrated lack of knowledge.

A. Respondent failed to conduct or document a pre-operative EKG or metabolic blood panel laboratory studies to properly clear Patient R.Z. for elective cosmetic surgery in light of her underlying and poorly controlled hypertension.

B. Respondent failed to conduct or document a mammogram, ultrasound, MRI, and/or biopsy and pathologic study of Patient R.Z.’s reported breast mass.

C. Respondent failed to conduct or document adequate pre-operative planning for a mastopexy procedure or proper intra-operative technique for a Wise pattern breast reduction to ensure proper symmetry of the breasts.

D. Respondent performed a breast reduction procedure lasting approximately seven hours under intravenous and local anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of her vital signs and provided no post-operative monitoring.

E. Respondent failed to provide or document adequate post-operative care in the presence of an infection and wound separation.

F. Respondent engaged in profane and inappropriate language and behaviors in his repeated cursing, yelling, kissing, and provocative comments of Patient R.Z.’s physical appearance.
FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Patient Records for Patient R.Z.)

47. Paragraphs 35 through 44 are incorporated herein.

48. Respondent is subject to disciplinary action under Code sections 2266 [failure to maintain adequate patient records], in that he failed to adequately document Patient R.Z.'s pre-, intra-, and post-operative care and treatment. Additionally, Respondent provided repeated certifications that no medical records existed for Patient R.Z. for a period of approximately five months before producing certified medical records for Patient R.Z.

FACTUAL SUMMARY – PATIENT R.B.

49. In June of 2013, Patient R.B. purchased a deal from Groupon for discounted Botox treatments at Breeze Cosmetic Surgery. On June 10, 2013, Patient R.B. reported to Respondent's medical office for her appointment. Upon her arrival, Patient R.B. was escorted into an examination room where Respondent entered and administered ten Botox injections throughout Patient R.B.'s face. Respondent failed to conduct and document an adequate physical examination or patient history prior to administering the Botox treatments. During the appointment, Patient R.B. discussed with Respondent the possibility of returning for a breast augmentation and liposuction of her chin area.

50. In July of 2013, Patient R.B. returned to Breeze Cosmetic Surgery for a brief pre-operative consultation for the breast augmentation and chin liposuction. Respondent again failed to conduct or document a pre-operative physical examination or medical history. Respondent asked Patient R.B. if she had Acquired Immune Deficiency Syndrome ("AIDS"), but failed to perform pre-operative blood panel laboratory studies. Respondent also indicated that he was the best at what he does and instructed her not to ask him any questions.

51. On or about July 12, 2013, Patient R.B. returned for her breast augmentation and chin liposuction. Respondent failed to conduct and document an adequate physical examination or patient history prior to performing the surgery. Respondent conducted the breast augmentation and chin liposuction procedures lasting approximately three hours under intravenous and local ///
anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of
her vital signs and provided no post-operative monitoring.

52. On or about July 19, 2013, Patient R.B. began to experience profuse bleeding from
her left breast. Patient R.B. returned to Breeze Cosmetic Surgery and Respondent briefly
examined her breast, indicated that her stitches had opened, and advised her that she was healing
nicely and that the incision would close on its own. Respondent failed to adequately address the
post-surgical complication or accurately document the visit.

53. Approximately three days later, Patient R.B. noticed a blood blister forming
underneath her left breast. Respondent declined to accommodate Patient R.B.’s request for an
appointment, indicating that he had a prior personal engagement. Patient R.B. opted to go to the
local urgent care center where the physician on duty closed her incision with medical glue and
advised her to return to Respondent.

54. On approximately July 23, 2013, the protrusion reoccurred and Patient R.B. returned
to Respondent’s practice for care. When Patient R.B. arrived, Respondent was in the middle of
performing a facelift on another patient and became agitated at the interruption, telling Patient
R.B. to stop harassing his staff. Respondent then examined Patient R.B. and observed that the
protrusion was actually the breast implant. Respondent again became agitated and stated, “if
you’re going to get an attitude with me then you can get the fuck out of my office!” Patient R.B.
began to cry and left Respondent’s office. Patient R.B. attempted to consult with three other
cosmetic surgeons; however, each declined to treat her while she remained under the care of
Respondent. Respondent later phoned Patient R.B. and asked her to return to his practice where
he pushed the implant back into the breast pocket and stitched the wound closed. Respondent
failed to document the care and treatment provided to Patient R.B. on this day.

55. From approximately July 30 through September 27, 2013, Patient R.B. returned to
Respondent’s practice approximately once per week to have her left breast re-stitched. When
Patient R.B. expressed concern, Respondent admonished her for being overly active and
repeatedly breaking the stitches, despite her insistence that she had not engaged in any strenuous
activities. During this period, Respondent popped Patient R.B.’s implant while attempting to re-
stitch the wound on three separate occasions. Each time, he would immediately reinsert a new implant. On the third occasion, Patient R.B. returned to urgent care where she was diagnosed with an active infection that would not heal unless the implant was removed. Patient R.B. then returned to Respondent’s practice where he removed her implant and instructed her to irrigate the breast pocket with a pre-filled syringe for the next three days. Respondent failed to document the care and treatment provided to Patient R.B. during each of these office visits.

56. On the fourth day, approximately October 3, 2013, Patient R.B. returned to Respondent’s practice where he performed a subsequent breast revision surgery. Respondent failed to conduct or document an adequate physical examination or patient medical history prior to performing the surgery. Respondent failed to administer anesthetic to Patient R.B., who remained awake, aware of, and able to feel each incision. Respondent responded to Patient R.B.’s obvious pain and distress by holding her down with both arms and saying, “if you don’t shut up, I’m putting you in restraints.” During the surgery, Patient R.B. noted her blood pressure had dropped to 98/47 just before she lost consciousness. When she awoke, Patient R.B. asked for someone to call her husband, and when Respondent’s assistant T.W. complied, Respondent punched T.W. in the face. When Patient R.B.’s husband arrived, Respondent insisted that he sign a form indicating that Patient R.B. was refusing his medical care. Patient R.B.’s husband declined to do so. T.W. then said to Respondent, “our patient is bleeding to death. Call 911.” Respondent then began to close Patient R.B.’s wound, saying, “holy shit. Did I really put that much liquid in? But I have to go stitch it up anyways,” and immediately left the office afterwards. Patient R.B. returned home to recuperate. Respondent failed to conduct and document post-operative vital sign monitoring.

57. On approximately October 4, 2013, Patient R.B. lost consciousness and was transported to Orange Coast Memorial Medical Center where she was diagnosed with severe sepsis resulting from a popped and deflated implant left inside her breast pocket. Patient R.B. received treatment from cosmetic surgeons and infectious disease specialists.

58. Respondent later text messaged Patient R.B. to notify her that he was terminating their doctor-patient relationship.
SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Gross Negligence, and/or Repeated Acts of Negligence, and/or Incompetence in the care and treatment of Patient R.B.)

59. Paragraphs 49 through 58 are incorporated herein.

60. Respondent is subject to disciplinary action under Code sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated acts of negligence], and/or 2234(d) [incompetence], in that each of the following constitutes an extreme departure from the standard of care and/or demonstrated lack of knowledge.

A. Respondent failed to conduct and document a pre-operative physical examination and medical history of Patient R.B.

B. Respondent performed a breast augmentation and chin liposuction procedures under intravenous and local anesthesia in a non-accredited facility without an anesthesiologist and/or adequate monitoring of her vital signs and provided no post-operative monitoring.

C. Respondent failed to provide or document adequate post-operative care in the presence of an infection and wound separation.

D. Respondent engaged in profane and inappropriate language and behaviors in his repeated cursing, yelling, and verbally abusing Patient R.B. and his staff.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Patient Records for Patient R.B.)

61. Paragraphs 49 through 58 are incorporated herein.

62. Respondent is subject to disciplinary action under Code section 2266 [failure to maintain adequate patient records], in that he failed to adequately document Patient R.B.'s pre-, intra-, and post-operative care and treatment.
EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Substantially Related Conviction, and/or Drug Related Conviction, and/or Violating a Statute Regulating Drugs, and/or Dangerous Use of Drugs and Alcohol and/or Self-Administering Controlled Substances)

63. Respondent is subject to disciplinary action under Code sections 2236 [substantially related conviction], and/or 2237 [drug related conviction], and/or 2238 [violating of a statute regulating drugs], and/or 2239 [dangerous use of alcohol and/or self-administering controlled substances], in that Respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a physician and surgeon certificate holder within the meaning of California Code of Regulations, title 16, section 1360. The circumstances are as follows:

   (February 25, 2014 Possession of a Controlled Substance and Battery of a Peace Officer Convictions)

64. On October 23, 2013, a Huntington Beach Police Officer was dispatched to investigate an altercation at a private business. The officer reported to the scene of the disturbance and observed Respondent screaming at other patrons in the parking lot of the business. Respondent was immediately placed into handcuffs to protect the responding officers and business patrons. Respondent indicated that he had been drinking and was addicted to opiates. The officer observed Respondent’s objective signs of intoxication and placed Respondent under arrest for violating Penal Code (“PC”) section 647(f) [public intoxication]. Respondent submitted to a search of his person, during which officers recovered four pills, which were later identified as Norco. Respondent failed to provide proof of a prescription. Officers also charged Respondent with violating Health and Safety (“HS”) Code section 11350(a) [possession of a controlled substance]. After Respondent was transported to the Huntington Beach Police Department, he began to resist the arresting officers, kicking one officer in the

4 Norco is a trade name for hydrocodone bitartrate with acetaminophen. Norco tablets contain 10 milligrams (“mg”) of hydrocodone bitartrate and 325 mg of acetaminophen (referred to as Norco 10/325). Norco is a dangerous drug as defined in Code section 4022 and a Schedule III controlled substance as defined by Health and Safety Code section 11056, subdivision (e). Repeated administration of Norco over a course of several weeks may result in psychic and physical dependence.
groin. Officers then charged Respondent with violating PC section 243(b) [battery of a peace officer].

65. On December 5, 2013, in a criminal complaint entitled The People of the State of California v. Scott Douglas Ewing, case number 13F13144, filed before Orange County Superior Court, Respondent was charged with violating HS Code section 11350(a), a felony, as well as PC 243(b) and 647(f), both misdemeanors.

66. On February 25, 2014, Respondent was convicted by guilty plea of violating HS Code section 11350(a) and PC 243(b) and the remaining charge was dismissed. Respondent was granted deferred entry of judgment as to the violation of HS Code section 11350(a). On the remaining charge, Respondent was sentenced as follows: three years probation, $850.00 in restitution, fines and fees.

67. On August 22, 2014, Respondent participated in a subject interview wherein he admitted to taking the Norco from his practice. Respondent further admitted that he has taken Norco from his practice for pain intermittently in the past.

(Spence 15, 2010 DUI Conviction)

68. On January 10, 2010, a Huntington Beach Police Officer was dispatched to the scene where an adult male, later identified as Respondent, was found unconscious behind the wheel of a car within an intersection – the engine was on and the vehicle was in drive. The officer approached the vehicle and attempted to awaken Respondent, who then lifted his foot from the brake pedal which caused the vehicle to lurch forward. The officer quickly responded by placing the vehicle in park and removing the keys from the ignition. The officer observed Respondent’s objective signs of intoxication and administered the standard field sobriety tests, which Respondent failed. When questioned, Respondent admitted to drinking prior to driving. Respondent was then placed under arrest for violating Vehicle Code (“VC”) section 23152(a) [driving under the influence], a misdemeanor. Respondent later submitted to a blood draw which measured 0.19% blood alcohol concentration (“BAC”).

69. On May 21, 2010, in a criminal complaint entitled The People of the State of California v. Scott Douglas Ewing, case number 10W05507, filed before the Orange County
Superior Court, Respondent was charged with violating VC section 23152(a) and 23152(b) [driving under the influence with a BAC of 0.08% or greater], with enhancement for violating VC section 23578 [driving under the influence with a BAC of 0.15% or greater], misdemeanors. The complaint further alleged a prior conviction, in that on May 19, 2004, Respondent was convicted of violating VC section 23152(a) in Los Angeles County Superior Court, case number 4PM0535001.

70. On September 15, 2010, Respondent was convicted by plea of guilty to violating VC section 23152(b) and the remaining charge was dismissed. Respondent was sentenced as follows: thirty days jail time, five years probation, and $857.00 in restitution, fines, and fees.

MATTERS IN AGGRAVATION

71. On May 19, 2004, Respondent was arrested for driving under the influence.

72. On July 7, 2004, in a criminal complaint entitled The People of the State of California v. Scott Douglass Ewing, case number 4PM0535001, filed in Los Angeles County Superior Court, Respondent was charged with violating VC section 23152(a) and VC section 23152(b) with enhancement within the meaning of VC section 23578 [driving under the influence with a BAC of 0.20% or greater].

73. On October 13, 2004, Respondent was convicted by plea of nolo contendere of violating VC section 23152(a), a misdemeanor.

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 A83530, issued to Scott D. Ewing, M.D.;

2. Revoking, suspending or denying approval of Scott D. Ewing, M.D.’s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Scott D. Ewing, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: September 30, 2015

[Signature]

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

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