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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY Vanilla F. Mader

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9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 17-2002-138788

13 MALVERSE MARTIN, M.D.
22110 Roscoe Boulevard, #203
14 West Hills, California 91304

A C C U S A T I O N

15 Physician and Surgeon's Certificate No. G38477,
16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. David T. Thornton ("Complainant") brings this Accusation solely in
21 his official capacity as the Executive Director of the Medical Board of California,
22 Department of Consumer Affairs ("Board").

23 2. On or about November 20, 1978, the Medical Board of California
24 issued Physician and Surgeon's Certificate Number G38477 to Malverse Martin, M.D.
25 ("Respondent"). The Physician and Surgeon's Certificate was in full force and effect at all
26 times relevant to the charges brought herein and will expire on October 31, 2006, unless
27 renewed.
28

JURISDICTION

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

4. Section 2227 of the Code 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 Division deems proper.

5. Section 2234 of the Code states:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(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

1 constitutes a separate and distinct breach of the standard of care.

2 "(d) Incompetence.

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

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

8 6. Section 2261 of the Code states:

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

13 7. Section 2266 of the Code states: "The failure of a physician and
14 surgeon to maintain adequate and accurate records relating to the provision of services to
15 their patients constitutes unprofessional conduct."

16 8. Section 14124.12 of the Welfare and Institutions Code states, in
17 pertinent part:

18 "(a) Upon receipt of written notice from the Medical Board of California,
19 the Osteopathic Medical Board of California, or the Board of Dental Examiners of
20 California, that a licensee's license has been placed on probation as a result of a
21 disciplinary action, the department may not reimburse any Medi-Cal claim for the
22 type of surgical service or invasive procedure that gave rise to the probation,
23 including any dental surgery or invasive procedure, that was performed by the
24 licensee on or after the effective date of probation and until the termination of all
25 probationary terms and conditions or until the probationary period has ended,
26 whichever occurs first. This section shall apply except in any case in which the
27 relevant licensing board determines that compelling circumstances warrant the
28 continued reimbursement during the probationary period of any Medi-Cal claim,

1 including any claim for dental services, as so described. In such a case, the
2 department shall continue to reimburse the licensee for all procedures, except for
3 those invasive or surgical procedures for which the licensee was placed on
4 probation.”

5 9. Section 125.3 of the Code provides, in pertinent part, that the
6 Division may request the administrative law judge to direct a licensee found to have
7 committed a violation or violations of the licensing act to pay a sum not to exceed the
8 reasonable costs of the investigation and enforcement of the case.

9
10 FIRST CAUSE FOR DISCIPLINE

11 (Making or Signing False Documents)

12 10. Respondent is subject to disciplinary action under section 2261 of
13 the Code in that on numerous occasions he knowingly made and/or signed documents
14 related to the practice of medicine which falsely represented the existence or nonexistence
15 of states of facts. The circumstances are as follows.

16 11. During the years 2001 and 2002, Respondent utilized in his
17 obstetrical practice a document entitled “Prenatal Obstetrical Record” to document patient
18 visits. On numerous occasions from on or about January 30, 2001, through a date
19 unknown to Complainant, Respondent made and/or signed such documents that contained
20 false “generic” values for temperature, pulse rate, and respiratory rate for his patients. In
21 each of these instances, the temperature is documented as “98.6,” the pulse rate as “80,”
22 and the respiration rate as “16.”

23 12. Respondent made and/or signed “Prenatal Obstetrical Records”
24 containing such false “generic” values for the following patients relating to office visits on
25 the following dates: Jamie G.¹ (January 30, 2001); Georgina H. (July 5, 2002); and
26

27
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1. The complete names of the patients to whom reference is made herein will be disclosed
to Respondent upon an appropriate request for discovery.

1 Monica S. (August 2, 2002). At the time he made and/or signed these "Prenatal
2 Obstetrical Records," Respondent knew that they contained false "generic" values for
3 temperature, pulse rate, and respiration rate.

4 5 SECOND CAUSE FOR DISCIPLINE

6 (Failure to Maintain Adequate and Accurate Records)

7 13. Respondent is subject to disciplinary action under section 2266 of
8 the Code in that he failed to maintain adequate and accurate records relating to the
9 provision of services to his patients. The circumstances are as follows.

10 11 False "Generic" Values

12 (Patients Jamie G., Georgina H., and Monica S.)

13 14. The facts alleged in paragraphs 11 and 12 above are re-alleged at
14 this point. The "Prenatal Obstetrical Records" referenced in these paragraphs were
15 inadequate and inaccurate because they documented false, "generic" values for
16 temperature, pulse, and respiration.

17 18 Unacknowledged Additions and Contradictory Data

19 (Patient Georgina H.)

20 15. A comparison of patient records that Respondent supplied to the
21 Department of Health Services ("DHS") with the patient records Respondent later
22 disclosed to the Board concerning Patient Georgina H. reveals that after he supplied the
23 records to the DHS, Respondent, on a date or dates unknown to Complainant, added data
24 to Georgina H.'s medical record without making thereon any notation to acknowledge the
25 fact that the data were late additions. The data added by Respondent, relating to a visit of
26 July 2, 2002, are a present weight of "126 ½;" a new temperature of 98.4, a new pulse
27 rate of 76, and a new respiration rate of 14 (which conflict with the "generic" values
28 contained in the document submitted to DHS); and the fact that the patient's mother,

1 father, and siblings were "alive + well." Moreover, the "Prenatal Obstetrical Record" on
2 which these new data appear is itself a newly-created document, existing in the patient's
3 record alongside the "Prenatal Obstetrical Record" for the same date that had been
4 submitted to the Department of Health Services. The newly-created document is
5 inadequate because it fails to note that the new and/or changed data are late additions and
6 that it is itself a newly-created document. The medical record for Georgina H. maintained
7 by Respondent is inadequate and inaccurate also because it contains two partially-
8 contradictory "Prenatal Obstetrical Records" for a single patient visit (July 2, 2002).

9
10 Failure to Document Prior Examination and Medical Indication for Prescriptions

11 (Patient Jamie G.)

12 16. On or about February 15, 2002, Respondent, or someone acting on
13 Respondent's behalf, transmitted to a pharmacy by telephone a prescription for Terazol 7
14 vaginal cream for Patient Jamie G. Terazol 7 vaginal cream is a dangerous drug as
15 defined in section 4022 of the Code. Jamie G.'s medical record as maintained by
16 Respondent contains no documented prior examination or medical indication for this
17 prescription.

18 17. On or about February 19, 2002, Respondent, or someone acting on
19 Respondent's behalf, transmitted to a pharmacy by telephone a prescription for ampicillin
20 for Patient Jamie G. Ampicillin is a dangerous drug as defined in section 4022. Jamie
21 G.'s medical record as maintained by Respondent contains no documented prior
22 examination or medical indication for this prescription.

23
24 THIRD CAUSE FOR DISCIPLINE

25 (Prescribing Without Prior Examination—Patient Jamie G.)

26 18. Respondent is subject to disciplinary action under section 2242 of
27 the Code in that he prescribed dangerous drugs as defined in Section 4022 to Patient Jamie
28 G. without a good faith prior examination and medical indication therefor. The

1 circumstances are as follows.

2 19. The facts alleged above in paragraphs 16 and 17 above are re-
3 alleged at this point.

4
5 FOURTH CAUSE FOR DISCIPLINE

6 (Repeated Negligent Acts—Patients Jamie G., Georgina H., and Monica G.)

7 20. Respondent is subject to disciplinary action under section 2234,
8 subdivision (c), of the Code in that he was repeatedly negligent in his care and treatment of
9 patients. The circumstances are as follows.

10 21. The facts alleged above in paragraphs 10-17 are re-alleged at this
11 point. Each and every act or omission alleged in those paragraphs as a violation of section
12 2261, 2266, or 2242 of the Code constituted a departure from the standard of care.

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14 DISCIPLINE CONSIDERATIONS

15 22. To determine the degree of discipline, if any, to be imposed on
16 Respondent, Complainant alleges that on June 28, 2002, the Board issued a citation to
17 Respondent. The citation was resolved by way of payment of \$1,000.00 on August 6,
18 2002. That citation is now final and is incorporated by reference as if fully set forth.

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