

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

In the Matter of the Accusation)
Against:)
) Case No. 1E-2011-214277
RAFAEL U. CHAVEZ, P.A.)
) OAH No. 2013040782
Physician Assistant)
Certificate No. PA 12656)
)
Respondent.)
_____)

DECISION

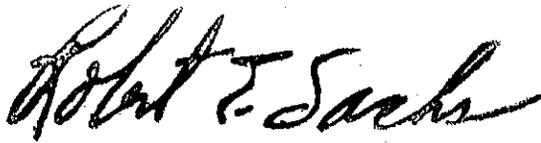
The attached Proposed Decision is hereby adopted as the Decision and Order of Physician Assistant Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 19, 2014.

IT IS SO ORDERED May 20, 2014.

PHYSICIAN ASSISTANT BOARD

By:



Robert E. Sachs, P.A., President

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In the Matter of the Accusation Against:

RAFAEL U. CHAVEZ, P.A.

Physician Assistant Certificate No. PA 12656,

Respondent.

Case No. 1E-2011-214277

OAH No. 2013040782

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 3, 4 and 6, 2014, in San Diego, California.

Tessa L. Heunis, Deputy Attorney General, Department of Justice, represented complainant Glen L. Mitchell, Jr., Executive Officer, Physician Assistant Board of California, Department of Consumer Affairs, State of California.

Edward O. Lear, Attorney at Law, represented respondent Rafael U. Chavez, P.A., who was present throughout the administrative proceeding.

On March 6, 2014, the matter was submitted. The exhibits in this matter are under seal.

SUMMARY

Clear and convincing evidence established that Rafael U. Chavez engaged in gross negligence and repeated negligent acts in the care and treatment of patients RM, CR, BB and MR; that he repeatedly prescribed excessive amounts of medications containing opioids and acetaminophen to CR and BB; that he altered MR's medical records; that he provided medical services to RM without required supervision; and that he engaged in dishonesty. His evidence of rehabilitation was not compelling. Under all the circumstances, it is concluded that the outright revocation of Mr.

Chavez's physician assistant certificate is the only measure of discipline that will protect the public.

FACTUAL FINDINGS

License History

1. On February 25, 1991, the Physician Assistant Board (the Board), Department of Consumer Affairs, State of California, issued Physician Assistant Certificate No. PA 12656 to Rafael U. Chavez, P.A. (Mr. Chavez or respondent). Mr. Chavez has been continuously licensed since 1991. Mr. Chavez's certificate is current and expires on February 28, 2016, unless revoked.

There is no history of any previous discipline having been imposed against Mr. Chavez's physician assistant certificate.

Respondent's Background, Education, Training and Experience

2. Mr. Chavez was born in 1964. He is a bright, engaging individual who has worked most of his life in the health care profession. In 1990, after working for several years as an ambulance driver, Mr. Chavez completed the University of Southern California physician assistant program. He has been employed continuously as a physician assistant since then.

After receiving certification as a physician assistant, Mr. Chavez worked part time from 1990 through 2007 at American Hospital's detoxification center in Pomona. He obtained patient histories, conducted physical examinations, established plans of care, and provided and supervised treatment to persons suffering from addiction and substance abuse. As a result of that experience, Mr. Chavez learned a great deal about addiction, substance abuse and the treatment of substance abuse, including the use of Suboxone.¹

In addition to working in the field of addiction medicine, Mr. Chavez has worked full time in the fields of occupational medicine, orthopedics, and urgent care.

¹ Suboxone is used to treat narcotic (opioid) addiction. Suboxone is the brand name for a drug that contains buprenorphine and naloxone. Suboxone is designated as a Schedule V controlled substance under the Health and Safety Code and is a dangerous drug under the Business and Professions Code. Under the Drug Addiction Treatment Act of 2000, any physician who dispenses or prescribes certain narcotic drugs, including Suboxone, for the maintenance or detoxification of an addict must possess a special waiver to provide narcotic treatment services.

Since 2007, Mr. Chavez has been employed by Central Desert Industrial Medical Group, an entity owned by Howard Oliver, D.O. Mr. Chavez provides medical services to patients at Central Desert's clinic in Apple Valley, California.

The Apple Valley Clinic

3. Dr. Oliver founded the Apple Valley clinic in 2003. Gwendolyn Grove is the clinic's office manager. The clinic is located in an approximate 8,000 square foot building that has a waiting room, six examination rooms, a front office area, a back office area, and an x-ray room. Mr. Chavez is the primary health care provider employed at the clinic. Mr. Chavez currently provides medical services to about 30 to 40 patients a day. The clinic employs approximately eight others. Dr. Oliver, the clinic's owner, visits the clinic once or twice a week.

About 80 percent of the clinic's clients are workers' compensation patients. Many of these patients work in construction, build solar panels, or work at cement plants in the High Desert. Of the remaining patients, some are seen for addiction and substance abuse problems and others are seen for general health problems. Many substance abuse patients are referred by STEPS Ultimate Solutions, a drug treatment center located next door to the Apple Valley clinic. Mr. Chavez has provided services at STEPS. About ten percent of the Apple Valley clinic's non-worker compensation patients have private health insurance. About ten percent of the patients pay cash.

4. Mr. Chavez provides medical services under an arrangement with Dr. Oliver dated April 5, 2007. Their arrangement is incorporated in a document entitled Protocols for Physician Assistant Practice. That document states:

As outlined in Section 1299.545 of the Physician Assistance Regulations, Central Desert Industrial Medical Group, APC has adopted the following Lange Medical books, all of which are published by Appleton and Lange, as the protocols and clinical practice guidelines for the physician assistant practice of medicine.

1. "Current Medical Diagnosis and Treatment;"
2. "Current Emergency Diagnosis and Treatment;"
3. "Current Surgical Diagnosis and Treatment;"

The current edition of these medical books shall provide the standard for the subjective and objective data that should be obtained for patients for each of the diseases in them. The protocols for the management of patients with any of the included diseases shall be as it is outlined in these medical books.

As an agent of the supervising physician assistant is authorized to provide, administer, or initiate and order or service, drug device or procedure specified in these protocols without a patient-specific order. Except as provided below, the physician assistant may initiate orders for the patient care services indicated in these medical books without prior consultation with the supervising physician.

Physician consultation or referral is indicated for the management of patents that have diseases which are not included in these medical books and regarding any patient, task procedures, or diagnostic problem that the physician assistant determines exceeds their level of competence.

5. Mr. Chavez also provides services under an undated document entitled Delegation of Services Agreement between Supervising Physician and Physician Assistant and Written Supervision Guidelines. That document states in part:

This Delegation of Services Agreement (“Agreement”) is entered into between Howard W. Oliver, D.O. (“Supervising Physician”) [the physicians whose signature appears below, shall be referred to herein as “Supervising Physician”], and Rafael Chavez, PA-C (“PA”), in order to fulfill the purposes set forth below.

1. Purpose. The purpose of this Agreement is to comply with the requirements of Title 16, Article 4, of the California Code of Regulations, hereinafter referred to as the “Physician Assistant Regulations.” Section 1399.540 of the Physician Assistant Regulations states, in pertinent part, that “A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant’s education, training and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.” In this Agreement, Supervising Physician hereby delegates the performance of certain medical services to PA. Section 1399.545 of the Physician Assistant Regulations sets forth requirements for supervision by a supervising physician when a PA is caring for patients. This Agreement shall set forth such requirements to be followed by Supervising Physician.

2. Qualifications. PA is licensed by the California Physician Assistant Committee. Supervising Physician is licensed by the Osteopathic Medical Board of California and is

qualified to act as a supervising physician. PA and Supervising Physician are familiar with the requirements governing the performance of medical services by PAs, and the supervision of PAs by supervising physicians, as set forth in the Physician Assistant Regulations.

3. Authorized Services.

(a) PA is authorized by Supervising Physician to perform all the tasks set forth in subsections (a), (b), (c), (d), (e), (f), and (g) of Section 1399.541 of the Physician Assistant Regulations, subject to the limitations and conditions described in this Agreement or established by Supervising Physician in any applicable protocols or otherwise. *[PA is also authorized to perform certain surgical procedures as specified by Supervising Physician in accordance with Section 1399.541(i) of the Physician Assistant Regulations].*

(b) As required by Section 1399.540 of the Physician Assistant Regulations, PA may only provide those medical services which he or she is competent to perform and which are consistent with PA's education, training and experience. PA shall consult with Supervising Physician or another qualified health care practitioner regarding any task, procedure or diagnostic problem which PA determines exceeds his or her level of competence, or shall refer such cases to Supervising Physician or another appropriate practitioner.

(c) PA shall perform delegated medical services under the supervision of the Supervising Physician as specified in the Physician Assistant Regulations, this Agreement, any applicable practice protocols, and the specific instructions of Supervising Physician.

(d) As required by Section 1399.546, each time a PA provides care for a patient and enters his or her name, signature, initials or computer code on the patient's record or written order, PA shall also enter the name of the Supervising Physician responsible for the patient.

4. Medical Devices and Physician's Prescriptions.

(a) PA may administer or provide medication to a patient, or issue a drug order transmit by telephone to a pharmacist, and orally or in writing in a patient's medical record

or a written or drug order, the supervising physician's prescription in accordance with Section 3502.1 of the Business and Professions Code. Such medications shall include Controlled Substances in schedules [II] through [V].

(b) Drug orders shall either be based on protocols established or adopted by Supervising Physician, or shall be approved by Supervising Physician for the specific patient prior to being issued or carried out. Notwithstanding the foregoing, all drug orders for Controlled Substances shall be approved by Supervising Physician for the specific patient prior to being issued or carried out.

(c) Supervising Physician shall review, countersign, and date the medical record of any patient for whom PA issues or carries out a drug order within seven (7) days.

(d) Any medication handed to a patient by the PA shall be authorized by the supervising physician's prescription and be prepackaged and labeled in accordance with Sections 4047.5, 5048, and 4228 of the Business and Professions Code.

[¶] . . . [¶]

5. Supervising Physician's Responsibilities.

(a) Supervising Physician shall remain electronically available at all times while PA is performing medical services, unless another approved supervising physician who has signed a Delegation of Services Agreement for PA is so available.

(b) To the extent required by Section 4(c) above, Supervising Physician shall review, countersign and date within seven (7) days the medical record of any patient for whom PA issues or carries out a drug order . . .

[¶] . . . [¶]

7. Protocols. This Agreement does not constitute the protocols required by Section 3502.1 of the Business and Professions Code or, if applicable, Section 1399.545(e)(3) of the Physician Assistant Regulations. Such protocols are on file at the practice site and may incorporate by reference appropriate medical texts (Original emphasis.)

6. Mr. Chavez is liked by Dr. Oliver, Ms. Grove, other co-employees, and many of the patients he sees at the clinic.

The Charges

7. The accusation charges Mr. Chavez with gross negligence in the care and treatment of patients RM, CR, BB and MR (first cause for discipline); repeated negligent acts (second cause for discipline); the unlicensed practice of medicine (third cause for discipline); repeated acts of clearly excessive prescribing (fourth cause for discipline); alteration of records (fifth cause for discipline); dishonesty (sixth cause for discipline); violation of drug laws (seventh cause for discipline); unlawful use of a controlled substance (eighth cause for discipline); failure to maintain complete and accurate records (ninth cause for discipline); and general unprofessional conduct (tenth cause of discipline).

The Stipulation

8. On March 3, 2014, the parties entered into a written stipulation related to certain factual allegations and stipulated to the authenticity and admissibility of various documentary exhibits. The accusation and other documents were admitted for jurisdictional purposes; exhibits 2 through 25 were deemed authentic and admissible for all purposes; and various factual allegations set forth in the accusation were admitted.

Factual Findings

Based on the stipulation and clear and convincing evidence, the following factual findings exist.

9. Mr. Chavez was in practice as Physician Assistant at the Central Desert Industrial Medical Group in Apple Valley under Dr. Oliver's supervision pursuant to a written Delegation of Services Agreement (the delegation) and Protocols for Physician Assistant Practice (the protocols). According to the delegation and applicable law, all drug orders Mr. Chavez wrote for controlled substances had to be approved by Dr. Oliver for the specific patient before being issued or carried out.

Patient RM

10. RM was a 40-year-old female patient who first saw Mr. Chavez at the Apple Valley clinic on November 23, 2009. At that visit, RM reported that she had been taking 40 tablets of Vicodin 7.5/750² per day for three years.³ It is found that

² Vicodin is the brand name for an opioid narcotic analgesic drug that contains hydrocodone and acetaminophen. It is designated as a Schedule II controlled substance under the Health and Safety Code and a dangerous drug within the meaning of the Business and Professions Code. Vicodin ES contains 7.5 mg hydrocodone and

Mr. Chavez obtained an adequate history concerning RM's past and current drug use, other addictions, past attempts to stop using illegal substances, and the date she last used opiates. However, Mr. Chavez failed to document this history in RM's chart.

Despite RM's reported daily use of 40 Vicodin ES, which would have yielded a dose of 30,000 mg of acetaminophen per day, an amount well in excess of the recommended safe dose, Mr. Chavez did not order laboratory testing, including a liver function test, to assess possible damage to RM's liver as a result of her claimed excessive use of acetaminophen.

11. RM asked Mr. Chavez to prescribe Suboxone "to get over opioid withdrawal." At the conclusion of the November 23, 2009, office visit, Mr. Chavez prescribed 60 x Suboxone 8/2 mg tablets (with one refill), to be taken twice daily. The prescription should have lasted RM for 30 days if taken as directed. RM filled the prescription on December 1, 2009. RM refilled the prescription on December 18, 2009.

Dr. Oliver did not sign the prescription for Suboxone or the November 23, 2009, chart note. Mr. Chavez did not consult with Dr. Oliver before prescribing Suboxone on November 23, 2009, or any other occasion. Mr. Chavez prescribed Suboxone on November 23, 2009, and on several other occasions without having a prescribing number or a waiver required by law. Mr. Chavez and Dr. Oliver were, at the time Mr. Chavez prescribed Suboxone, ignorant of the law and unaware that Mr. Chavez could not lawfully prescribe Suboxone.

12. On January 11, 2010, Mr. Chavez saw RM again at the Apple Valley clinic. At the conclusion of that visit, Mr. Chavez prescribed 60 x Suboxone 8/2 mg tablets (with one refill) to be taken twice daily. Dr. Oliver did not authorize the prescription or the January 11, 2010, chart note.

13. On February 13, 2010, RM filled another prescription for at least 10 Suboxone 8/2 mg tablets that had been written by Mr. Chavez. No medical records document Mr. Chavez's treatment or examination of RM after January 11, 2008. Mr.

750 mg acetaminophen.

³ Acetaminophen is a mild analgesic that, in combination with opioid analgesics, is used in the management of severe or chronic pain. While acetaminophen is generally safe at recommended doses, its use in amounts that exceed recommended doses may be toxic and can result in liver damage and even death. Before 2011, the recommended maximum dose of acetaminophen for the average healthy adult over a 24-hour period was 4 grams (4,000 mg). In July 2011, drug manufacturers reduced the recommended "safe level" of acetaminophen to three grams (3,000 mg) over a 24-hour period.

Chavez did not provide any reason for his prescription of Suboxone on that date. Dr. Oliver did not authorize the prescription for Suboxone.

14. On February 18, 2010, RM filled a prescription for at least 10 x Suboxone 8/2 mg tablets that Mr. Chavez wrote. On March 8 and March 10, 2010, RM used the same prescription to obtain 11 more Suboxone 8/2 mg tablets. Dr. Oliver did not authorize the prescription for Suboxone.

15. Mr. Chavez never discussed RM, her presenting condition, his findings related to RM's condition, his treatment of RM, or RM's progress with Dr. Oliver. Dr. Oliver never met RM in a professional capacity. According to Dr. Oliver, Mr. Chavez issued orders for Suboxone orders that were inconsistent with Dr. Oliver's customary medical practice when issuing prescriptions for Suboxone.

16. In February 2010, RM and Mr. Chavez met socially. A romantic relationship developed. By mid-March 2010, RM and Mr. Chavez began living together. Mr. Chavez told RM that he could no longer provide RM with medical services as a result of their personal relationship, and that RM would have to seek medical services from another health care provider.

17. In April 2010, while RM and Mr. Chavez were living together, Mr. Chavez removed a tattoo from RM's finger at their home by using a scalpel and a local anesthetic that he took from the Apple Valley clinic. Mr. Chavez applied a topical antibiotic following the surgery. Dr. Oliver was not aware that Mr. Chavez had removed RM's tattoo and did not ratify it. Mr. Chavez's conduct in removing RM's tattoo involved the unlawful practice of medicine.⁴

⁴ Business and Professions Code section 2051 authorizes the holder of a physician's and surgeon's certificate "to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions."

Under Business and Professions Code section 2502, any person who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition . . . without having a valid, unrevoked, or unsuspended [physician's and surgeon's] certificate is guilty of a public offense.

Under Business and Professions Code section 3502, a physician assistant may perform medical services but only when those services are rendered under the supervision of a licensed physician and surgeon.

18. In June 2010, while RM and Mr. Chavez were living together, Mr. Chavez injected Cortisone into RM's elbow at home by using a syringe and medication that he took from the Apple Valley clinic. Dr. Oliver was not aware of Mr. Chavez's conduct in this regard and did not ratify it. Mr. Chavez's injecting RM's elbow with Cortisone involved the unlawful practice of medicine.

19. On January 20, 2011, Mr. Chavez wrote a prescription for 90 x. Lovastatin tablets⁵ in RM's name for his own convenience. RM was going to the pharmacy and he wanted her to pick up his medication. RM filled the prescription. It was stipulated that Mr. Chavez wrote that prescription for his own personal use.

Mr. Chavez's conduct in writing a prescription for Lovastatin for his own use in RM's name involved dishonesty, obtaining a dangerous drug under false pretenses, and obtaining a dangerous drug without a prescription from a treating physician.

20. On January 22, 2011, Mr. Chavez wrote a prescription in RM's name for 7 x Lunestra 3 mg tablets⁶ and a prescription for 14 x Ryzold 300 mg tablets⁷ for his own convenience. RM filled the prescriptions. Mr. Chavez testified that he wrote the prescriptions for his own personal use and to have on hand at home. Mr. Chavez's conduct in this regard involved dishonesty, obtaining dangerous drugs under false pretenses, and obtaining dangerous drugs without having prescriptions for them from a treating physician.

Patient CR

21. CR was a 41-year-old male patient that Mr. Chavez first saw at the Apple Valley Clinic on September 14, 2009. At that visit, CR reported that he had twisted his right knee while walking on tile and that his knee had been hurting for about a week. Mr. Chavez obtained an adequate history concerning CR's presenting complaint of knee pain and conducted an appropriate physical examination. At the conclusion of that visit, Mr. Chavez prescribed Naproxen 500 mg⁸ and Vicodin. He

⁵ Lovastatin is a medication used primarily to treat high cholesterol and to prevent cardiovascular disease. Lovastatin is a dangerous drug within the meaning of the Business and Professions Code.

⁶ Lunestra is a brand name for Eszopiclone, a drug used to treat insomnia. Lunestra is a dangerous drug within the meaning of the Business and Professions Code.

⁷ Ryzold is a brand name for extended release tramadol, a drug used to treat chronic pain. Ryzold is a dangerous drug within the meaning of the Business and Professions Code.

⁸ Naproxen is a nonsteroidal anti-inflammatory drug (NSAID) used to treat

directed CR to return to the clinic in three or four weeks. The chart note for that visit stated, "Labs requested," but it did not indicate what labs were requested.

22. Mr. Chavez treated CR from September 14, 2009, through December 29, 2011, primarily for problems associated with knee pain and anxiety. The chart notes for those visits were confusing because some notes indicated that CR was having problems with his right knee and other notes indicated that he was having problems with his left knee. When Mr. Chavez was interviewed on May 17, 2012, concerning CR's care and treatment, he could not recall or describe the exact nature of CR's knee problems based upon his chart notes and his independent recollection. He did mention that Vicodin was prescribed for CR's knee pain.

23. CR's knee problems persisted for more than two years with no signs of improvement. During the period from September 14, 2009, through July 27, 2010, Mr. Chavez wrote prescriptions for approximately 2,400 Vicodin and Vicodin ES tablets, which amounted to approximately 5.5 grams of acetaminophen daily.

On October 13, 2010, Mr. Chavez wrote a prescription for CR for 120 x Vicodin ES tablets, with four refills. Mr. Chavez's most recent visit with CR before he wrote that prescription was on May 26, 2010.

On November 19, 2010, Mr. Chavez wrote a prescription for CR for 240 x Vicodin ES tablets, with three refills.

Mr. Chavez's prescriptions to CR for Vicodin ES amounted to a daily average of 5.9 grams of acetaminophen per day for the year 2010. During the three month period from February 1, 2010, through April 30, 2010, the daily average of Vicodin ES prescribed for CR contained 7.4 grams of acetaminophen, and from May 1, 2010, through July 31, 2010, the average daily amount of Vicodin ES prescribed for CR contained 8.8 grams of acetaminophen.⁹

mild pain, fever, inflammations, and stiffness. The Food and Drug Administration approved the use of Naproxen as an over-the-counter drug in 1994. Naproxen 500 is not subject to the Controlled Substances Act.

⁹ In his interview on May 17, 2012, Mr. Chavez stated he knew that 4,000 mg of acetaminophen a day was the "cutoff amount." He stated he was aware of CR's dosing and that he knew he was prescribing more than 4,000 mg of acetaminophen to CR per day. Mr. Chavez said he filled out a lab requisition form to obtain liver function testing for CR, but "finances were an issue" and "Maybe that's why he [CR] never did it."

On January 7, 2011, Mr. Chavez switched from prescribing Vicodin ES to CR to prescribing Norco¹⁰, which increased the tablet dose of hydrocodone from 750 mg to 1000 mg. On January 7, 2010, Mr. Chavez provided CR with a prescription for 120 x Norco tablets, with two refills. On March 22, 2011, Mr. Chavez provided CR with a prescription for 120 x Norco tablets, with four refills.

24. In addition to knee pain, Mr. Chavez treated CR for anxiety. Mr. Chavez did not document an adequate history concerning CR's presenting complaint of anxiety. On April 21, 2010, Mr. Chavez began prescribing Xanax¹¹ to CR for anxiety, starting with 60 x 5 mg tablets (with two refills) to be taken as needed. On May 16, 2011, Mr. Chavez increased CR's Xanax dosage and wrote a prescription for 120 x Xanax 2 mg tablets, to be taken four times a day (i.e., 8 mg of Xanax daily), even though the maximum recommended dose of Xanax was 4 mg per day. Mr. Chavez never referred CR to a specialist for evaluation of CR's anxiety.

25. Mr. Chavez never discussed CR, CR's presenting conditions, any findings related to CR's conditions, CR's treatment, or CR's progress (or lack thereof) with Dr. Oliver. Mr. Chavez did not receive prior approval from Dr. Oliver before he prescribed Vicodin, Norco or Xanax for CR.

26. CR said he was a tile setter when he first began treating with Mr. Chavez. Later, CR began attending a truck driving school with the intent of driving a truck for a living.

Mr. Chavez knew that CR was taking Vicodin and Xanax at the same time, and that the use and combination of those drugs might cause CR to become drowsy and pose a risk of danger to CR and other motorists when CR was driving a truck. Mr. Chavez discussed the potential danger of driving a truck after taking Vicodin and Xanax with CR, and Mr. Chavez concluded that the amounts of those medications CR was taking did not pose any risk of danger. He did not document this conversation in CR's chart.

27. During his treatment of CR, Mr. Chavez did not obtain a urine drug screen for CR, did not obtain appropriate laboratory testing to determine whether CR was taking toxic amounts of acetaminophen, and did not obtain an MRI or an x-ray of

¹⁰ Norco is the brand name of an opioid narcotic drug that contains hydrocodone and acetaminophen. It is designated as a Schedule II controlled substance under the Health and Safety Code and is a dangerous drug within the meaning of the Business and Professions Code.

¹¹ Xanax is a brand name of Alprazolam, a short-acting benzodiazepine class of psychoactive drugs. Alprazolam is used to treat anxiety disorders. Xanax is designated a Schedule IV controlled substance under the Health and Safety Code and is a dangerous drug under the Business and Professions Code.

CR's knee(s). Mr. Chavez claimed that CR could not pay for this kind of diagnostic testing even though such testing was medically indicated and the cost of such testing was minimal in relation to the amount of money that CR was spending on prescription medications.

Patient BB

28. BB was a 36-year-old male patient that Mr. Chavez first saw at the Apple Valley Clinic on September 10, 2007. BB worked for the Los Angeles City Fire Department as a helicopter mechanic. Mr. Chavez treated BB through January 27, 2012, mostly for work related cervical, thoracic and low back injuries. On nearly every occasion that BB presented at the Apple Valley clinic, his blood pressure was elevated. BB said was seeing another physician for his elevated blood pressure condition. Over the course of BB's treatment, Mr. Chavez prescribed Vicodin ES and Soma¹² for BB's complaints of spinal pain.

29. Between March 15, 2010, and September 27, 2010, Mr. Chavez prescribed approximately 2,520 Vicodin ES tablets to BB, resulting in the prescription of an average of roughly 9.6 grams of acetaminophen per day. From March 2010 through December 2010, Mr. Chavez prescribed Vicodin ES to BB in an amount resulting in approximately 7.5 grams of acetaminophen per day.

30. On February 24, 2010, BB told Mr. Chavez that he "vomits every time he takes a pill from bottle dispensed on last visit. No issues when taking pill from prior bottle." Mr. Chavez prescribed more Vicodin ES to BB following that visit.

31. At the second Medical Board interview in May 2012, Mr. Chavez said he was aware that BB was consuming approximately ten Vicodin ES a day, stating, "I knew he was taking more than the prescribed amount" and "I was trying to help the patient with his pain."

32. BB's low back condition did not appreciably improve over the course of treatment with Mr. Chavez, who never consulted with Dr. Oliver concerning BB's intractable low back pain. Dr. Oliver did not authorize Mr. Chavez's prescription of Vicodin ES to BB before the prescription began. Dr. Oliver's initials do not appear on BB's chart or on the medication list for BB.

¹² Soma is the brand name for Carisoprodol, a centrally acting skeletal muscle relaxant. Before January 11, 2012, Carisoprodol was not a controlled substance; after that, Carisoprodol was designated a Scheduled IV controlled substance. Soma's interaction with opioids and other centrally acting analgesics potentiates the opioid or analgesic's effect and permits the use of a smaller dose of the opioid or analgesic.

33. During his treatment of BB, Mr. Chavez did not obtain liver function test results. During his treatment of BB, Mr. Chavez obtained only one urinary drug screen test, despite speaking with BB about substance abuse issues.

34. BB presented to Mr. Chavez on many occasions with significantly elevated blood pressures.¹³ For example, on November 17, 2009, BB's blood pressure was 210/124; on November 30, 2009, it was 162/120; on December 14, 2009, it was 160/118; on December 21, 2009, it was 154/104; on January 4, 2010, it was 148/102; on January 14, 2010, it was 166/98; on February 5, 2010, it was 162/98; and on February 18, 2010, it was 174/90. Despite these elevated blood pressure readings, only one chart note indicated that Mr. Chavez brought BB's hypertensive issue to BB's attention, even though Mr. Chavez claimed he did so.

35. Patient notes were missing for the visits dated November 10, 2009, November 30, 2009, and February 18, 2010.

Patient MR

36. MR was a 38-year-old female patient that Mr. Chavez first saw at the Apple Valley Clinic on June 23, 2008. MR presented with complaints of "anxiety since last week, dizziness, overwhelmed, chest pain." Mr. Chavez's chart note for that visit indicated "c/o anxiety, distress causing LBP [low back pain], husband not working, having to leave work early."

Mr. Chavez treated MR for complaints of anxiety, depression and low back pain from June 23, 2008, through April 27, 2012. Mr. Chavez never documented a history of past or current use of controlled substances or a history of any addiction to controlled substances. At no time during his treatment of MR did Mr. Chavez inquire about suicidal ideation or recommend psychological evaluation, counseling or non-medical management for MR's anxiety and depression. The word "depression" first appeared in MR's chart in a chart note dated March 1, 2011.

¹³ A blood pressure reading of 119/70 or below is considered normal. A blood pressure reading of 120-139/80-89 is considered prehypertension. A blood pressure reading of 140-159/90-99 is considered stage 1 hypertension. A blood pressure reading of 160/100 and above is considered stage 2 hypertension. A single high blood pressure reading does not necessarily indicate the patient suffers from high blood pressure. However, if blood pressure readings remain at 140/90 or above over time, continuing observation and treatment is indicated. When a blood pressure reading of 180/110 or greater is obtained, a second blood pressure reading should be obtained a few minutes after the first. If the second blood pressure results in a systolic reading of 180 or higher OR a diastolic reading of 110 or higher, immediate emergency medical treatment must be considered.

Mr. Chavez prescribed Lexapro¹⁴ to MR from June 23, 2008, through at least January 30, 2012. On June 23, 2008, Mr. Chavez prescribed Xanax to MR, with 0.5 mg to be taken once or twice per day. On December 10, 2010, the Xanax dose was increased to 1 mg to be taken twice daily. Mr. Chavez prescribed Vicodin ES as indicated on August 16, 2010, and he switched MR to Norco on April 8, 2011. According to Mr. Chavez in his May 17, 2012, interview, no laboratory testing was obtained for MR as a result of a “financial issue on her side”

37. Mr. Chavez did not obtain Dr. Oliver’s approval before he began prescribing these medications. Dr. Oliver did not initial MR’s chart to indicate that he had reviewed MR’s chart or MR’s medication list.

38. During the course of the Medical Board’s investigation, two certified copies of MR’s chart from Central Desert Industrial Medical Group were produced. The first copy of MR’s chart was certified by a Central Desert employee on March 19, 2012, as being complete and correct. Mr. Chavez certified a second copy of MR’s chart on April 3, 2012. The copies of MR’s chart that were produced were not identical. The copy that Mr. Chavez certified contained additional information that Mr. Chavez had added before the chart was copied the second time. Mr. Chavez did not initial or date the additional information that he added to MR’s chart.

Mr. Chavez added the following to the July 12, 2010, chart note: “Advised of labs.” He added the following to the August 31, 2010, chart note: Abdomen soft and NT [non tender]. No organomegaly.” He added the following to July 5, 2011, chart note: “Abdomen without organomegaly, soft and NT.” He added the following to the January 30, 2012, chart note: “Labs pending fasting.”

39. In his interview on May 17, 2012, Mr. Chavez admitted he added certain information to MR’s chart and that he did so because he “wanted to give, uh, a more complete representation of what I was thinking at the time I examined her.”

Complainant’s Expert Witness

40. Timothy A. Munzing, M.D. graduated from UCLA’s School of Medicine in 1982. He completed an internship/residency in Family Medicine at the Kaiser Foundation Hospital in Los Angeles in 1985. He has been employed by Kaiser as a Family Physician since then. He was board certified by the American Board of Family Practice in 1985, and he was recertified in 1997 and 2004. He holds Fellow status with the American Academy of Family Physicians. He has been a

¹⁴ Lexapro is an antidepressant drug of the selective serotonin reuptake inhibitor (SSRI) class. Lexapro is used to treat major depressive disorders and generalized anxiety disorders. Lexapro is a dangerous drug within the meaning of the Business and Professions Code.

Medical Board expert reviewer since 2004. He serves as a Clinical Professor of Medicine at the UCI's School of Medicine in Family Medicine.

Dr. Munzing has supervised physician assistants for more than 20 years. He currently supervises one physician assistant. He is familiar with standards of care that exists with regard to the provision of medical services by both Family Physicians and physician assistants practicing family medicine and providing primary care services. He had rendered expert opinions in the area of the conduct of physician assistants in three or four cases before rendering his opinions in Mr. Chavez's case.

According to Dr. Munzing, the standard of care incumbent upon a family medicine and primary care physician assistant is the same as the standard of care that exists for a physician who practices in the area of family medicine and primary care; however, a physician assistant is subject to additional limitations imposed under the Business and Professions Code and by the specific practice protocols and delegation of authority under which the physician assistant practices.

Dr. Munzing possessed sufficient education, training and experience to render expert opinions related to whether Mr. Chavez complied with applicable standards of care in his interaction and treatment of patients RM, CR, BB and MR.¹⁵

41. Dr. Munzing authored a comprehensive 60 page narrative report in which he included information about Mr. Chavez's background and set forth a summary of the case, a summary of the patients' medical records, a summary of various investigations, summaries of relevant portions of Mr. Chavez's interviews, and expert opinions and conclusions.

Dr. Munzing's Expert Testimony

42. Dr. Munzing testified that the "standard of care" was what a reasonable practitioner – whether a physician or a physician assistant – would do in the diagnosis and treatment of a patient under the same or similar circumstances as presented by the evidence. He defined simple negligence as conduct falling below the standard of care, and gross negligence as the failure to provide any care at all or engaging in a serious departure from the standard of care.

¹⁵ Once it is established that a witness has adequate credentials to qualify as an expert, the degree of expertise goes to weight of the expert testimony and not to its admissibility. (*Howard Entertainment, Inc. v. Kudrow* (2012) 208 Cal.App.4th 1102, 1120-1121.) Actually working in a particular medical field is not an absolute prerequisite to qualification as an expert. An overly strict standard of qualification could make it inordinately difficult to secure a qualified expert. The unmistakable general trend has been toward liberalizing rules related to the qualifications of medical experts. (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 274-275.)

In reaching his expert opinions and conclusions, Dr. Munzing relied on his education, training and experience, upon the applicable delegation and protocols, upon CURES reports for the patients at issue, upon patient profiles from several pharmacies, upon medical records obtained from the Apple Valley clinic, upon digital recordings of Mr. Chavez's interviews on October 6, 2011, and May 17, 2012, and upon a transcript of the May 17, 2012, interview.

Opinions re Patient RM

43. With regard to Mr. Chavez's care and treatment of RM, Dr. Munzing opined that RM's history of drug abuse and claimed consumption of 40 Vicodin ES a day required that RM undergo a liver function test to determine the extent of any liver damage RM may have suffered as a result of her overuse of Vicodin ES. He believed that RM's history of drug abuse and opioid addiction gave rise to the possibility of RM's using other drugs when she was seen, and Mr. Chavez should have required RM to undergo drug testing to determine whether she was taking other drugs. He believed Mr. Chavez lacked the legal authority to prescribe Suboxone and, further, that the delegation that Mr. Chavez practiced under required Dr. Oliver's prior approval before Mr. Chavez could prescribe any controlled substance to RM. Dr. Munzing did not know the precise history that Mr. Chavez obtained from RM, but he was critical of the limited information set forth in RM's chart notes and believed RM's medical records should have contained more information about her past medical history, her drug use, and the findings on examination.

Dr. Munzing opined that Mr. Chavez's unlawful prescription of Suboxone to RM violated the law and exceeded limits set forth in the delegation agreement and, coupled with his failure to obtain necessary laboratory testing (particularly the liver function test), Mr. Chavez's prescribing practice for RM involved an extreme departure from the standard of care.

44. Dr. Munzing also opined that Mr. Chavez's deficient record keeping practice for RM was a simple departure from the standard of care. Mr. Chavez did not disagree with this opinion.

Other Improper Conduct Related to RM

45. Dr. Munzing opined that Mr. Chavez's medical care and treatment of RM in the home, including the removal of a tattoo and the injection of cortisone into RM's shoulder, involved an extreme departure from the standard of care because Mr. Chavez provided medical services that were not supervised by a physician.

Opinions re Patient CR

46. With regard to Mr. Chavez's care and treatment of CR, Dr. Munzing opined that Mr. Chavez's prescribing practices involved gross negligence. Mr. Chavez failed to monitor CR's use of acetaminophen, which often exceeded recommended limits. Mr. Chavez improperly prescribed Xanax, dosages of which ultimately exceeded generally accepted maximum limits. Mr. Chavez failed to order a liver function test, which was indicated because CR's used acetaminophen in amounts exceeding recommended limits. CR's increasing use of Vicodin ES should have raised the possibility that CR was diverting or selling Vicodin ES; for that reason, Mr. Chavez should have ordered a drug screen. An MRI of the knee was ordered, but was never obtained. Mr. Chavez did not consult with Dr. Oliver or another qualified health care provider despite the fact that CR's knee pain and level of anxiety did not improve.

47. Dr. Munzing opined that Mr. Chavez's deficient record keeping practice for CR was a simple departure from the standard of care. Mr. Chavez did not disagree with this opinion.

48. Dr. Munzing opined that Mr. Chavez's treatment of CR's chronic knee pain with the use of long-term opiate analgesics was inappropriate without further exploring available diagnostic and management options. Dr. Munzing believed that Mr. Chavez's improper treatment of CR's chronic knee pain was a simple departure from the standard of care.

49. Dr. Munzing believed that Mr. Chavez's improper treatment of CR's anxiety with a daily dose of Xanax of 8 mg a day, twice the generally accepted maximum daily dosage, without consulting with Dr. Oliver or another qualified health care provider involved a simple departure from the standard of care.

50. It was not established that Mr. Chavez did not warn CR about the dangers of using an opioid analgesic and Xanax, singly or in combination, even though there was no mention of that discussion in CR's chart.

Opinions re Patient BB

51. With regard to Mr. Chavez's care and treatment of BB, Dr. Munzing opined that Mr. Chavez did not pay sufficient attention to BB's elevated blood pressure readings. Dr. Munzing testified that health care providers must be cognizant of a patient's vital signs and presentation even though a patient seeks attention for an unrelated problem. Hypertension is a significant condition. Blood pressure readings of 140/90 or higher require some discussion with the patient, particularly when blood pressure readings are significantly elevated or are chronic. Management must be provided for hypertension or the patient should be referred to a competent health care provider for such management. Mr. Chavez testified that BB was being treated at Kaiser for hypertension, but this information was not documented. Nor did Mr. Chavez document any discussions he had with BB related to hypertension.

Mr. Chavez's deficient record keeping practice for CR was a simple departure from the standard of care.

52. Dr. Munzing opined that Mr. Chavez's prescribing practices for BB involved an extreme departure from the standard of care. BB used controlled substances in amounts greater than Mr. Chavez prescribed, after which Mr. Chavez simply increased the dosage of the medication without further inquiry. Mr. Chavez never required BB to undergo a urine drug screen or liver function test. Controlled substances were prescribed to BB without obtaining prior authorization from Dr. Oliver as required. Dr. Oliver never reviewed any of BB's progress notes or BB's medication records. These factors constituted gross negligence.

Opinions re Patient MR

53. Mr. Chavez added relevant information to MR's medical records before his second interview with the Medical Board without noting in those records when he added the information or even the very fact that he had done so. It is found that Mr. Chavez made the additions with the intent of making it appear at his second interview that he had provided MR with quality care. Dr. Munzing testified that a health care provider's undocumented after-the-fact-alteration of a patient's medical record to document what a health care professional was thinking at the time of a patient interaction is dishonest and unethical where the licensee's intent is corrupt, and that the alteration of MR's medical records was an extreme departure from the standard of care under the circumstances.

54. Mr. Chavez's management of MR's anxiety with Xanax for a period of four years, in the absence of an adequate documented history to support the medical treatment provided and in the absence of any laboratory testing to determine whether another condition was present that mimicked anxiety or depression, and without referring MR to a specialist, involved a simple departure from the standard of care.

Opinion re Mr. Chavez's Self-Treatment

55. Mr. Chavez admitted he improperly prescribed and obtained various medications for his personal use including hydrocodone, Lunestra, Ryzolt, Tramadol, and Bactrim. Some of these medications were obtained by writing a prescription in RM's name. Other medications were taken from the Apple Valle clinic after they had been returned by other patients. Mr. Chavez admitted he self-administered narcotic pain medications he obtained in this fashion.

Dr. Munzing testified that it is unethical for a physician or a physician assistant to treat himself except in an emergency. There was no emergency that warranted Mr. Chavez's self-prescription and self-administration of these

medications. Mr. Chavez admitted he should have obtained prescriptions for these medications from a treating health care provider.

Dr. Munzing opined that Mr. Chavez's improper obtaining and using a narcotic medication was an extreme departure from the standard of care.

Cross-Examination of Dr. Munzing

56. Respondent's counsel established that Dr. Munzing was not aware of any patient complaints and that some patients whose care was at issue submitted letters that supported Mr. Chavez. Dr. Munzing believed the lack of patient complaints and the existence of patient support was commendable, but that the lack of criticism and high praise was irrelevant to the issue of whether Mr. Chavez complied with standards of care.

Dr. Munzing testified that if Mr. Chavez altered MR's records without the intent to deceive, the alteration of those records would constitute simple departures from the standard of care.

Dr. Munzing conceded that he was not aware of the patient histories Mr. Chavez actually obtained, and that if Mr. Chavez obtained adequate patient histories, his opinion that Mr. Chavez was negligent in obtaining those histories would not have factual support. Even if that were the case, however, Dr. Munzing opined that Mr. Chavez's failure to adequately document relevant information he obtained from those patients histories would constitute a simple departure from the standard of care.

Respondent's Evidence

57. Gwendolyn Grove is the Apple Valley clinic office manager. She had known Mr. Chavez since 2007. According to Ms. Grove, Mr. Chavez is a nice person and "patients love him." Mr. Chavez spends a lot of time with patients.

Ms. Grove was shocked to learn of the allegations. She acknowledged that if Mr. Chavez injected RM's shoulder with cortisone at home, that "posed a problem." The improperly obtained medications stored in Mr. Chavez's house also "posed a problem," but she believed "People make mistakes and learn from them." Ms. Grove testified Mr. Chavez's judgment seemed briefly clouded following RM's unexpected death in March 2011, but since then she had witnessed a change in Mr. Chavez's professional practice for the better.

Ms. Grover did not believe that Mr. Chavez posed a risk of harm to patients.

58. Patient BB testified that Mr. Chavez began treating him in June 2009. Mr. Chavez spoke with BB for "at least 45 minutes" on the first visit. BB found Mr.

Chavez professional, knowledgeable, thorough, and available. BB believed Mr. Chavez obtained an adequate oral history at each visit, discussed elevated blood pressure readings, and did not overprescribe medications. BB recalled that Mr. Chavez warned him about the overuse of acetaminophen and the possibility of liver damage on their first visit and thereafter. BB said Mr. Chavez warned him about the danger of using Vicodin ES and Xanax and driving a truck.

BB stopped seeing Mr. Chavez when BB was referred to an orthopedic surgeon.

BB testified that obtaining medical services in the High Desert was difficult, and that Mr. Chavez should be permitted to keep his license.

59. Howard Oliver, D.O., has been licensed to practice medicine in California since 1985. He obtained a medical degree from the Kirksville College of Osteopathic Medicine in 1979. He completed an internship. He was employed by the United States Department of Justice as a prison physician in Texas. In the 1980s, he participated in a Pathology residency at UCI's School of Medicine and in a fellowship in Forensic Medicine at the Los Angeles Coroner's Office. He has been in private practice since 1990. He has served as Medical Director at two methadone clinics. He founded the Central Desert Industrial Medical Group. He conducts private autopsies, consults with substance abuse patients in Los Angeles County on Mondays and Tuesdays, and provides industrial medicine and primary care medical services at the Apple Valley clinic one or two days a week.

60. Dr. Oliver was not called as an expert witness to testify about standards of care, but as a percipient witness.

61. Mr. Chavez is an employee of the Apple Valley clinic who has expertise in opiate addiction. Mr. Chavez provides occupational and primary care medical services. Dr. Oliver is Mr. Chavez's supervising physician. Dr. Oliver trusts Mr. Chavez, and he will continue to employ Mr. Chavez if Mr. Chavez remains certified as a physician assistant. Dr. Oliver believes Mr. Chavez is very competent, one of the best of the 21 physician assistants he has supervised.

62. Mr. Chavez practices under protocols and a written delegation of authority. However, not all of protocols have been reduced to writing. Dr. Oliver was not aware that the written delegation of authority required him to approve drug orders for controlled substances Mr. Chavez wrote before an order was issued for a specific patient.

63. Dr. Oliver was also unaware, in 2009, that Mr. Chavez could not lawfully prescribe Suboxone. "It was a gray area," he said. Dr. Oliver assumed that Mr. Chavez's writing Suboxone prescriptions was appropriate because the pharmacy filled those prescriptions and never contacted him to advise him that Mr. Chavez

could not write them. In mid-2011, once Dr. Oliver found out that Mr. Chavez could not lawfully write Suboxone prescriptions, he prohibited Mr. Chavez from seeing patients whose care required Suboxone prescriptions and from writing prescriptions for Suboxone.

64. On October 26, 2013, Dr. Oliver first learned that an accusation had been filed against Mr. Chavez. Before then, Dr. Oliver knew there was a Medical Board investigation concerning Mr. Chavez's professional practices at the Apple Valley clinic, but he was not really aware of the status of the investigation. He did not inquire about it. Dr. Oliver first read the accusation on March 3, 2014, the day Mr. Chavez's disciplinary hearing began.

Dr. Oliver testified that he reviewed BB's chart before March 3, 2014, but not the charts of RM, CR or MR. He reviewed those patient charts during the hearing, before he testified. He believed that Mr. Chavez followed written protocols in his treatment of BB, RM, CR and MR. Dr. Oliver testified that the clinic procedure had changed, and that obtaining liver function tests and drug testing was now routine. Dr. Oliver now reviews all abnormal MRIs and x-rays.

65. Dr. Oliver said he had no knowledge that Mr. Chavez removed RM's tattoo at his home or that Mr. Chavez had injected RM's shoulder with cortisone at his home before the hearing began. Dr. Oliver believed Mr. Chavez "exercised poor judgment" in providing those medical services. He testified, "It was not a clinic action." Regarding Mr. Chavez writing prescriptions in RM's name with the intent of using those prescriptions himself, Dr. Oliver commented, "It's wrong."

66. Dr. Oliver testified Mr. Chavez was "in no way a danger to the public."

Respondent's Testimony

67. Mr. Chavez testified about his background, education, training and employment, including his employment at the Apple Valley clinic.

Mr. Chavez said he was embarrassed by the allegations. He claimed he accepted responsibility for his misconduct. He described his professional and personal relationship with RM, and the circumstances surrounding her death. He mentioned law enforcement's investigation into RM's death, how he was cleared of foul play, how various controlled substances were found at his home during the investigation, and how RM's death ultimately resulted in a complaint being filed with the Board by RM's relative. Mr. Chavez admitted that he removed a tattoo from RM's finger and injected her shoulder with cortisone at home. He acknowledged that doing so was improper and inexcusable. He admitted that he wrote prescriptions in RM's name for his own use, explaining that he did so because it was convenient. He acknowledged that this conduct was improper.

Mr. Chavez testified he did not insist on liver function tests, drug screens, MRIs or certain other diagnostic tests for many patients, including the patients mentioned in the accusation, because testing was expensive, the patients did not have insurance to cover the cost of testing, and the patients could not easily afford testing. Mr. Chavez explained that it was his practice to carefully obtain a detailed oral history from each patient at each patient encounter, but he admitted he did not always adequately document the histories he obtained from RM, CR, BB and MR.

Mr. Chavez believed he had Dr. Oliver's oral authority to prescribe controlled substances to patients without having to obtain prior specific approval. He admitted he sometimes prescribed medications containing acetaminophen in amounts that exceeded recommended daily dosages; he admitted he should not have given early refills. He testified that he believed at the time he treated the patients mentioned in the accusation that his controlled substance prescribing practices were safe and within standards of care. He testified he now realizes his prescribing practices needed some improvement.

Mr. Chavez testified he first became aware in mid-2011 that he could not lawfully prescribe Suboxone. He has not prescribed Suboxone since then, and he no longer treats patients for narcotic addiction.

Mr. Chavez testified that RM's death on March 7, 2011, dramatically changed his life. RM's unexpected death briefly clouded his judgment and may have resulted in his failure to practice within standards of care. He said he spoke informally with an unidentified counselor about his situation, but he did not seek formal help to deal with the emotional sequella following RM's death. He did not believe his clouded judgment posed a risk of danger to patients.

Mr. Chavez testified that the four entries he added to MR's chart were truthful "late entries." He testified that the addition of the late entries was not intended to mislead anyone, but were added "for the sake of thoroughness."

Mr. Chavez testified that he has changed some of his prescribing practices. He no longer prescribes Suboxone. He no longer prescribes medication(s) that contain more than 3,000 mg of acetaminophen per day. He no longer provides early refills; if a patient claims his or her medication was stolen, he requires the patient to file a police report. He more carefully documents patient histories. He brings abnormal x-rays or MRIs to Dr. Oliver's attention. He has more contact and interaction with Dr. Oliver concerning patient care.

Mr. Chavez testified that he has been diligent in meeting continuing professional education requirements.

Mr. Chavez realized that imposing discipline against his certificate was justified, but he requested that an outright revocation not be imposed. He said he knows what went wrong and that he has corrected his errors. Mr. Chavez believed his

professional services have benefitted the Apple Valley and High Desert communities, which include a significant underserved patient population. Imposing an outright revocation would harm existing patients and others living in the community. Mr. Chavez has no other profession. He would complete PACE training if required as a condition of probation.

68. Cross-examination established that Mr. Chavez had claimed 40 hours of continuing education credit as a result of taking several on-line courses on January 11, 2011. Mr. Chavez said he worked diligently from 8:00 a.m. until 7:00 p.m. that day to earn 40 hours of continuing education credit in 11 hours.

Mr. Chavez claimed the medical texts containing the protocols he followed authorized his prescription of controlled substances and did require him to obtain specific patient prior approval from Dr. Oliver.¹⁶ No text was produced. Mr. Chavez testified that he prescribed 60 days of Suboxone for RM following his first visit with her even though he knew Dr. Oliver's practice was to prescribe no more than a 30-day supply of Suboxone. He testified, "I thought that was the amount she needed," and that prescribing that amount would save RM from having to pay for another office visit.

Mr. Chavez admitted that when his home was searched by members of the San Bernardino Sheriff's Department on March 7, 2011, he possessed several medications that he had removed from the Apple Valley clinic including 30 Vicodin ES tablets, 30 Norco tablets, 17.75 Bactrim tablets, 58 Tramadol tablets, 24 Phentermine tablets, and 54 Omeprazole tablets. He admitted he took these medications from the Apple Valley clinic for his own use, that he did not have a prescription for them, and that the Tramadol and Bactrim tablets had been returned unused by two patients. Mr. Chavez admitted he self-administered some controlled substances.

Mr. Chavez demonstrated an excellent memory during some portions of his testimony (e.g., Mr. Chavez recalled that CR was wearing blue shorts when he first met with CR), but had to look at patient charts to recall other matters (e.g., which of CR's knees was painful and whether he added the words "labs pending" at the bottom of CR's chart note dated December 29, 2011). Mr. Chavez testified he prescribed a daily dose of 8 mg of Xanax to CR because "he was just trying to help."

Mr. Chavez provided detailed testimony concerning his care and treatment of RM, BB and MR. He had an excellent memory of what these patients told him and what he said to these patients when the information was helpful to his defense, but he

¹⁶ This testimony was inconsistent with the written stipulation, which admitted Paragraph 27 of the accusation which stated: "According to the Delegation of Services Agreement, and applicable law regulating physician assistants, all drug orders written by Respondent for controlled substances are to be approved by his supervising physician for the specific patient prior to being issued or carried out."

had to look at patient charts before discussing matters that might be damaging to his case. Mr. Chavez's selective recall made his testimony unreliable.

Mr. Chavez testified he told Dr. Oliver about his treatment of his girlfriend at their home, and that Dr. Oliver told him "not to do that." Mr. Chavez said he told Dr. Oliver that the Board might be concerned about his overprescribing acetaminophen, the failure to obtain diagnostic testing, the lack of referrals to specialists, and other matters. Mr. Chavez testified that in response to these concerns, Dr. Oliver said, "Let's go forward and put this behind us." Mr. Chavez testified he believed Dr. Oliver read the accusation before March 3, 2014. Dr. Oliver's testimony on these matters was inconsistent with Mr. Chavez's testimony.

Other Evidence

69. Mr. Chavez provided documentary evidence that established he completed seven hours of professional credit in addiction medicine as a result of attending a conference on October 12, 2011, that was presented by the California Society of Addiction Medicine. He produced documentary evidence dated November 13, 2013, that established that he participated in an educational program provided by CME that involved current pain syndromes for which he obtained 15 hours of credit. He produced documentary evidence dated November 19, 2013, that established that he participated in a CME program that involved medical error prevention and root cause analysis that resulted in his receiving two hours of credit. He produced documentary evidence that established that he participated in an addiction medicine program provided by the California Society of Addition Medicine over a four day conference taking place in October 2013 that resulted in his receiving 22.5 hours of credit. He produced documentary evidence dated October 30, 2013, that established that he participated in a CME program that involved medical ethics that resulted in his receiving five hours of credit. He produced documentary evidence dated January 11, 2011, that established that he participated in a CME program that involved risk management that resulted in his receiving five hours of credit.

70. Mr. Chavez produced letters of reference from patients Chip L. Boughner, James and Carolyn Schockley, Edward Stuckey and Elaine Anderson, Mary Rinne, and Benjamin Bertrand. These letters praised Mr. Chavez for his caring, thoughtful and competent medical services.

71. Mr. Chavez produced a letter of reference from Steven Bradshaw of Burrtec Waste Industries that praised Mr. Chavez's competent and ethical medical treatment of an employee.

72. Mr. Chavez produced a letter of reference from Lynn Taylor, who had been an extern at the Apple Valley clinic. Ms. Taylor assisted Mr. Chavez and found him to be a competent and caring physician assistant. Ms. Taylor was so impressed

with Mr. Chavez's care that she and her husband became Mr. Chavez's patients. Ms. Taylor refers friends to Mr. Chavez for care and treatment.

73. Mr. Chavez produced a letter from Patricia L. Smith, who has known Mr. Chavez since 2009. Ms. Smith sends employees who have suffered work-related injuries to Mr. Chavez. She values his medical opinion and respects the value of the quality care he provides. Ms. Smith works as an emergency medical technician and often calls Mr. Chavez for assistance in treating severely injured patients.

Disciplinary Guidelines

74. California Code of Regulations, title 16, section 1399.523, provides in part:

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Physician Assistant Board shall consider the disciplinary guidelines entitled "Physician Assistant Board Manual of Model Disciplinary Guidelines and Model Disciplinary Orders" 3rd Edition 2007, which are hereby ~~incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Physician Assistant Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.~~

75. The Manual of Disciplinary Guidelines and Model Disciplinary Orders is intended to serve as a guide for persons involved in establishing administrative disciplinary orders related to violations committed by licensed physician assistants. The penalties and conditions contained in the manual are merely guidelines. Absent significant extenuating circumstances, the penalty and probationary provisions set forth in the guidelines should be followed. Whenever a Proposed Decision varies from the guidelines, the deviation or omission should be explained.

The manual specifically provides that any violation of the Medical Practice Act that constitutes unprofessional conduct by a physician is grounds for finding if committed unprofessional conduct by a physician assistant. Furthermore, the guidelines state that in addition to the grounds for discipline set forth in Business and Professions Code, section 3527(a), other grounds for action are set forth in California Code of Regulations, title 16, section 1399.521 et seq.

The guidelines recommend a maximum sanction of outright revocation and a minimum sanction of a stayed revocation and at least five years probation for conduct

involving gross negligence (first cause for discipline) and repeated negligent acts (second cause for discipline).

The guidelines contain no specific sanction for the unlicensed practice of medicine (third cause for discipline), but the guidelines recommend a maximum sanction of outright revocation and a minimum sanction of a stayed revocation and three years probation for practicing medicine without delegated authority, exceeding the delegated scope or practice, or practicing without adequate supervision.

The guidelines contain no specific recommendation for repeated acts of clearly prescribing excessive medications (fourth cause for discipline), but the guidelines recommend a maximum sanction of outright revocation and a minimum sanction of a stayed revocation and five years probation for excessive treatment. The guidelines recommend a maximum sanction of outright revocation and a minimum sanction of stayed probation and one year probation for administering, furnishing or transmitting drug orders not prescribed by a supervision physician.

The guidelines recommend a maximum sanction of outright revocation and a minimum sanction of a stayed revocation and at least three years probation for the alteration of patient records (fifth cause for discipline).

The guidelines recommend a maximum sanction of outright revocation and a minimum sanction of a stayed revocation and at least five years probation for dishonesty (sixth cause for discipline).

The guidelines recommend a maximum sanction of outright revocation and a minimum sanction of a stayed revocation and at least seven years probation for the violation of laws regulating drugs (seventh cause for discipline). The same recommendation applies for illegal drug use (eighth cause for discipline).

The guidelines recommend a maximum sanction of outright revocation and a minimum sanction of a stayed revocation and at least three years probation for improper record keeping (ninth cause for discipline).

The guidelines contain no specific recommendation for general unprofessional conduct. However, the unprofessional conduct alleged in this matter is specifically tied to statutory violations set forth in the first eight causes for discipline, each of which has its own recommendation.

Credibility of the Witnesses

76. Dr. Munzing was a believable witness. He listened carefully to the questions he was asked, provided thoughtful and measured responses, and was not guilty of overstatement.

Dr. Oliver was not presented as an expert witness, and he was not particularly knowledgeable about the facts at issue. Dr. Oliver's testimony that Mr. Chavez was fit to practice was not compelling given Dr. Oliver's lack of knowledge concerning Mr. Chavez's wrongdoing.

The lay witnesses who testified on Mr. Chavez's behalf – Ms. Grove and patient BB – were pleasant individuals who were supportive and protective of an individual of whom they were quite fond. Their testimony was not persuasive on the issue of Mr. Chavez's fitness to practice.

Mr. Chavez's testimony was troubling. His admissions of wrongdoing at the hearing were required by the improper treatment he documented in patient records and his admissions at the interviews. Mr. Chavez demonstrated selective recall. He had no difficulty testifying about matters that helped his defense, but could not easily remember many damaging matters established by clear and convincing evidence. Mr. Chavez engaged in intentionally dishonest conduct, e.g., writing prescriptions for his own use in the name of another and altering medical records to make himself look better. His willingness to engage in dishonesty to benefit himself raised questions about the truthfulness of his testimony. With regard to his demeanor, Mr. Chavez provided answers to questions that were not asked when doing so was helpful, and misunderstood questions that required damaging testimony. His evasiveness did not promote confidence in his account.

Evaluation

77. Mr. Chavez stipulated to the truth of many facts alleged in the accusation. While clear and convincing evidence did not establish that Mr. Chavez failed to obtain an adequate history or conduct thorough examinations in his care and treatment of patients RM, CR, BB and MR, it was established that Mr. Chavez failed to accurately and adequately document many important matters he learned in his interactions with these patients. His chart notes were sometimes inaccurate and nearly always incomplete. His record keeping was unprofessional. If poor record keeping was the only cause for discipline, an outright revocation of Mr. Chavez's certificate would not be required.

Clear and convincing evidence established that Mr. Chavez prescribed Suboxone to RM when he did not have the legal authority to do so. Mr. Chavez wrote prescriptions for Suboxone for RM, each with several refills, without requiring RM to undergo more than the two office visits. He failed to obtain a liver function test even though RM had provided him with a history of having taken 40 Vicodin ES tablets per day for four years, a practice involving the excessive use of acetaminophen that could have resulted in liver damage. Mr. Chavez's prescribing practices for RM and his care for her in the clinic involved gross negligence. It was no defense that RM was impoverished; there was a relatively small charge associated with conducting a liver function test; if RM had the funds to pay for Vicodin ES and Suboxone, she

had the funds to pay for necessary testing to determine whether she had liver damage. Mr. Chavez's prescribing practices for RM were part of a pattern of unprofessional practice that supports the outright revocation of his certificate.

Clear and convincing evidence established that Mr. Chavez prescribed Vicodin ES and Norco to CR in amounts greatly exceeding safe recommended daily dosages. He prescribed Xanax to CR in an amount exceeding the recommended daily dosage. He never discussed CR, CR's presenting conditions, any finding related to CR, CR's treatment, or CR's lack of progress with Dr. Oliver. Mr. Chavez did not receive prior approval from Dr. Oliver before prescribing Vicodin or Norco. He did not obtain relevant laboratory testing. His prescribing practices with respect to patient CR involved gross negligence and were part of a pattern of unprofessional conduct that supports the outright revocation of his certificate.

Clear and convincing evidence established that Mr. Chavez prescribed controlled substances to BB, that Mr. Chavez did not obtain prior approval from Dr. Oliver before issuing those prescriptions, that he provided BB with early refills, that BB consumed controlled substances in amounts exceeding prescribed dosages, and that Mr. Chavez increased dosages of controlled substances without making further inquiry in response to BB's drug seeking behavior. Mr. Chavez never required BB to undergo a urine drug screen or liver function test. Mr. Chavez's prescribing practices with respect to patient BB involved gross negligence and were part of a pattern of unprofessional conduct that supports the outright revocation of his certificate.

Clear and convincing evidence established that Mr. Chavez altered MR's medical records by adding information to those records without noting when he did so or the very fact that he did so. He did so to benefit himself. Mr. Chavez's undocumented alteration of MR's medical record was dishonest, unethical and unprofessional; it supports the outright revocation of his certificate.

Clear and convincing evidence established that Mr. Chavez removed a tattoo from RM's finger and injected her shoulder with cortisone at home. The provision of these medical services was unsupervised, unethical, illegal, unprofessional, and involved gross negligence. This conduct supports the outright revocation of Mr. Chavez's certificate

Clear and convincing evidence established that Mr. Chavez improperly prescribed or otherwise obtained various medications for his personal use including hydrocodone, Lunestra, Ryzolt, Tramadol, and Bactrim. His conduct in obtaining these controlled substances was unlawful, dishonest, and involved gross negligence. Cause exists to impose an outright revocation of Mr. Chavez's certificate based on this misconduct.

Clear and convincing evidence established that Mr. Chavez engaged in numerous acts of repeated negligence in his care and treatment of patients RM, CR,

BB and MR. Only the charts for these four patients were subject to Dr. Munzing's expert review. Mr. Chavez provided inadequate and improper medical services to each patient whose chart was reviewed. He failed to obtain appropriate supervision from Dr. Oliver in every case; in fact, the evidence established that Mr. Chavez was practicing as a physician assistant in the Apple Valley clinic most of the time without any supervision at all. Mr. Chavez's repeated negligence took place over an extended period of time, and it compels a finding that Mr. Chavez is a dangerous physician assistant who is unfit to practice. The repeated negligent acts support an outright revocation of Mr. Chavez's certificate

The evidence of rehabilitation was not persuasive. Mr. Chavez's admissions of wrongdoing were required because they clearly occurred; these admissions did not reflect Mr. Chavez's character for honesty. The fact that Mr. Chavez was well liked by Dr. Oliver, his co-employees, and many patients did not establish that Mr. Chavez provided medical services within standards of care. No witness called by respondent, other than Dr. Oliver, had the expertise necessary to reach a conclusion about Mr. Chavez's fitness to practice. Dr. Oliver's opinion that Mr. Chavez "was in no way a danger to the public" was not believable. Dr. Oliver provided Mr. Chavez very little direct supervision. He was unaware of most of Mr. Chavez's wrongdoing before the hearing commenced. Even after learning about Mr. Chavez's wrongdoing, Dr. Oliver continued to believe that Mr. Chavez was a fit practitioner.

The assertion that Mr. Chavez learned his lesson and had taken educational courses to remedy areas of deficiency was unpersuasive. Mr. Chavez obtained about 57 hours of continuing education after September 2011, but more than half of that (29.5 hours) was obtained in the area of addiction medicine, which Mr. Chavez claimed was his specialty and an area in which he no longer practices. The remainder of his education was obtained on-line from CME, and Mr. Chavez's previous record with regard to his earning CME on-line education credit established that he claimed 40 hours of CME on-line credit in just 11 hours, a situation that raised questions about the worth of such an education.

Under all the circumstances, an outright revocation of Mr. Chavez's certificate is the only measure of discipline that will protect the public. Imposing an outright revocation falls within the Board's disciplinary guidelines.

Costs of Investigation and Enforcement

78. Senior Investigator Eric R. Ryan investigated the complaint that was filed against Mr. Chavez, reviewed documents, traveled to various sites to obtain documents and interview witnesses, interviewed witnesses, and prepared a report. He confirmed that the time set forth in the certification was correct. He established that 46.5 hours were spent in the investigation. Investigative rates were billed at the rate of \$127 per hour.

The Board's cost of investigation was \$5,887, not including the cost of expert reviewer services.

79. The Board's cost for expert reviewer services totaled \$5,250, which consisted of Dr. Munzing's review of documents and preparation of a narrative report. Dr. Munzing billed \$150 an hour for 35 hours for his reviewer services.

80. The deputy attorney general who prosecuted this disciplinary matter was well prepared and professional. The matter was complex, and it was vigorously defended by competent counsel. The deputy who prosecuted this matter signed a declaration under penalty of perjury to which exhibits were appended. The exhibits contained the dates on which legal services were provided, a brief description of the services provided on each date, and the identity of the professionals providing the services. The Attorney General's Office billed the Board \$13,840 for legal services before the hearing commenced. Attorney services were billed at the rate of \$170 per hour, and paralegal services were billed at the rate of \$120 per hour. Costs of enforcement totaled \$13,840.

81. The Board's costs of investigation and enforcement totaled \$24,977.

LEGAL CONCLUSIONS

Protection of the Public

1. Protection of the public is the highest priority for the Physician Assistant Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, protection of the public is paramount. (Bus. & Prof. Code, § 3504.1.)

2. Administrative proceedings to revoke, suspend, or impose discipline upon a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but to protect the public. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768.)

Burden and Standard of Proof

3. In administrative disciplinary proceedings, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty and cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

4. Since the underlying purpose of disciplining attorneys and physicians is protection of the public, it would be anomalous to require a higher degree of proof in disciplinary hearings involving attorneys or real estate agents than in hearings

involving physicians. Accordingly, the proper standard of proof in an administrative hearing to revoke or suspend a physician's license should be clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

5. Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt. (*In re Z.K.* (2011) 201 Cal.App.4th 51, 65.)

6. The burden was on the complainant to establish by clear and convincing evidence that grounds exist to revoke or suspend respondent's certificate.

Authority to Impose Discipline

7. Business and Professions Code section 3527, subdivision (a), authorizes the Board to suspend or revoke a physician assistant license for unprofessional conduct including, but not limited to, a violation of the Physician Assistant Practice Act, the Medical Practice Act, or regulations adopted by the Board or the Medical Board of California.

8. California Code of Regulations, title 16, section 1399.521, subdivision (d), authorizes the Board to suspend or revoke a physician assistant's license for "performing medical tasks which exceed the scope of practice of a physician assistant as prescribed in these regulations."

9. Business and Professions Code section 2234 provides in part:

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

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

(b) Gross negligence.

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

[¶] . . . [¶]

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

(f) Any action or conduct that would have warranted the denial of a certificate

This statute applied to Mr. Chavez.

10. Business and Professions Code section 2052, subdivision (a), prohibits any person from practicing or attempting to practice any system or mode of treating the sick or afflicted, and from diagnosing, treating, operating for, or prescribing for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition without having a valid, unrevoked, or unsuspended physician's and surgeon's certificate or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law.

This statute applied to Mr. Chavez.

11. Business and Professions Code section 2238 provides that a violation of any federal statute or regulation or any California statute or regulation that regulates dangerous drugs or controlled substances involves unprofessional conduct.

This statute applied to Mr. Chavez.

12. Business and Professions Code section 2239 provides that the use, prescribing or administering to himself or herself of any controlled substance constitutes unprofessional conduct.

This statute applied to Mr. Chavez.

13. Business and Professions Code section 725 prohibits and makes it unlawful to engage in repeated acts of clearly excessive prescribing of drugs.

This statute applied to Mr. Chavez.

14. Business and Professions Code section 2266 requires a physician and surgeon to maintain adequate and accurate records related to the provision of services to patients; the failure to do so constitutes unprofessional conduct.

This statute applied to Mr. Chavez.

15. Business and Professions Code section 2262 provides in part:

Altering or modifying the medical record of any person, with fraudulent intent or creating any false medical record, with fraudulent intent constitutes unprofessional conduct.

This statute applied to Mr. Chavez.

16. Business and Professions Code section 3502 provides in part:

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

[¶] . . . [¶]

(c)(1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the physician assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:

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

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

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

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

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

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

17. Business and Professions Code section 3502.1 provides in part:

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

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

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

the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

(b) "Drug order," for purposes of this section, means an order for medication that is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians and surgeons, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

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

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

(2) A physician assistant may not . . . provide, or issue a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled

substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.

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

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

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

18. California Code of Regulations, title 16, section 1399.541, provides in part:

(. . .) Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician.

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

[¶] . . . [¶]

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

19. California Code of Regulations, title 16, section 1399.545, provides in part:

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

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

(c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

[¶] . . . [¶]

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

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

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

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

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

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

20. California Code of Regulations, title 16, section 1399.525, provides in part:

For the purposes of . . . suspension or revocation of a license 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 under the Physician Assistant Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such . . . acts shall include, but are not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Medical Practice Act.

(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physician Assistant Practice Act. . . .

Standard of Care

21. Expert testimony is required to establish that a health care practitioner failed to satisfy the necessary standard of care unless the practitioner's negligence was demonstrated by matters within the common knowledge of a layperson and no scientific enlightenment is necessary. (*Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 141; *Ewing v. Northridge Hospital Medical Center* (2004) 120 Cal.App.4th 1289, 1302; see also, Evid. Code, § 801, subd. (a).)

22. The standard of care requires a medical professional to possess and exercise that level of knowledge and skill ordinarily possessed by members in good standing in his profession or specialty. (*N.N.V. v. American Assn. of Blood Banks* (1999) 75 Cal.App.4th 1358, 1384.) The standard of care must be established by expert testimony. (*Elcome v. Chin* (2003) 110 Cal.App.4th 310, 317.) The standard of care is often a function of custom and practice. (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 280.)

Ordinary Negligence, Gross Negligence, Repeated Negligent Conduct

23. "Ordinary negligence" - an unintentional tort - consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm. "Gross negligence" long has been defined in California and other jurisdictions as either a "want of even scant care" or "an extreme departure from the ordinary standard of conduct." (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753.)

24. In the discipline of medical doctors, the phrase "repeated negligent acts" means "two or more acts." This is a logical, straightforward interpretation of the phrase that affords some degree of flexibility to the Medical Board in imposing

discipline. There is no reason for the terminology to have a different meaning for dentists. (*Gillis v. Dental Board of California* (2012) 206 Cal.App.4th 311, 320-321.)

Expert Testimony

25. A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Work in a particular field is not an absolute prerequisite to qualification as an expert in that field. For example, qualifications other than a license to practice medicine may serve to qualify a witness to give a medical opinion. Because of the dramatic growth of diverse interdisciplinary studies in recent times, individuals of different professions are called upon to give medical opinions or at least opinions involving some medical expertise. The determinative factor is whether the expert has sufficient skill or experience in the field so that his testimony would assist in the search for the truth. The degree of expertise goes to the weight of the expert's testimony, not its admissibility. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1318-1319.)

26. As a general rule, provided the trier of fact does not act arbitrarily, he may reject in toto the testimony of a witness, even though the witness's testimony is uncontradicted. This rule is applied equally to expert witnesses. However, a fact finder must accept uncontradicted expert testimony as conclusive in professional negligence cases where the standard of care must be established by expert testimony. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 632.) Although a jury may not arbitrarily or unreasonably disregard the testimony of an expert, it is not bound by the expert's opinion. Instead, it must give each opinion the weight the opinion deserves. So long as it does not do so arbitrarily, a fact finder may entirely reject the testimony of an expert, even where the opposing party does not call any opposing expert and the expert testimony is not contradicted. (*Ibid.*, at p. 633.)

Evidence and Credibility Determinations

27. Evidence Code section 411 provides: 1 "Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact."

28. The trier of fact is the sole and exclusive judge of the credibility of witnesses as determined by their demeanor. A written transcript of testimony is a pallid reflection of what actually happens in a trial court. The best and most accurate record is like a dehydrated peach; it has neither the substance nor the flavor of the fruit before it was derived. It resembles a pressed flower. The cold record cannot give the look or manner of the witnesses; their hesitations, their doubts, their variations of language, their precipitancy, their calmness or consideration. A witness may convince all who hear him testify that he is disingenuous and untruthful, and yet his testimony when read, may convey a most favorable impression. There are many

factors aiding in a reasonable conclusion which are presented to the trier of facts in the first instance and not available to one going over the cold record. There is what might be called the "feel" of the case. This embraces a consideration of the witnesses, the manner in which they testify and their general attitude in the court room. On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted - but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, and his reliability. All of this is because a great deal of that highly delicate process we call evaluating the credibility of a witness is based on what might be called, for lack of a better word, "intuition" - that intangible, inarticulable capacity of one human being to evaluate the sincerity, honesty and integrity of another human being with whom he comes in contact. (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140-141.)

Respondent's Burden of Proof

29. The burden was on respondent to introduce evidence in explanation, mitigation and rehabilitation in this disciplinary matter. (Evid. Code, §§ 500, 550.)

30. A licensee has the burden of establishing that misconduct was caused in significant measure by a condition or events from which the licensee has made substantial progress towards recovery or rehabilitation. The licensee's evidence must be sufficiently mitigating, in light of the particular facts of the misconduct and other relevant circumstances, to warrant a discipline less than an outright revocation. (See, *Harford v. State Bar* (1990) 52 Cal.3d 93, 101.)

Rehabilitation

31. The amount of evidence required to establish rehabilitation varies according to the seriousness of the wrongdoing at issue. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of an individual's misconduct is greatly diminished by the passage of time and the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) While rehabilitation is properly considered a mitigating factor, the degree of discipline must correspond to some reasonable degree with the gravity of the misconduct. (*In re Strick* (1987) 43 Cal.3d 644, 656.)

Cause Exists to Impose Discipline

32. First Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code section 2234, subdivision

(b), and California Code of Regulations, title 6, section 1399.521. Mr. Chavez engaged in gross negligence in his care and treatment of patients RM, CR, BB and MR. With respect to RM, Mr. Chavez prescribed Suboxone when he was not legally entitled to do so, improperly prescribed Suboxone, failed to obtain required laboratory testing, and provided unsupervised medical treatment to RM. With respect to CR, Mr. Chavez prescribed pain medications for a chronic knee condition in amounts greatly exceeding the recommended daily maximum dosage of acetaminophen, prescribed Xanax for anxiety in amounts greatly exceeding the recommended daily maximum dosage, and failed to obtain indicated laboratory testing. With respect to BB, Mr. Chavez prescribed pain medications in amounts greatly exceeding the recommended daily maximum dosage of acetaminophen and failed to obtain indicated laboratory testing other than a single urinary dip. With respect to MR, Mr. Chavez intentionally added information to MR's chart without indicating the date the information was added with the dishonest intent of making it appear that he was providing quality services to MR. In addition, Mr. Chavez's method of obtaining controlled substances of his own use, including Lovastatin, Lunestra, Ryzold, and hydrocodone, involved gross negligence.

33. Second Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code section 2234, subdivision (c), and California Code of Regulations, title 6, section 1399.521. Mr. Chavez engaged in repeated negligent acts in his care and treatment of patients of RM, CR, BB and MR as set forth in legal conclusion 31 and in the other ways described as gross negligence and simple negligence in the factual findings.

34. Third Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code section 2227, 2234, subdivision (a) and (f), 2052, and California Code of Regulations, title 6, section 1399.521. Mr. Chavez's unsupervised treatment of RM in the home, his prescription of medications to her for his own use, and his possession of controlled substances for his own use without having a prescription written by a treating physician constituted the unlawful practice of medicine and unprofessional conduct.

35. Fourth Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code section 725. Mr. Chavez engaged in repeated acts of clearly prescribing excessive medications to CR and BB as determined by the standards of care related to the prescription of those medications. This activity constituted unprofessional conduct.

36. Fifth Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code section 2262 and California Code of Regulations, title 6, section 1399.521. Mr. Chavez modified MR's medical record with the sole intent of making his record keeping practices and the quality of care he provided to MR appear more appropriate at an upcoming Board interview; he did not date or initial the modifications. Even though the information

that was added may have been truthful, Mr. Chavez's intentionally dishonest activity constituted unprofessional conduct.

37. Sixth Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code section 2234, subdivision (e), and California Code of Regulations, title 6, section 1399.521. Mr. Chavez engaged in dishonesty in that he prescribed controlled substances in RM's name that he intended to use himself, unlawfully took returned prescriptions from the Apple Valley clinic for his own use, and modified MR's medical records with the dishonest intention of making himself look better during a Board interview.

38. Seventh Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code section 2234, subdivision (e), Business and Professions Code section 2238, Business and Professions Code section 2239, and California Code of Regulations, title 6, section 1399.521. Mr. Chavez violated drug statutes because on March 7, 2011, when his home was searched, Mr. Chavez unlawfully possessed hydrocodone/APAP, Bactrim, Tramadol, and Phentermine without having a valid prescription for those drugs. His unlawful possession of those controlled substances constituted unprofessional conduct under the circumstances presented in the factual findings.

39. Eighth Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code sections 2234 and 2239 and California Code of Regulations, title 6, section 1399.521. Mr. Chavez admitted he used controlled substances he prescribed for others or he took from the Apple Valley clinic and that he did not have a valid prescription for these medications. This misconduct involved unprofessional conduct.

40. Ninth Cause for Discipline: Clear and convincing evidence established grounds for discipline under Business and Professions Code sections 2266 and California Code of Regulations, title 6, section 1399.521. Mr. Chavez failed to maintain adequate and accurate records relating to the provision of services to patients RM, CR, BB and MR as set forth in the factual findings. This failure involved unprofessional conduct.

41. Tenth Cause for Discipline: Clear and convincing evidence did not establish independent grounds for discipline apart from the conduct previously identified in legal conclusions 32 through 40.

The Appropriate Measure of Discipline

42. Mr. Chavez demonstrated grossly unprofessional conduct in his care and treatment of three separate patients, by altering another patient's medical records to make himself look better, by writing prescriptions in the name of another person when he intended to use the medications he had prescribed for his own use, by taking

controlled substances from his employer without permission, and by using controlled substances that he unlawfully obtained without having a valid prescription from a treating physician. Mr. Chavez's unprofessional conduct extended over a lengthy period of time, involved several patients, and was egregious. Mr. Chavez's obtained educational credits to meet continuing professional education requirements, not to rehabilitate himself. Even if Mr. Chavez obtained the credit to rehabilitate himself, the extent to which Mr. Chavez actually earned educational credits is subject to doubt.

A disciplinary order that imposes an outright revocation falls within the Board's recommended disciplinary guidelines. The nature, character, extent and duration of Mr. Chavez's unprofessional conduct, coupled with the lack of evidence to support findings of extenuation and rehabilitation, require the outright revocation of Mr. Chavez's certificate. No other measure of discipline will protect the public.

Cost Recovery

43. Business and Professions Code section 127.5 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed

decision fails to make a finding on costs requested pursuant to subdivision (a).

44. Cause exists under Business and Professions Code section 127.5 to issue an order directing Mr. Chavez to pay the Board's reasonable costs of investigation and prosecution in the amount of \$24,977.

ORDER

Physician Assistant Certificate No. PA 12656 issued to respondent Rafael U. Chavez is revoked pursuant to Legal Conclusions 32 through 42, separately and for each of them.

Rafael U. Chavez is hereby directed to pay to the Physician Assistant Board of California \$24,977.

DATED: April 7, 2014



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings