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

13 In the Matter of the First Amended Accusation
14 Against:

15 **MANUEL TANGUMA III, M.D.**
16 **277 Rancheros Drive, Suite 100**
San Marcos, CA 92069

17 **Physician's and Surgeon's Certificate No.**
18 **A101646**

19 Respondent.

Case No. 800-2013-002174

OAH No. 2015070764

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

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

22 **PARTIES**

23 1. Kimberly Kirchmeyer (complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Tessa L. Heunis,
26 Deputy Attorney General.

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1 participation in this or any other matter affecting or involving respondent. In the event that the
2 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this
3 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
4 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
5 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
6 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
7 by the Executive Director on behalf of the Board, respondent will assert no claim that the
8 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
9 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
10 of any matter or matters related hereto.

11 **ADDITIONAL PROVISIONS**

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

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

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

21 **ORDER**

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A101646,
23 issued to Respondent Manuel Tanguma III, M.D., is surrendered and accepted by the Medical
24 Board of California.

25 1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A101646
26 and the acceptance of the surrendered license by the Board shall constitute the imposition of
27 discipline against respondent. This stipulation constitutes a record of the discipline and shall
28 become a part of respondent's license history with the Medical Board of California.

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: *March 10, 2017*

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation No. 800-2013-002174

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 1 20 16
BY R. Firdaus ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the First Amended Accusation
Against:
14 **MANUEL TANGUMA III, M.D.**
15 **1345 Encinitas Blvd., #614**
Encinitas, CA 92024-2845
16 **Physician's and Surgeon's**
17 **Certificate No. A 101646,**
18 Respondent.

Case No. 8002013002174

FIRST AMENDED ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (complainant) brings this First Amended Accusation solely in
23 her official capacity as the Executive Director of the Medical Board of California, Department of
24 Consumer Affairs (Board).

25 2. On or about September 26, 2007, the Board issued Physician's and Surgeon's
26 Certificate Number A101646 to Manuel Tanguma III, M.D. (respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges and
28 allegations brought herein and will expire on July 31, 2017, unless renewed. On May 20, 2016,

1 an Interim Order of Suspension was issued immediately suspending respondent's Physician's and
2 Surgeon's Certificate Number A101646 and, following a noticed hearing on June 6, 2016,
3 respondent remains suspended from the practice of medicine as of the date of the filing of this
4 First Amended Accusation.

5 JURISDICTION

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

9 4. Section 2227 of the Code states:

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

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

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

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

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

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

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

1 the board pursuant to Section 803.1.”

2 5. Section 726 of the Code states:

3 “The commission of any act of sexual abuse, misconduct, or relations with a patient,
4 client, or customer constitutes unprofessional conduct and grounds for disciplinary action
5 for any person licensed under this division,¹ under any initiative act referred to in this
6 division and under Chapter 17 (commencing with Section 9000) of Division 3.

7 “...”

8 6. Section 2234 of the Code, states:

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

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

14 “(b) Gross negligence.

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

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

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

25 “...”

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

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28 ¹ Business and Professions Code, Division 2.

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“ ...”

7. Section 2266 of the Code states:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

8. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.²

FIRST CAUSE FOR DISCIPLINE

(Sexual Abuse, Misconduct, or Relations with a Patient)

9. Respondent is subject to disciplinary action under section 726 of the Code, in that he committed an act or acts of sexual abuse, misconduct, or relations with a patient, as more particularly alleged hereinafter:

10. At all relevant times, respondent was a primary care physician, employed by the Graybill Medical Group and practicing primarily out of offices in San Marcos, California.

Patient A:

11. During 2013, respondent was the primary care physician for patient A, then 43 years old, her husband and their two sons. Patient A saw respondent on several occasions during 2013, both during her own visits and also while accompanying her sons and her husband on their visits to respondent.

12. During her office visits with respondent, she initially experienced him as being pleasant and light-hearted, if somewhat flirty. He was personable and approachable.

13. Respondent started making comments that made patient A feel uncomfortable. For instance, during one visit, when discussing patient A’s husband’s recent weight loss, respondent told patient A she should “watch” her husband since he may now start looking at other women. Respondent then asked patient A whether she ever looks at other men, or words to that effect,

² *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 impliedly asking whether she has had or considered having an extra marital affair.

2 14. Respondent also told patient A, who is Hispanic, that he was part Hispanic and that
3 she was "his type of woman," or words to that effect. Respondent asked patient A whether he
4 could call her sometime. When she left his office, respondent shook her hand and held onto her
5 hand for an extended period of time.

6 15. On or about November 1, 2013, patient A went to the medical offices in San Marcos
7 with a suspected urinary tract infection (UTI). Patient A asked the nurse whether she could give
8 her a urine sample to test for an infection. Patient A was told that respondent wanted to see her.
9 Patient A was feeling ill and agreed to see respondent. When she saw respondent, he asked to
10 check patient A's abdomen by palpation, to which she agreed. Respondent lifted patient A's shirt
11 and, in so doing, allowed the back of his hands to touch patient A's breasts.

12 16. While inspecting patient A's abdomen, respondent felt around patient A's belly and
13 asked if she had had plastic surgery. Patient A replied that she had had a "tummy tuck."
14 Respondent then started to rub patient A's stomach, telling her that she had some fat pockets but
15 that she "still looked good." While looking at her breasts, respondent asked whether the "tummy
16 tuck" was the only plastic surgery she had had. Respondent gestured that he was getting hot, and
17 said "I feel like I'm your puppy dog when I'm around you!" or words to that effect.

18 17. When patient A was leaving respondent's office, he reached over, gave her his hand,
19 and attempted to kiss patient A on the lips. She turned her face and he kissed her on the cheek.
20 When patient A pulled away from respondent, he asked her whether she got any lipstick on his
21 face, and whether she wanted to do it again.

22 18. Respondent's conduct and comments towards patient A made her feel "horrible" and
23 extremely uncomfortable.

24 Patient B:

25 19. Patient B is an adult female who was a patient of the respondent at the Graybill
26 San Marcos office on or about September 28, 2011, June 28, 2013 and October 7, 2013.

27 20. Patient B saw respondent on or about June 28, 2013, for a rash that had developed
28 on her foot. During the appointment, respondent appeared to be flirting with patient B and

1 behaving inappropriately.

2 21. Patient B took off her sock and shoe and pointed to her foot to show respondent
3 the reason for her visit. After patient B explained the rash, respondent said something like, "I'm
4 sorry, I've been lost in your eyes." Respondent then asked patient B about her relationship status
5 and whether she was married or had a boyfriend. When patient B said she has a boyfriend,
6 respondent responded with something to the effect that patient B's boyfriend was a lucky man.

7 22. Respondent made enquiries about patient B's last pap smear and wanted to do one
8 right then and there. Patient B told respondent she was up to date and did not need one.
9 Respondent told patient B there was no need to see a gynecologist and that it would be more
10 convenient for patient B to let respondent do a pap smear than for her to schedule it with a
11 gynecologist.

12 23. Respondent's demeanor and comments throughout the appointment were sexually
13 charged and made patient B extremely uncomfortable.

14 Patient C:

15 24. Patient C received care and treatment from respondent from on or about July 30,
16 2013, through on or about December 16, 2014 (the patient C treatment period).

17 25. During the patient C treatment period, respondent openly flirted with patient C.
18 Respondent also said things to patient C such as that he had not been able to stop thinking about
19 her, and that, when he was around her, he felt like he was in high school again.

20 26. During the patient C treatment period, respondent held patient C's hand, and
21 kissed her on the lips several times.

22 27. On one occasion during the patient C treatment period, respondent exposed his
23 erect penis to patient C and asked her to touch his penis. On another occasion, respondent
24 gestured to his erect penis, still in his trousers, and told patient C, "look what you do to me," or
25 words to that effect.

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1 Patient D:

2 28. Patient D is an adult female who, along with her two children, consulted
3 respondent as their family physician for approximately five years, from approximately 2008
4 through 2013.

5 29. When respondent was alone with patient D, she found his manner sexually charged
6 and "odd."

7 30. On one occasion, patient D was lying down on the examination table while
8 respondent was standing next to her, to her side, at hip height, examining patient D's abdomen
9 and/or breasts. While facing patient D, respondent reached down into his pants to straighten his
10 penis, which was clearly and obviously erect, and only inches away from patient D's face.

11 Patient E:

12 31. Patient E is an adult female who has long suffered from depression, and was a
13 patient of the respondent during approximately 2012 through August 28, 2015 (the patient E
14 treatment period).

15 32. During the patient E treatment period, respondent flirted with patient E and made
16 comments which had a sexual innuendo. He also asked her out to lunch, and asked questions
17 about her breasts which were not related to any medical treatment at that time. Respondent also
18 hugged patient E multiple times during her medical appointments with him.

19 33. On at least one occasion, respondent hugged patient E very tightly, pulling her
20 close to him. Respondent placed his hands completely around patient E and, with his fingers,
21 brushed the side of both her breasts. Patient E then felt what she knew was an erection pressing
22 against her pubic area. She immediately pulled away from respondent and noticed he had a
23 visible erection.

24 Patient F:

25 34. Patient F is an adult female and was a patient of the respondent during 2015.

26 35. At her first appointment with respondent, she and respondent both realized that
27 they had previously met and that respondent had briefly treated patient F during a period of
28 hospitalization in 2012, for alcohol abuse and depression.

1 36. Respondent asked patient F about her intrauterine contraceptive device (IUD)
2 implant and made sexually charged comments about it.

3 37. Respondent asked patient F about her last pap smear and told her he would love to
4 do her next pap smear.

5 38. Respondent asked patient F when she had last had her breasts examined. He raised
6 both hands to approximately chest level, open and facing her, held as if squeezing something, and
7 said "I'd love to do your breast exam, just to make sure all is well."

8 39. Respondent asked patient F about her personal life, and told her that he "is not
9 getting any at home" and that he had been a bit flustered when he saw patient F.

10 Patient G:

11 40. Patient G is an adult female who was a patient of the respondent from 2010
12 through 2015 (the patient G treatment period).

13 41. During the patient G treatment period, respondent made sexually-charged
14 comments to patient G, including that he had missed seeing her naked breasts when she had
15 covered herself before respondent entered the exam room, and that he would like a photo of her
16 vagina. Respondent frequently told patient G that she was beautiful.

17 42. During the patient G treatment period, respondent would frequently sit on his
18 spinning chair, facing patient G with his legs spread wide apart, and open up his lab coat in what
19 appeared to be a sexually suggestive manner.

20 43. During the patient G treatment period, respondent frequently had his penis
21 exposed, either flaccid or erect. Respondent made sexual remarks to patient G regarding the
22 length of his erect penis and made references to sexual acts.

23 44. At one visit, patient G sought treatment from respondent for some stomach
24 problems and he instructed her to unzip her pants so he could palpate her stomach. There was no
25 chaperone present. Respondent unzipped patient G's pants, trying to pull them down and reach
26 his hand in and rub her vagina, without patient G's consent.

27 45. On at least one occasion during the patient G treatment period, respondent moved
28 patient G's hand to his genitals.

1 46. Respondent told patient G about sexual acts between himself and other person(s)
2 and invited patient G to participate.

3 47. On multiple occasions during the patient G treatment period, respondent demanded
4 fellatio from patient G in exchange for prescriptions for the pain medications she needed.

5 48. On multiple occasions during the patient G treatment period, respondent would
6 reach a sexual climax during a medical appointment with patient G.

7 Patient H:

8 49. Patient H is an adult female who was a patient of the respondent, off and on, from
9 approximately October 2011 through June 2015 (the patient H treatment period). She recalls first
10 seeing respondent around 2008 or 2009, with her daughter, who was experiencing regular,
11 persistent, high fevers.

12 50. When patient H saw respondent as a patient, alone, for her own care and treatment,
13 she found his manner sexually charged and openly flirtatious.

14 51. On more than one occasion during the patient H treatment period, respondent told
15 patient H that he wanted to have sex with her.

16 52. At patient H's last visit to respondent, in June 2015, he showed her a photo on his
17 phone, namely, a 'selfie'³ of a man with his trousers unzipped and his penis exposed and erect.

18 Patient I:

19 53. Patient I received care and treatment from respondent during the period from
20 approximately July 2010 through October 2015 (the patient I treatment period).

21 54. Initially, patient I was accompanied by her mother on her visits to respondent. On
22 her later visits to respondent, patient I was alone.

23 55. Patient I has a history of past sexual abuse, which she shared with respondent.

24 56. During the patient I treatment period, respondent frequently conducted breast
25 exams on patient I which were not medically indicated and/or were sexual and inappropriate.
26 Respondent took one or more photographs of patient I's breasts with his personal cell phone and
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28 ³ A 'selfie' is an image of oneself taken by oneself using a digital camera.

1 said that these photograph(s) were for a medical purpose.

2 57. On occasion during the patient I treatment period, patient I was required to disrobe
3 in respondent's presence and without a third party chaperone.

4 58. During the patient I treatment period, respondent regularly kissed patient I on the
5 cheek at the beginning and conclusion of her visits.

6 59. During the patient I treatment period, respondent frequently told patient I that he
7 'wanted' her. Respondent also told patient I that she is beautiful and has a sexy body.

8 60. During the patient I treatment period, patient I wanted a copper IUD birth control
9 device inserted. Respondent informed her that she would need a pap smear before the device
10 could be inserted. Patient I had had a pap smear approximately one year previously. Respondent
11 performed the pap smear on or about December 31, 2014.

12 61. Respondent inserted the IUD on or about January 12, 2015. Subsequently,
13 respondent informed patient I that he needed to check that the IUD was correctly placed by
14 performing a digital pelvic examination.

15 62. During the patient I treatment period, respondent touched patient I's naked
16 buttocks and genitalia without medical indication, and/or with an ungloved hand, and/or
17 otherwise inappropriately.

18 63. At times during the patient I treatment period, respondent would show patient I his
19 erect penis, in his trousers, and/or place her hand on it.

20 64. During the patient I treatment period, respondent asked patient I to engage in
21 sexual intercourse with him.

22 65. On at least one occasion during the patient I treatment period, respondent
23 masturbated and reached a sexual climax in the presence of patient I.

24 66. During the patient I treatment period, respondent frequently asked patient I for
25 details about her intimate personal life.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 67. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
4 defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in
5 his care and treatment of patients A, C, E, F, G, H, and I, as more particularly alleged hereinafter:

6 68. Paragraphs 9 and 10, above, are hereby realleged and incorporated by this reference as
7 if fully set forth herein.

8 Patient A:

9 69. Paragraphs 11 through 18, above, are hereby realleged and incorporated by this
10 reference as if fully set forth herein.

11 70. Respondent treated patient A from August 2013 through November 2013.

12 71. On or about August 12, 2013 (the first visit), patient A consulted respondent with
13 complaints of "insidious onset of joint aches" and symptoms of a UTI. After conducting a
14 physical examination of patient A, respondent's assessment of her condition included "dysuria,"
15 and he referred patient A for a consultation with a urologist.

16 72. With regard to patient A's complaint of joint aches, no details are provided in the
17 section entitled "review of systems." Specific details about which joints are affected are not
18 documented. There was no recorded examination of the extremities. Respondent ordered
19 bilateral X-rays of patient A's hands, and of her left knee. No explanation or reason for the X-
20 rays is provided in the medical record.

21 73. Also at the first visit, respondent issued patient A a prescription for sixty (60) Vicodin
22 5 mg/500 mg⁴ tablets. There is no mention of this prescription in patient A's medical record for
23 this visit. At an interview conducted on or about June 11, 2014, during the Board's investigation
24 of this matter (the subject interview), respondent stated that he was "not sure" why he had
25 prescribed the Vicodin.

26 _____
27 ⁴ Vicodin is a brand name for acetaminophen and hydrocodone bitartrate, a Schedule III
28 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a
dangerous drug pursuant to Business and Professions Code section 4022.

1 74. Patient A again consulted respondent on or about August 29, 2013 (the second visit).
2 According to the "nursing comments" on patient A's medical record for that date, the reason for
3 patient A's visit on that date was to obtain the results of her X-rays. Under the "history of present
4 illness" in the medical record for this visit, the following information is provided:

5 "This is a patient here for general surveillance of their medical
6 conditions/concerns. The patient has concerns about their general medical issues.
7 Presents today."

8 75. The medical record for the second visit makes no mention of what the X-rays showed.
9 or whether the X-ray results were discussed with patient A. No remarks or observations are made
10 in the section entitled "musculoskeletal." In the section entitled "assessment plan," respondent's
11 discussion of patient A's osteoarthritis provides only, "conditions/current state discussed.
12 Options and therapies also discussed. Questions answered."

13 76. Also during the second visit, patient A's blood pressure was measured by a medical
14 assistant and noted in her medical record as being 140/110. Respondent did not recheck patient
15 A's blood pressure, nor did he address it in any way.

16 77. According to patient A's list of medications contained in her medical record, she was
17 taking Anaprox DS⁵ 550 mg tablets, as well as Flexeril⁶ 10 mg tablets, among others. There are
18 no notes in patient A's medical record, explaining the use or reason for these medications. At the
19 subject interview, respondent stated that "it'd be speculation" for him to explain why patient A
20 was taking Flexeril, a muscle relaxant. When asked about why patient A was taking Anaprox,
21 respondent stated that he was "not sure." Respondent, likewise, did not know why patient A was
22 taking Paxil⁷ 10 mg, which was noted in her list of medications.

23 ⁵ Anaprox DS is a nonsteroidal anti-inflammatory drug (NSAID), used to treat pain or
24 inflammation caused by conditions such as arthritis, ankylosing spondylitis, tendinitis, bursitis,
25 gout, or menstrual cramps. It is a dangerous drug pursuant to Business and Professions Code
section 4022.

26 ⁶ Flexeril, a brand name for cyclobenzaprine, is a muscle relaxant that is used together
27 with rest and physical therapy to treat skeletal muscle conditions such as pain or injury. It is a
dangerous drug pursuant to Business and Professions Code section 4022.

28 ⁷ Paxil, a brand name for paroxetine, is an antidepressant in a group of drugs called

(continued...)

1 78. Patient A again consulted respondent on or about November 1, 2013 (the third visit).
2 The "nursing comments" on the medical record for this visit state: "Possible UTL. Patient had
3 incontinence procedure done on Monday 10/28/13 and has discomfort since." This information is
4 repeated in the section entitled "history of present illness." No note is made of which particular
5 "incontinence procedure" had been performed or what patient A's exact symptoms were.

6 79. Also in the medical note for the third visit, in the section "history of present illness,"
7 the following information is provided:

8 "This is a patient who presents today for follow up of a medical malady/concern.

9 The patient has been seen before and attended to by myself. A length of time has
10 passed and now the patient finds themselves [*sic*] here for follow up to their [*sic*]
11 problem(s). Overall the pt relates that they [*sic*] are still worried/suffering from their
12 [*sic*] medical concern/malady." (Brackets and inserts added.)

13 80. At the visit on or about November 1, 2013, respondent performed a physical
14 examination which included a HEENT⁸ assessment, observing that patient A had "no chest
15 heave," noting "no labored respirations" of her lungs, and a "scaphoid" abdomen. The medical
16 record for this visit concludes with "for now will rx with levaquin."⁹ A urine sample was
17 obtained for further analysis.

18 81. No CVA tenderness examination¹⁰ was conducted.

19 82. The results of the urine analysis indicated that patient A had an infection which was
20 resistant to both ciprofloxacin and levofloxacin. Consequently, the antibiotic prescribed on or

21 _____
22 (...continued)
23 selective serotonin reuptake inhibitors (SSRIs). It is a dangerous drug pursuant to Business and
24 Professions Code section 4022.

24 ⁸ Head, eyes, ears, nose and throat.

25 ⁹ Levaquin (levofloxacin) is in a group of antibiotics called fluoroquinolones and is used
26 to treat bacterial infections of the skin, sinuses, kidneys, bladder, or prostate. It is a dangerous
27 drug pursuant to Business and Professions Code section 4022.

27 ¹⁰ Costovertebral angle tenderness (CVAT), is a medical test in which pain is elicited by
28 percussion of the area of the back overlying the kidney (the costovertebral angle, an angle made
by the vertebral column and the costal margin).

1 about November 1, 2013, needed to be changed. On or about November 6, 2013, patient A was
2 informed that her new prescription was Macrobid.¹¹

3 83. Respondent committed gross negligence in his care and treatment of patient A which
4 included, but are not limited to:

5 (a) Respondent repeatedly failed to document an adequate history, a review of systems,
6 and a treatment plan for patient A, along with medical justification therefor;

7 (b) Respondent repeatedly made unprofessional and inappropriate comments to patient A
8 which caused her discomfort; and/or

9 (c) Respondent inappropriately touched patient A's breast(s), lingered over her
10 abdominoplasty scar, tried to kiss her on the lips, and actually kissed her on her
11 cheek.

12 Patient C:

13 84. Paragraphs 24 through 27, above, are hereby realleged and incorporated by this
14 reference as if fully set forth herein.

15 85. At or near the beginning of the patient C treatment period, respondent did a urine
16 analysis on patient C and diagnosed a UTI. Since her urine sample also showed elevated glucose,
17 respondent considered the possibility of patient C having diabetes and ordered lab work to
18 investigate this.

19 86. On or about August 3, 2013, as directed by respondent, patient C had her blood drawn
20 and lab work done. The results show an elevated blood glucose of 346 mg/dL. Respondent was
21 aware of the abnormal results of the labs.

22 87. Respondent never discussed patient C's lab results with her during the patient C
23 treatment period, nor did he at any stage attempt to address patient C's diabetes.

24 88. Respondent committed gross negligence in his care and treatment of patient C which
25 included, but are not limited to:

26
27 ¹¹ Macrobid, a brand name for nitrofurantoin, is an antibiotic that is used to treat urinary
28 tract infections. It is a dangerous drug pursuant to Business and Professions Code section 4022.

- 1 (a) Respondent failed to communicate to patient C the test results indicating that she had
2 diabetes and/or to begin treatment of patient C's diabetes in a timely fashion; and
3 (b) Respondent made repeated unprofessional and inappropriate comments to patient C
4 which caused her discomfort.

5 Patient E:

6 89. Paragraphs 31 through 33, above, are hereby realleged and incorporated by this
7 reference as if fully set forth herein.

8 90. Respondent's notes for patient E's visit(s) frequently state:

9 "This is a patient who presents today for follow up of a medical malady/concern.

10 The patient has been seen before and attended to by myself. A length of time has
11 passed and now the patient finds themselves here for follow up to their problem(s).

12 Overall the pt relates that they are still worried/suffering from their medical concern
13 [*sic*]/malady." (Brackets and insert added.)

14 91. Respondent's notes for patient E's visit(s) frequently state, "Conditions/current state
15 discussed. Options and therapies also discussed. Questions answered" without further
16 elucidation of what this entailed.

17 92. Respondent's notes for patient E's visit(s) frequently state, without further elaboration
18 or explanation, "Well known pt to me from previous clinical [*sic*] history. Pt presents for f/u of
19 various medical maladies. Relays that is here for the addressment of concerns. Questions were
20 asked and answers provided." (Brackets and insert added.)

21 93. Respondent's notes for patient E's visits frequently do not describe how patient E
22 responded to treatment, whether or not she followed up with referrals or what the consultant's
23 treatment plan is, details of labs obtained or X-ray findings, or provide details of character, onset,
24 duration, locations or exacerbating or relieving factors with regard to pain.

25 94. Respondent committed gross negligence in his care and treatment of patient E which
26 included, but are not limited to:

- 27 (a) Respondent repeatedly touched patient E inappropriately and/or made inappropriate
28 comments to patient E which caused her discomfort; and

1 (b) Respondent repeatedly failed to maintain accurate and adequate records of his care
2 and treatment of patient E.

3 Patient F:

4 95. Paragraphs 34 through 39, above, are hereby realleged and incorporated by this
5 reference as if fully set forth herein.

6 96. Respondent committed gross negligence in his care and treatment of patient F which
7 included, but was not limited to, making repeated comments to patient F which were of a
8 flirtatious and/or sexual nature, which caused her discomfort.

9 Patient G:

10 97. Paragraphs 40 through 48, above, are hereby realleged and incorporated by this
11 reference as if fully set forth herein.

12 98. Respondent's notes for patient G's visit on or about February 14, 2013, provide the
13 following information under the section entitled "history of present illness:"

14 "f/u - Pt here for f/u of labs/xrays and also paperwork."

15 Respondent's assessment at this visit was knee arthritis and chronic hepatitis C. No knee
16 exam is documented in respondent's notes for this visit, and the "Review of Systems" does not
17 have any musculoskeletal complaints. No specifics are provided about what was discussed.

18 99. Respondent's notes for patient G's visit on or about November 15, 2013, December 2,
19 2013, and February 3, 2014, provide the following information under the section entitled "history
20 of present illness:"

21 "issues - This is a patient who presents today for follow up of a medical
22 malady/concern. The patient has been seen before and attended to by myself. A length
23 of time has passed and now the patient finds themselves here for follow up to their
24 problem(s). Overall the pt relates that they are still worried/suffering from their medical
25 concern/malady."

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1 100. Respondent's notes for patient G's visit on or about December 2, 2013, lists five
2 diagnoses. None of the listed diagnoses would require an EKG,¹² but respondent has added a note
3 that patient G refused an EKG. Also on or about this date, respondent ordered sinus films but the
4 note does not explain the reason for the order.

5 101. On or about January 28, 2014, respondent requested that patient G should come in to
6 discuss her "X-Ray Report" and informed his staff that a 30 minute visit should be scheduled for
7 the visit. Respondent's notes for patient G's next visit, on or about February 3, 2014, state: "had
8 an xray and now is here." The note does not report what the X-ray was of, what it showed, or
9 what was discussed. There are no reported symptoms and the exam is normal. Respondent writes
10 only that patient G's allergic rhinitis is a chronic problem.

11 102. Respondent's notes for patient G's visit on or about October 26, 2014, include under
12 the "assessment plan," the diagnosis of "Chest pain, unspecified." The notes under this diagnosis
13 state:

14 "This is a seemingly complex medical pt who comes in today with a discrete set
15 of complex presenting complaints. We will have to order, as of today, a limited
16 extensive workup, which should be completed and then the pt should return for further
17 workup and elucidation."

18 103. Respondent committed gross negligence in his care and treatment of patient G which
19 included, but are not limited to:

- 20 (a) Respondent repeatedly touched patient G inappropriately and/or made inappropriate
21 comments to patient G which caused her discomfort; and
22 (b) Respondent repeatedly failed to maintain accurate and adequate records of his care
23 and treatment of patient G.

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27 ¹² An electrocardiogram (EKG or ECG) is a test that checks for problems with the
28 electrical activity of the heart. An EKG shows the heart's electrical activity as line tracings on
paper.

1 Patient H:

2 104. Paragraphs 49 through 52, above, are hereby realleged and incorporated by this
3 reference as if fully set forth herein.

4 105. Respondent committed gross negligence in his care and treatment of patient H which
5 included, but are not limited to, making repeated comments to patient H which were of a
6 flirtatious and/or sexual nature, which caused her discomfort.

7 Patient I:

8 106. Paragraphs 53 through 66, above, are hereby realleged and incorporated by this
9 reference as if fully set forth herein.

10 107. Respondent committed gross negligence in his care and treatment of patient I which
11 included, but are not limited to:

- 12 (a) Respondent repeatedly touched patient I inappropriately and/or made inappropriate
13 comments to patient I which caused her discomfort; and
14 (b) Respondent took photograph(s) of patient I's breast(s) with his personal phone and
15 misrepresented the purpose for which the photographs were taken.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Repeated Negligent Acts)**

18 108. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
19 defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts
20 in his care and treatment of patients A, C, E, F, G, H, and I, as more particularly alleged
21 hereinafter:

22 109. Paragraphs 9 and 10, above, are hereby realleged and incorporated by this reference as
23 if fully set forth herein.

24 Patient A:

25 110. Paragraphs 11 through 18, and 69 through 83, above, are hereby realleged and
26 incorporated by this reference as if fully set forth herein.

27 111. Respondent committed repeated negligent acts in his care and treatment of patient A
28 which included, but are not limited to, the following:

- 1 (a) Respondent repeatedly failed to document an adequate history; a review of systems,
2 and a treatment plan for patient A, along with medical justification therefor;
- 3 (b) Respondent repeatedly made unprofessional and inappropriate comments to patient A
4 which caused her discomfort;
- 5 (c) Respondent inappropriately touched patient A's breast(s), lingered over her
6 abdominoplasty scar, tried to kiss her on the lips, and actually kissed her on her
7 cheek;
- 8 (d) Respondent failed to follow through on the results of patient A's urinary analysis and
9 get her on the appropriate antibiotic in a timely fashion; and
- 10 (e) Respondent failed to document appropriately his prescription for Vicodin for patient
11 A in her medical record.

12 Patient C:

13 112. Paragraphs 24 through 27, and 84 through 88, above, are hereby realleged and
14 incorporated by this reference as if fully set forth herein.

15 113. Respondent's notes for patient C's visit on or about July 30, 2013, do not mention any
16 specific details in the section entitled "history of present illness," other than she has "some issues
17 but is here to establish care. Neg hx of trauma. Has been feeling not herself."

18 114. Respondent's notes for patient C's visit on or about April 4, 2014, state:

19 "Well known pt to me from previous clinical history. Pt presents for f/u of various medical
20 maladies. Relays that is here for the addressment of concerns. Questions were asked and answers
21 provided."

22 115. Respondent committed repeated negligent acts in his care and treatment of patient C
23 which include, but are not limited to:

- 24 (a) Respondent failed to communicate to patient C the results indicating that she had
25 diabetes and/or to begin treatment of patient C's diabetes in a timely fashion;
- 26 (b) Respondent made repeated unprofessional and inappropriate comments to patient C
27 which caused her discomfort; and

28 ////

1 (c) Respondent failed to maintain adequate and accurate records of his care and treatment
2 of patient C.

3 Patient E:

4 116. Paragraphs 31 through 33, and 89 through 94, above, are hereby realleged and
5 incorporated by this reference as if fully set forth herein.

6 117. Respondent committed repeated negligent acts in his care and treatment of patient E
7 which include, but are not limited to:

8 (a) Respondent repeatedly touched patient E inappropriately and/or made inappropriate
9 comments to patient E which caused her discomfort; and

10 (b) Respondent repeatedly failed to maintain accurate and adequate records of his care
11 and treatment of patient E.

12 Patient F:

13 118. Paragraphs 34 through 39, 95 and 96, above, are hereby realleged and incorporated by
14 this reference as if fully set forth herein.

15 119. Respondent committed repeated negligent acts in his care and treatment of patient F
16 which include, but are not limited to, making repeated comments to patient F which were of a
17 flirtatious and/or sexual nature, which caused her discomfort.

18 Patient G:

19 120. Paragraphs 40 through 48, and 97 through 103, above, are hereby realleged and
20 incorporated by this reference as if fully set forth herein.

21 121. Respondent committed repeated negligent acts in his care and treatment of patient G
22 which include, but are not limited to:

23 (a) Respondent repeatedly touched patient G inappropriately and/or made inappropriate
24 comments to patient G which caused her discomfort; and

25 (b) Respondent repeatedly failed to maintain accurate and adequate records of his care
26 and treatment of patient G.

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1 Patient H:

2 122. Paragraphs 49 through 52, 104 and 105, above, are hereby realleged and incorporated
3 by this reference as if fully set forth herein.

4 123. Respondent's note for patient H's visit on or about May 12, 2015, states:
5 "Pt's orthopedic surgeon at Camp Pendleton thinks she needs a test to r/o MS vs
6 Sjogran's syndrome. Her sugeon [*sic*] at Camp Pendleton thinks she needs an MRI to
7 r/o MS. Therefore since she has no power at all apparently to order an MRI and the
8 concept of ordering advanced imaging studies of the 21st century seems foreign to
9 providers at Camp Pendleton, she states to patient that it falls to me to order the MRI of
10 the patient's brain."

11 124. Respondent committed repeated negligent acts in his care and treatment of patient H
12 which include, but are not limited to:

- 13 (a) Respondent made repeated comments to patient H which were of a flirtatious and/or
14 sexual nature, which caused her discomfort; and
15 (b) Respondent aired his grievance with Camp Pendleton medical providers in patient
16 H's medical records.

17 Patient I:

18 125. Paragraphs 53 through 66, 106 and 107, above, are hereby realleged and incorporated
19 by this reference as if fully set forth herein.

20 126. Respondent frequently conducted breast exams of patient I and/or touched her breasts
21 inappropriately, without recording the exam and/or touching of her breasts in patient I's medical
22 chart.

23 127. Respondent committed repeated negligent acts in his care and treatment of patient I
24 which include, but are not limited to:

- 25 (a) Respondent repeatedly touched patient I inappropriately and/or made inappropriate
26 comments to patient I which caused her discomfort;
27 (b) Respondent took photograph(s) of patient I's breast(s) with his personal phone and
28 misrepresented the purpose for which the photographs were taken;

- 1 (c) Respondent claimed that digital probing of patient I's vagina was part of IUD care;
2 (d) Respondent required a pap smear and a separate pelvic exam of patient I prior to the
3 insertion of an IUD; and
4 (e) Respondent failed to maintain adequate and accurate records of his care and treatment
5 of patient I.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Failure to Maintain Adequate and Accurate Records)**

8 128. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
9 defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records
10 relating to his provision of services to patient A, C, E, G, and I, as more particularly alleged in
11 paragraphs 9 through 127, above, which are hereby realleged and incorporated by this reference as
12 if fully set forth herein.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(General Unprofessional Conduct)**

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

20 130. Paragraphs 9 through 128, above, are hereby realleged and incorporated by this
21 reference as if fully set forth herein.

22 131. Medical assistant 1 (MA 1) worked in the San Marcos office from June 2014
23 through May 2015, and was assigned to respondent when his former medical assistant went on
24 leave for six weeks.

25 132. While working together, respondent made comments that made MA 1
26 uncomfortable. For instance, respondent was friends with many of the 'reps' who came into the
27 office and he would say things to them like, "Look at my lovely assistant, isn't she beautiful?"
28 On one occasion, respondent said something to MA 1 something along the lines of, "I am a flower

1 and you are a bee, and I have big pollen to give you.”

2 133. One day, MA 1 was assisting respondent while he cleaned out an abscess on a
3 patient’s back while the patient was lying on the examination table, face down. At one point,
4 while holding the gauze between the ends of a pair of scissors, and moving the scissors (and
5 gauze) in and out of the abscess, respondent looked away from what he was doing and at MA 1,
6 and mouthed the words, “Would you like me to do this to you?”

7 134. Respondent asked MA 1 out to lunch a couple of times and, on a daily basis,
8 when passing her in the hallway, would mouth the words to her, “I love you.” He would have his
9 cell phone out and ask MA 1 to stay put so that he could take her picture. MA 1 would never
10 allow it.

11 135. MA 1 complained about respondent and his inappropriate behavior and comments
12 to her supervisor. After that, respondent refused to work with MA 1.

13 136. At times, before or after conducting a physical exam on a female patient,
14 respondent would make comments which were not medically relevant, regarding either the
15 patients’ anatomy or the exam itself, to medical assistant 2.

16 **PRAYER**

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

19 1. Revoking or suspending Physician’s and Surgeon’s Certificate Number A101646,
20 issued to respondent Manuel Tanguma III, M.D.;

21 2. Revoking, suspending or denying approval of respondent Manuel Tanguma III,
22 M.D.’s authority to supervise physician assistants, pursuant to section 3527 of the Code;

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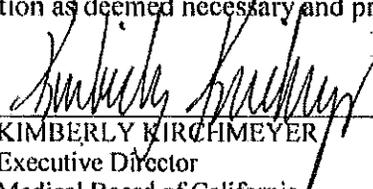
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3. Ordering respondent Manuel Tanguma III, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and

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

DATED: July 1, 2016


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