

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

In the Matter of the Accusation)
Against:)
)
GREGORY PAUL DICARLO, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 38130)
)
Respondent)
_____)

Case No. 19-2010-210810

DECISION

The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 1, 2013.

IT IS SO ORDERED October 1, 2013.

MEDICAL BOARD OF CALIFORNIA

By: 

Kimberly Kirchmeyer,
Interim Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MARTIN W. HAGAN
Deputy Attorney General
4 State Bar No. 155553
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
13 **GREGORY PAUL DICARLO, M.D.**
411 W. 20th Street
14 Merced, CA 95340
15 Physician's and Surgeon's Certificate No.
G38130
16
17 Respondent.

Case No. 19-2010-210810

OAH No. 2013030612

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Interim Executive Officer of the Medical
22 Board of California, and is represented in this matter by Kamala D. Harris, Attorney General of
23 the State of California, by Martin W. Hagan, Deputy Attorney General.

24 2. Gregory Paul DiCarlo, M.D. (Respondent) is represented in this proceeding by
25 attorney Dominique A. Pollara, Esq., whose address is 400 University Avenue, Sacramento, CA
26 95825-6502.

27 ////

28 ////

1 CULPABILITY

2 8. Respondent does not contest that, at an administrative hearing, complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
4 No. 19-2010-210810 and that he has thereby subjected his Physician's and Surgeon's Certificate
5 No. G38130 to disciplinary action.

6 9. Respondent agrees that his Physician's and Surgeon's Certificate No. G38130 is
7 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
8 in the Disciplinary Order below.

9 10. Respondent further agrees that if he ever petitions for reinstatement of his Physician's
10 and Surgeon's Certificate No. G38130, or if an accusation is filed against him before the Medical
11 Board of California, all of the charges and allegations contained in Accusation No. 19-2010-
12 210810 shall be deemed true, correct, and fully admitted by respondent for purposes of any such
13 proceeding or any other licensing proceeding involving respondent in the State of California or
14 elsewhere.

15 11. Respondent understands that by signing this stipulation he enables the Interim
16 Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender
17 of his Physician's and Surgeon's Certificate No. G38130 effective November 1, 2013, without
18 further process.

19 CONTINGENCY

20 12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
21 part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . .
22 stipulation for surrender of a license."

23 13. This Stipulated Surrender of License and Disciplinary Order shall be subject to
24 approval of the Interim Executive Director on behalf of the Medical Board. The parties agree that
25 this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Interim
26 Executive Director for her consideration in the above-entitled matter and, further, that the Interim
27 Executive Director shall have a reasonable period of time in which to consider and act on this
28 Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this

1 stipulation, respondent fully understands and agrees that he may not withdraw his agreement or
2 seek to rescind this stipulation prior to the time the Interim Executive Director, on behalf of the
3 Medical Board, considers and acts upon it.

4 14. The parties agree that this Stipulated Surrender of License and Disciplinary Order
5 shall be null and void and not binding upon the parties unless approved and adopted by the
6 Interim Executive Director on behalf of the Board, except for this paragraph, which shall remain
7 in full force and effect. Respondent fully understands and agrees that in deciding whether or not
8 to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Interim
9 Executive Director and/or the Board may receive oral and written communications from its staff
10 and/or the Attorney General's Office. Communications pursuant to this paragraph shall not
11 disqualify the Interim Executive Director, the Board, any member thereof, and/or any other
12 person from future participation in this or any other matter affecting or involving respondent. In
13 the event that the Interim Executive Director on behalf of the Board does not, in her discretion,
14 approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the
15 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
16 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
17 hereto. Respondent further agrees that should this Stipulated Surrender of License and
18 Disciplinary Order be rejected for any reason by the Interim Executive Director on behalf of the
19 Board, respondent will assert no claim that the Interim Executive Director, the Board, or any
20 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
21 Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

22 **ADDITIONAL PROVISIONS**

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

26 16. The parties agree that facsimile copies of this Stipulated Surrender of License and
27 Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original
28

1 documents and signatures and, further, that facsimile copies shall have the same force and effect
2 as originals.

3 17. In consideration of the foregoing admissions and stipulations, the parties agree the
4 Interim Executive Director of the Medical Board may, without further notice to or opportunity to
5 be heard by respondent, issue and enter the following Disciplinary Order on behalf of the Board:

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G38130, issued
8 to Respondent Gregory Paul DiCarlo, M.D., is surrendered and accepted by the Medical Board of
9 California.

10 1. The effective date of this Decision and Disciplinary Order shall be November 1,
11 2013.

12 2. The surrender of Respondent's Physician's and Surgeon's Certificate No. G38130 and
13 the acceptance of the surrendered license by the Board shall constitute the imposition of
14 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
15 become a part of Respondent's license history with the Medical Board of California.

16 3. Respondent shall lose all rights and privileges as a physician and surgeon in
17 California as of the effective date of the Board's Decision and Order.

18 4. Respondent shall cause to be delivered to the Board his pocket license and, if one was
19 issued, his wall certificate on or before the effective date of the Decision and Order.

20 5. If respondent ever applies for licensure or petitions for reinstatement in the State of
21 California, the Board shall treat it as a petition for reinstatement. Respondent must comply with
22 all the laws, regulations and procedures for licensure in effect at the time the application or
23 petition is filed, and all of the charges and allegations contained in Accusation No. 19-2010-
24 210810 shall be deemed to be true, correct and fully admitted by Respondent when the Board
25 determines whether to grant or deny the application or petition.

26 6. If respondent should ever apply or reapply for a new license or certification, or
27 petition for reinstatement of a license, by any other health care licensing agency in the State of
28 California or elsewhere, all of the charges and allegations contained in Accusation No. 19-2010-

1 210810 shall be deemed to be true, correct, and fully admitted by Respondent for the purpose of
2 any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Surrender of License and Disciplinary Order and
5 have fully discussed it with my attorney, Dominique A. Pollara, Esq. I understand the stipulation
6 and the effect it will have on my Physician's and Surgeon's Certificate No. G38130. I enter into
7 this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and
8 intelligently, and agree to be bound by the Decision and Disciplinary Order of the Medical Board
9 of California.

10 DATED: 8/20/13


11 GREGORY PAUL DICARLO, M.D.
Respondent

12 I have read and fully discussed with Respondent Gregory Paul DiCarlo, M.D. the terms and
13 conditions and other matters contained in this Stipulated Surrender of License and Disciplinary
14 Order. I approve its form and content.

15 DATED: 8/20/13


16 DOMINIQUE A. POLLARA, ESQ.
17 Attorney for Respondent

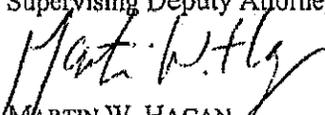
18 ENDORSEMENT

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

22 Dated: 8/22/2013

Respectfully submitted,

23 KAMALA D. HARRIS
24 Attorney General of California
25 THOMAS S. LAZAR
Supervising Deputy Attorney General


26 MARTIN W. HAGAN
27 Deputy Attorney General
Attorneys for Complainant

28 SD2013704749/70739218.doc

Exhibit A

Accusation No. 19-2010-210810

1 KAMALA D. HARRIS
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2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MARTIN W. HAGAN
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 14, 2013
BY: [Signature] ANALYST

8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
13 **GREGORY PAUL DICARLO, M.D.**
411 W. 20th Street
14 Merced, CA 95340
15
16 Physician's and Surgeon's Certificate No.
G38130
17 Respondent.

Case No. 19-2010-210810

ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
23 2. On or about September 25, 1978, the Medical Board of California issued Physician's
24 and Surgeon's Certificate Number G38130 to Gregory Paul DiCarlo, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on November 30, 2013, unless renewed.

27 ////
28 ////

1 JURISDICTION

2 3. This Accusation is brought before the Medical Board of California (Medical Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
7 one year, placed on probation and required to pay the costs of probation monitoring, be publicly
8 reprimanded, or have such other action taken in relation to discipline as the Medical Board deems
9 proper.

10 5. Section 2234 of the Code, states:

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

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

16 "...

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

19 "..."

20 6. Unprofessional conduct under California Business and Professions Code section 2234
21 is conduct which breaches the rules of ethical code of the medical profession, or conduct which is
22 unbecoming to a member in good standing of the medical profession, and which demonstrates an
23 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
24 575.)

25 7. Section 822 of the Code, states:

26 "If a licensing agency determines that its licentiate's ability to practice his or her profession
27 safety is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
28 licensing agency may take action by any one of the following methods:

1 10. On or about January 1993, a sexual harassment complaint was filed against
2 respondent by a surgical technician. The surgical technician alleged that respondent engaged in
3 unwelcome sexual harassment which included, but was not limited to, pinching her, making
4 comments of a sexual nature and attempting to lie on top of her while she was resting in a lounge
5 area. Respondent was advised that any similar events would subject him to disciplinary action,
6 including possible summary suspension from Mercy Medical Center (MMC), under the Medical
7 Staff Bylaws.

8 11. On or about October 1993, respondent engaged in inappropriate physical contact with
9 a nurse that resulted in her filing a sexual harassment lawsuit against respondent and Merced
10 Community Medical Center (MCMC). In his deposition in the sexual harassment case,
11 respondent admitted "swatting her on her butt." Respondent also admitted to touching the
12 buttocks, breasts and/or crotches of other female staff members on as many as six prior occasions.
13 As a result of his misconduct, respondent had multiple meetings with the Physicians Aid
14 Committee and an Ad Hoc Committee.

15 12. On or about October 1996, an anesthesiologist reported respondent told a "story" in
16 the operating room about his sexual and romantic exploits with his girlfriend while a female nurse
17 was present. This raised concern over respondent's continued inappropriate conduct and the
18 potential for additional claims of sexual harassment. Respondent was confronted about this
19 incident. Respondent claimed he did not recall the incident but would be more careful in the
20 future.

21 13. On or about March 1998, a surgery center nurse reported that respondent came up
22 behind her and partially pulled down her pants. As a result, the nurse fell to the floor, while
23 attempting to keep respondent from pulling her pants down further, and sustained a knee injury.

24 14. On or about April 1998, a hospital inventory and supply coordinator complained that
25 respondent touched her in an offensive manner when she bent down to pick something off the
26 floor. The coordinator reported respondent touched her on the leg and then moved his hand up
27 towards her crotch. Respondent initially denied wrongdoing and claimed no recollection of the
28

1 incident. He later claimed he inadvertently brushed against the coordinator's leg as he was
2 picking up a box.

3 15. On or about June 1998, respondent was directed to review a videotape and workbook
4 entitled "*Stopping Sexual Harassment before it Starts.*" Respondent was then required to report
5 to the hospital's Vice President of Human Resources. During his meeting with the Vice President
6 of Human Resources, respondent admitted that he liked to kid around and acknowledged that
7 sometimes his behavior was not accepted in the workplace. Respondent acknowledged the prior
8 complaints against him, indicated he understood the potential legal ramifications from his
9 inappropriate behavior and further acknowledged that the inappropriate behavior needed to stop.

10 16. On or about August 11, 1998, the Chief of Staff, Dr. S.H., sent respondent a letter
11 which set forth his inappropriate behavior and which stated, in pertinent part:

12 "As the Physician's Aid Committee noted, the above incidents are part of a pattern of
13 similar conduct that has been observed or indirectly experienced by others over time,
14 and you have developed a reputation that could be very damaging to the Hospital and
15 to you, personally, in the event of a lawsuit. While you may believe that you are
16 merely being playful, or that the women involved are friendly to you and would not
17 object, these justifications cannot be accepted. Conduct of the type described is both
18 unprofessional and unlawful, and you must not engage in it. There is no alternative
19 but for me to advise you, as Chief of Staff and as your friend, that any further
20 incidents that are confirmed would jeopardize your Medical Staff membership."

21 17. On or about January 1999, a surgery nurse at Mercy Hospital and Health Services
22 reported three incidents involving respondent. According to the surgery nurse, the first incident
23 occurred in November 1998, when respondent came up behind her and touched the back of her
24 neck. Respondent's conduct was unwelcome and startled her. The second incident occurred in
25 December 1998, when respondent gave the nurse a hug and kiss in the nurses' lounge and
26 whispered "I'd like to do more than that" in her ear. The nurse responded by telling respondent
27 she had a boyfriend and his conduct was inappropriate. Shortly thereafter, the nurse, while
28 picking up her paycheck, ran into respondent who grabbed her arm and whispered "[t]hat felt
good, I'd like to do that again sometime" (apparently referring to the unwelcome hug and kiss in
the lounge area). The third incident occurred in early-January 1999, when respondent hugged the
nurse and said "[d]on't I get a New Year's kiss?" Before the nurse could respond, respondent

1 kissed her on the cheek which almost touched the side of her mouth. Respondent followed this
2 up with questions about the nurse's personal interests and told the nurse he would call her.

3 18. On or about January 2000, respondent engaged in inappropriate conduct with a
4 nursing assistant on two occasions which resulted in a lawsuit being filed against respondent and
5 Sutter Merced Medical Center for sexual harassment, assault and battery. The civil complaint for
6 the lawsuit alleged an incident where respondent "began running his hand all around her
7 buttocks" as she was working and another incident in which respondent put his arms tightly
8 around the nursing assistant and "began rubbing her buttocks area" while she was working. As a
9 result of this incident, the reappointment of respondent's staff privileges was delayed while the
10 matter was investigated.

11 19. On or about August 2, 2000, respondent's reappointment was approved. However,
12 the reappointment was subject to certain terms and conditions which included, but were not
13 limited to, monitoring, training on "appropriate workplace behavior" and ongoing meetings with
14 the Medical Staff Aid Committee. The Chief of Staff, Dr. R.G., advised respondent of the
15 following in correspondence dated August 2, 2000, which stated, in pertinent part:

16 "The professional conduct required of you is that you refrain from all remarks that
17 could reasonably be construed as a sexual reference or innuendo (example: you
18 should not ask anyone about their sexual habits, preferences, or activity, however
19 obliquely). You must refrain from initiating any physical touching including hugs,
20 hands around waists, touching anyone's body excluding commonly accepted social
21 touching such as shaking hands. You must refrain from commenting on someone's
22 personal appearance or physical appearance. . . . [¶]. These are the conditions of your
23 continuing appointment to the Medical Staff. Should our periodic review reveal that
24 you have not satisfied these conditions, you will be subject to disciplinary steps which
25 may include termination or restriction of your privileges."

26 20. On or about June 2002, a Certified Nurse Assistant (CNA) at the Dominican Campus
27 of Mercy Medical Center Merced (MMCM) alleged that respondent approached her while she
28 was assisting a patient at bedside, touched her on the right wrist and lightly touched her on her
left lower buttock. After the matter came to the attention of Dr. L.C., the Vice President of
Medical Affairs, he discussed the allegation with respondent who claimed no independent
recollection of the incident. Respondent was advised, once again, that he was to avoid any
conduct that could be considered sexual harassment.

1 21. On or about October 4, 2002, a physical therapy aide (PTA) was walking with a
2 patient, using a gait bell, while another aide followed behind pushing the patient's IV pole. After
3 the PTA exited the patient's room, respondent came up to her and said "you have a very nice,
4 bright outfit on...is it just as bright underneath?" Respondent then lifted up the back of the
5 PTA's shirt and placed his hand in her pants. In describing this incident, the PTA reported that
6 respondent placed his hand down her pants and then pressed his hand on her buttocks. She was
7 surprised and shocked and moved quickly away from respondent without saying anything.

8 22. On or about November 26, 2002, J.H., the President of MMCM, sent respondent
9 correspondence summarizing his numerous acts of inappropriate and sexually harassing behavior
10 and the unsuccessful remedial efforts that had been taken to address his behavior. J.H. advised
11 respondent of an upcoming meeting, that he could participate in, which would be followed by a
12 report to the Medical Evaluation Committee (MEC) to be used in determining future action
13 against respondent.

14 23. On or about December 6, 2002, the MEC met and respondent was given the
15 opportunity to address the allegations against him. After full deliberation, the MEC, through
16 correspondence dated December 20, 2002, advised respondent of the following actions that were
17 being taken in an attempt to address his recurrent improper behavior: (1) his clinical privileges
18 were suspended for thirty days; (2) mandatory evaluation by a psychiatrist to be selected by the
19 MEC; (3) mandatory participation in PACE's "Professional Boundaries Program;" (4) close
20 monitoring for five years with regular reports to the MEC; (5) a stern written warning; and (6)
21 required acknowledgment in writing by respondent indicating his receipt of the correspondence of
22 December 20, 2002, that he understood the contents of the correspondence and the consequences
23 of any further misconduct. The warning in the MEC's correspondence stated:

24 "Should there be any substantial allegations of further misconduct such as sexually
25 suggestive remarks or questions, inappropriate physical contact with any part of
26 another person's body, or other unprofessional interactions with any Medical Center
27 employee, visitor or patient, you will be summarily suspended while the allegations
28 are investigated. Should the allegations be deemed credible in the estimation of the
MEC, a recommendation will be made to the Governing Board that your Medical
Staff membership and clinical privileges be terminated. Hearing rights will be
afforded as described in the Bylaws, and reports will be made to the Medical Board of
California and the National Practitioner Data Bank as required by law." (Underline in

original.)

1
2 24. On or about January 9, 2003, respondent signed the acknowledgment described in
3 paragraph 23, above.

4 25. On or about October 16, 2003, after initially resisting the mandatory psychiatric
5 evaluation ordered by the MEC, respondent submitted to a psychiatric evaluation before Dr. R.T.,
6 who was selected by the MEC to perform the evaluation. In a report dated November 21, 2003,
7 Dr. R.T. diagnosed respondent as suffering form a "narcissistic personality disorder," defined as
8 "a pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of
9 empathy." Dr. R.T. further noted the following:

10 "It is helpful and critically essential that the MEC has held him [respondent] to an
11 adequate standard of being responsible for his behavior. Other episodes of sanctions,
12 verbal reprimands, inferred legal action, civil penalties or harm to others have not
13 motivated him to meaningfully address his behavior. He has been informed that one
14 'slip' or misdeed will result in prompt predictable consequences. The degree of the
15 offense should not matter since the principle of abuse is contained in even the
16 smallest manifestation. The predictable pattern is that the degree of offense would
17 then escalate." (Insert added.)

18 26. On or about February 25, 2005, the Medical Board filed an Accusation against
19 respondent based on charges that he had "engaged in sexualized and inappropriate behavior with
20 female medical staff which constitutes unprofessional misconduct."

21 27. On or about March 29, 2006, the Medical Board adopted a Stipulated Settlement and
22 Disciplinary Order (hereinafter "Stipulated Settlement") with an effective date of April 28, 2006,
23 in which respondent admitted to the truth of the allegations against him.¹ As part of the
24 Stipulated Settlement, respondent's medical license was revoked. However, the revocation was
25 stayed and respondent was placed on five years probation under various terms and conditions
26 including a requirement that he successfully complete the PACE's "Professional Boundaries"
27 course (or other equivalent course) within sixty days; submit to a psychiatric evaluation by a
28 Medical Board appointed psychiatrist within thirty days; provide a copy of the Medical Board's

¹ The allegations included respondent's sexual harassment of the surgery center nurse in March 1998; his sexual harassment of the nursing assistant in January 2000; and respondent's sexual harassment of the physical therapy aide that occurred on October 4, 2002. These incidents are discussed herein at paragraphs 13, 18 and 21, respectively.

1 Stipulated Decision to the Chief of Staff or CEO or every hospital where respondent practiced
2 medicine; and comply with other standard terms and conditions of probation.

3 28. On or about July 26, 2006, respondent submitted to an evaluation by the Medical
4 Board's designated psychiatrist, Dr. H.T. In his report dated August 2, 2006, Dr. H.T. stated that
5 respondent's "behavior represented very juvenile, childish and inappropriate behavior by a man
6 who otherwise has an exceptionally high intellect." Dr. H.T. believed that after all the
7 admonishments, the thirty day suspension of his privileges at MMC, at least one lawsuit for
8 sexual harassment, and the disciplinary action by the Board, that respondent had been convinced
9 to alter his behavior and thus, at that time, was "mentally fit to practice medicine as a physician
10 and surgeon in the State of California." Dr. H.T. recommended that respondent enter into
11 psychotherapy in order to gain a greater insight into his underlying sexual conflicts and how it has
12 created serious difficulties in his life.

13 29. On or about March 28, 2007, a female pharmacy technician notified Human
14 Resources that she filed a police report against respondent for harassment and stalking. She
15 reported respondent had been stalking her at work and at home, leaving flowers on her car while
16 she was at work and calling her on her home phone and cell phone as much as eleven to thirteen
17 times a day, especially during working hours. The pharmacy technician indicated she was
18 previously in a relationship with respondent that had ended approximately three months prior to
19 her contacting the police. After receiving this report, Dr. D.C., the Director of Risk Management,
20 and J.L., the Vice President of Human Resources, counseled respondent the same day about
21 sexual harassment, harassment, retaliation and/or intimidation. After receiving the counseling,
22 respondent agreed to stay away from the pharmacy technician.

23 30. On or about April 9, 2007, respondent was reported to have continued to harass the
24 pharmacy technician at home and work. After being confronted with this allegation, respondent
25 admitted to violating the admonishment of March 28, 2007, in which he was directed to stay
26 away from the pharmacy technician. The admonishment was reiterated, once again, and
27 respondent, once again, agreed not to contact the pharmacy technician.

28 ///

1 31. On or about April 19, 2007, the MEC recommended to the Governing Body that the
2 following action be taken against respondent based on the most recent events: (1) issue a letter of
3 admonishment to respondent; (2) suspend respondent's clinical privileges for ten days; and (3)
4 require a second psychiatric evaluation to be completed within ninety days by Dr. R.T., the
5 Governing Board's previously designated psychiatrist who evaluated respondent on October 16,
6 2003, and issued a report on November 21, 2003. (See Paragraph 25, above.)

7 32. On or about May 24, 2007, the Governing Body adopted the recommendations of the
8 MEC and respondent was advised of the same in correspondence dated May 25, 2007, which
9 stated, in pertinent part:

10 "The [Governing] Board shares the MEC's concerns regarding the repeated nature of
11 your behavior, especially in light of your probationary status with the Medical Board
12 of California; your previous 30-day suspension from the MMCM Medical Staff for
13 sexual harassment; and your inability to follow through on assurances on March 28
14 that all such behavior regarding the most recent complaint would cease. It is essential
15 for you to understand that there will be severe consequences if there is any recurrence
16 of behavior that is considered harassment and sexual harassment."

17 33. On or about May 26, 2007, the pharmacy technician "retract[ed] her complaint,
18 claiming to have been 'pushed' by a 'cop' boyfriend and to have reconciled with [respondent]."²
19 The MEC considered this information and decided not to withdraw its recommendations to the
20 Governing Board. This was communicated to respondent through correspondence dated June 21,
21 2007, and at a meeting on June 27, 2007.¹ Respondent was advised that while the complaint had
22 been withdrawn, the events had occurred as alleged and were accurately reported, and therefore
23 the recommendations would stand. Respondent reacted by announcing "[t]his is all B.S.," cursed
24 at those present, and left the room.

25 ////

26 ////

27 ////

28 ////

² According to Dr. H.T.'s psychiatric report of August 31, 2012, the pharmacy technician
referenced herein "is now his [respondent's] wife." (Insert added.)

1 34. On or about September 21, 2007, Dr. R.T. conducted a repeat (his second) psychiatric
2 evaluation of respondent, as recommended by the MEC and adopted by the Governing Board. In
3 a report of November 9, 2007, Dr. R.T. stated, among other things:

4 "[Respondent] has not profited from the inordinate amount of time and effort of his
5 peers, the Medical Board, his therapist, and his record of social disarray. His
6 prognosis continues to be for little meaningful change in his behavior or attitude."

7 35. On or about December 2007, the MEC considered Dr. R.T.'s report and decided, in
8 the absence of recent events, that respondent should be allowed to retain his privileges at MMC
9 subject to ongoing monitoring.³

10 36. On or about August 28, 2008, the mother of an eleven year old patient complained
11 that respondent was "completely inappropriate" with her daughter. Specifically, the mother
12 complained that respondent "made comments about her [daughter's] slender build and how
13 beautiful slender girls can really 'stand out' as they mature." The matter was assigned to Dr. R.S.
14 to be investigated. When respondent was advised of the complaint against him, he acknowledged
15 making the alleged comment but said he meant no harm and believed the comment was
16 misinterpreted. Based on the information available, Dr. R.S. decided additional discipline against
17 respondent was not warranted based on this particular incident. However, respondent was
18 admonished that he must be sensitive to "body image" statements and limit his comments to
19 diagnostic decisions and proposed plans regarding the care and treatment of patients. Respondent
20 acknowledged the need to be more careful in his word selection.

21 37. On or about September 27 or 28, 2010, respondent encountered J.W., a female MMC
22 employee, in a hospital stairway and engaged her in conversation about a mutual friend. During
23 this conversation, respondent said "give this to [the mutual friend]" and then leaned in to kiss

24 ³ At that point in time, respondent had been evaluated by Dr. H.T. in July 2006 who
25 believed respondent "had been convinced to change [his] ways" and was later evaluated by Dr.
26 R.T. in November 2007, who opined that "[respondent's] prognosis continues to be for little
27 meaningful change." The MEC's decision in December 2007, to allow respondent to retain his
28 privileges, was referenced and explained in a subsequent letter to respondent of October 7, 2010.
That letter states, in pertinent part, "In the hope that Dr. [H.T.] was right, you were again given
the benefit of the doubt and allowed to retain your privileges at MMCM. Unfortunately, as
demonstrated by the most recent events, Dr. [R.T.] was correct in predicting future misconduct of
the same type."

1 J.W. on the lips. J.W. turned her head and respondent kissed her on the cheek. Respondent then
2 gave J.W. "a little chuckle and said, while walking away: I hope [the mutual friend] finds the man
3 of her dreams." According to J.W., respondent's overture was unprovoked, unexpected and
4 unwarranted. J.W. "was interviewed by Medical Staff representatives during the week of October
5 4, and exhibited ongoing emotional distress."

6 38. On or about October 7, 2010, respondent was advised in writing that his clinical
7 privileges were summarily suspended as a result of the latest incident with J.W. and his history of
8 similar misconduct. Among other things, the correspondence of October 7, 2010, advised
9 respondent "[u]nder the circumstances, we have determined that you cannot reasonably be relied
10 upon to conform to the standards of professional behavior required by the Hospital and the law,
11 and that allowing you to continue to practice at MMCM [Mercy Medical Center Merced] would
12 expose Hospital employees and perhaps others to an imminent threat of harm." Through this
13 correspondence, respondent was also advised the MEC would be meeting in order to decide
14 "whether to continue, modify or lift the [summary] suspension."

15 39. On or about October 13, 2010, the MEC deliberated regarding the latest incident
16 involving respondent, his long history of similar misconduct and what action to take, if any, to
17 address respondent's inappropriate and unprofessional conduct. After their deliberations,
18 respondent was advised through correspondence dated October 14, 2010, that the MEC had
19 unanimously decided to "[r]ecommend to the Governing Board that your Medical Staff
20 membership and clinical privileges at Mercy Medical Center ("MMC") be terminated" and to
21 "[k]eep in place the current summary suspension of your clinical privileges, pending the waiver
22 or exhaustion of your hearing." The correspondence also stated, in pertinent part:

23 "Although you admitted that you 'crossed over the line' in the latest incident and
24 offered your sincere apology, you denied that certain aspects of the employee's
25 account, such as your attempt to kiss her on the lips, and you did not seem to
26 appreciate the seriousness of your misconduct. This was similar to your reaction
27 regarding past allegations of sexually inappropriate behavior, not only at the MEC
28 meeting on October 13th but on prior occasions. The MEC finds that the allegations
against you, in general and with specific reference to the latest incident, to be more
credible than your denials. There is deep concern about your lack of self-awareness
and lack of insight, which are no longer considered to be remedial based on all of the
facts and circumstances. In the absence of any reasonable basis for confidence that
you can be relied upon to refrain from engaging in future misconduct of the type

1 alleged, the MEC has concluded that the actions described above [in the
2 correspondence of October 14] are reasonable and warranted to protect female
employees from an imminent threat of harm.”

3 40. On or about October 19 or 20, 2010, respondent advised MMCM in writing that,
4 among other things, “because of recent developments, I am requesting to resign from the Medical
5 Staff and will terminate my practice at the hospital as of today, October 14, 2010.”⁴

6 41. On or about November 5, 2010, the Medical Board received a “Health Facility/Peer
7 Review Reporting Form” (805 Report) from MMCM reporting that respondent had resigned from
8 staff following notice of an impending investigation.

9 42. On or about August 21, 2012, respondent submitted to a repeat (his second)
10 psychiatric evaluation with Dr. H.T., which lasted over three hours.

11 43. On or about August 22, 2012, a Medical Board investigator interviewed Dr. K.B., a
12 psychologist about her treatment of respondent. Dr. K.B. began treating respondent on or about
13 December 20, 2006, through approximately March 9, 2011, and would see him approximately
14 every three months.⁵ Dr. K.B. stated the purpose of her treatment was to identify, address, and
15 attempt to correct respondent’s behavior which led to his probationary status with the Medical
16 Board. Dr. K.B. diagnosed respondent as suffering from “[m]ajor depressive disorder, recurrent,
17 severe without psychotic features” and “[i]mpulse control, not otherwise specified.” Among
18 other things, Dr. K.B. opined that respondent experienced problems because “his perception is he
19 is more of a friend with females than he is in actuality.” Dr. K.B. did not “not have a concern
20 with [respondent] in his relationship/dealings with patients” and noted “his problem is dealing
21 with non-physician female staff members.” Dr. K.B. believed that respondent “progressed over
22 the duration of treatment” and that he had made some improvements.

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25 ⁴ The correspondence is dated October 14, 2010, indicates it was faxed on October 19,
26 2010, has a notation presumably from respondent indicating “signed 10/20/10” and has a received
stamp dated October 21, 2010.

27 ⁵ Dr. K.B.’s treatment records indicate approximately 15 individual therapy sessions with
28 respondent.

1 44. On or about August 23, 2012, the Medical Board of California investigator forwarded
2 a summary of his interview with Dr. K.B. to Dr. H.T. with instructions to "[p]lease take the
3 information into consideration for your evaluation of [respondent]."

4 45. On or about August 31, 2012, Dr. H.T. sent his "repeat Forensic Psychiatric
5 Evaluation" to the Medical Board for its consideration. In his report, Dr. H.T. provided an Axis I
6 diagnosis for respondent of "302.9 Paraphilia NOS" and "312.30 Impulse Control Disorder Not
7 Otherwise Specified."⁶ In the comment section of his report, Dr. H.T. offered the following
8 opinions and prognosis regarding respondent:

9 "Dr. DiCarlo's long-term behavior represents not only juvenile, childish and
10 inappropriate behavior, but also represents **exceptionally poor judgment,**
exceptionally poor insight and exceptionally poor impulse control.

11 "One would expect that given the many difficulties he has had with his hospital Board
12 and the Medical Board of California for greater than a decade, that he would have
13 conformed his behavior to the requirements of law of law (sic) long ago.
14 Unfortunately he continues to show exceptionally poor judgment in the way he
15 interacts with female patients and female staff, in a manner that is frequently
16 considered **sexually inappropriate.**

17 "In addition, he volunteered information about a very recent episode demonstrating
18 extremely poor judgment and insight regarding taking around one to two ounces of
19 marijuana that he had found in the street because he thought it was funny and because
20 he wanted to see the reactions of others."

21 ⁶ The report listed respondent's Axis IV issues as "Long-term history of inappropriate
22 sexual conduct resulting in sanctions by his hospital Board and the Medical Board of California
23 and at least one lawsuit for sexual harassment [;] History of three marriages and two divorces [;]
24 History of recurrent criticisms and sanctions by his hospital Board as well as intervention by the
25 Medical Board of California for inappropriate sexual behavior towards females." (Inserts added.)

26 ⁷ In regard to the incident about finding marijuana, Dr. H.T.'s report states, "He
27 [respondent] then volunteered about 10 days before his interview, while riding his bicycle, he
28 found someone's backpack in the middle of the road. The backpack had a container in it that
contained approximately one to two ounces of marijuana. Rather than notify the authorities, he
told me that he took the container of marijuana and showed it to his friends for a day. He thought
it was funny. He enjoyed seeing their reaction when they unexpectedly saw a container of
marijuana. It took him a day or so to realize that he could possibly get in trouble for carrying
around marijuana and, as a result, he finally threw it out. [¶] I asked him why it didn't occur to
him that a medical doctor with a license to protect and a prior history of his problems with his
license could possibly stand to lose a great deal by having an illegal drug like marijuana with him,
especially in a quantity of one to two ounces. He told me he liked 'to see people's faces' when he
showed the marijuana to them. [¶] (This represents very poor judgment and insight on the part of
a physician.) [¶] After discussing it with me for some time, he finally agreed that it was 'lousy
judgment.' He told me, however, that he had a lot of fun doing it, 'Sort of like a novelty.' He
told me that he had never seen marijuana before. He added: [¶] 'I have a perverse sense of
humor, maybe.'"

1 "At this point, I am now convinced that Dr. DiCarlo suffers from Paraphilia NOS
and Impulse Control Not Otherwise Specified.

2 "At this point in time, it is clear that counseling with a psychologist once every three
3 months or so was inadequate to meet his needs. It is also obvious that the trouble he
4 has been in which his hospital Board as well as the Medical Board of California, has
not been adequate to convince him to change his ways.

5 "Therefore, I believe that Dr. DiCarlo's behavior represents an unacceptable danger
6 to his patients and other professionals working with him." (Emphasis in
original.)

7 46. Respondent's ability to practice medicine safely is impaired because he is mentally
8 ill.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 47. Respondent has subjected his Physician's and Surgeon's Certificate Number G38130
12 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code, in
13 that he engaged in conduct which breaches the rules or ethical code of the medical profession, or
14 conduct which is unbecoming to a member in good standing of the medical profession, and which
15 demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 37
16 through 41, above, which are hereby incorporated by reference and realleged as if fully set forth
17 herein.

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1 **PRAYER**

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

4 1. Revoking or suspending Physician's and Surgeon's Certificate Number G38130,
5 issued to Gregory Paul DiCarlo, M.D.;

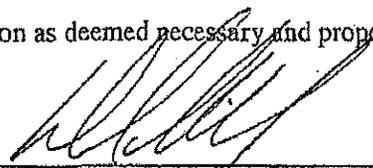
6 2. Revoking, suspending or denying approval of Gregory Paul DiCarlo, M.D.'s authority
7 to supervise physician assistants, pursuant to section 3527 of the Code;

8 3. Ordering Gregory Paul DiCarlo, M.D. to pay the Medical Board of California the
9 costs of probation monitoring;

10 4. Taking action against Gregory Paul DiCarlo, M.D., as authorized by section 822 of
11 the Code as the Board, in its discretion, deems necessary and proper; and

12 5. Taking such other and further action as deemed necessary and proper.

13
14 DATED: February 14, 2013


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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