

**IN THE MATTER OF
ANDREW GEWIRTZ, M.D.**

Respondent

License Number: D80872

*** BEFORE THE
* MARYLAND STATE BOARD
* OF PHYSICIANS
* Case Number: 2221-0024**

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

The Maryland State Board of Physicians (the "Maryland Board") received information that Andrew Gewirtz, M.D. (the "Respondent"), License Number D80872, was disciplined by the Medical Board of California (the "California Board"). In a Decision and Order dated August 18, 2020, the California Board reprimanded the Respondent and required the Respondent to complete certain courses.

Based on the above referenced California Board action, a disciplinary panel of the Maryland Board has grounds to charge the Respondent with violating the following provisions of the Maryland Medical Practice Act (the "Act"), under H. O. § 14-404(a):

- a. Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
 - (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veteran's Administration for an act that would be grounds for disciplinary action under this section,

Disciplinary Panel B ("Panel B") of the Maryland Board has determined that the acts for which the Respondent was disciplined in California would be grounds for disciplinary action

under H.O. § 14-404(a). The grounds for disciplinary action under H.O. § 14-404(a) are as follows:

- (3) Is guilty of:
 - (ii) Unprofessional conduct in the practice of medicine.
- (22) Fails to meet appropriate standards ... for the delivery of quality medical and surgical care
- (40) Fails to keep adequate medical records

Based on the action taken by the California Board, the Respondent agrees to enter into this Consent Order with Panel B, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, and Consent.

FINDINGS OF FACT

Panel B makes the following findings of fact:

1. At all times relevant hereto, the Respondent was a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about January 11, 2016.
2. On August 18, 2020, the California Board issued a Decision and Order (which went into effect on September 17, 2020). The California Board Decision and Order attached and adopted the Stipulated Settlement and Disciplinary Order signed and agreed to by the Respondent. A copy of the California Board Decision and Order is attached hereto.
3. In its Decision and Order, the California Board found that the Respondent failed to provide onsite supervision of certified ophthalmic technicians for telemedicine examinations in the care and treatment of two patients. Under the California Board Decision and Order, the Respondent was reprimanded and is required to complete courses in education, medical record keeping, and professionalism.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel B concludes as a matter of law that the Respondent is subject to discipline under Health Occ. § 14-404(a)(21) for the disciplinary action taken by the California Board against the Respondent for an act or acts that would be grounds for disciplinary action under Health Occ. § 14-404(a)(3)(ii), (22) and (40).

ORDER

It is, thus, by Panel B, hereby:

ORDERED that the Respondent is **REPRIMANDED**; and it is further

ORDERED that the Respondent shall comply with the terms and conditions of the August 18, 2020 California Board Decision and Order; and it is further

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that, after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend Respondent's license with appropriate terms and conditions, or revoke the Respondent's license. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

ORDERED that this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

Signature on File

12/09/2020
Date

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, Andrew Gewirtz, acknowledge that I have consulted with legal counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 *et seq.* concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right

to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

11/30/2020
Date

Signature on File

Andrew Gewirtz, MD
Respondent

Received

NOTARY

DEC 07 2020

STATE OF NEW YORK

MD Board of Physicians

CITY/COUNTY OF QUEENS

I HEREBY CERTIFY that on this 30th day of November, 2020, before me, a Notary Public of the State and City/County aforesaid, personally appeared Andrew Gewirtz, MD, and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS my hand and notarial seal.

Harriet Gewirtz
Notary Public

My Commission expires: 12/31/2020

HARRIET B. GEWIRTZ
Notary Public, State of New York
Qualified in Queens County
No. 02GE6274221
My Commission Expires 12/31/2020

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

In the Matter of the Accusation
Against:

Andrew Ellis Gewirtz, M.D.

Case No. 800-2016-021063

Physician's & Surgeon's
Certificate No G63048

Respondent.

DECISION

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

This Decision shall become effective at 5:00 p.m. on September 17, 2020.

IT IS SO ORDERED August 18, 2020.

MEDICAL BOARD OF CALIFORNIA

By: 

Ronald H. Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 JANNSEN TAN
Deputy Attorney General
4 State Bar No. 237826
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7549
Facsimile: (916) 327-2247
7 Attorneys for Complainant

8
9 BEFORE THE
10 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:
13 ANDREW ELLIS GEWIRTZ, M.D.
14
15 Physician's and Surgeon's Certificate No. G
16 63048
17 Respondent.

Case No. 800-2016-021063
OAH No. 2019080396
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California of the Department of Consumer
21 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
22 which will be submitted to the Board for approval and adoption as the final disposition of the
23 Accusation.

24 PARTIES

25 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
26 California (Board). He brought this action solely in his official capacity and is represented in this
27
28

1 matter by Xavier Becerra, Attorney General of the State of California, by Janssen Tan, Deputy
2 Attorney General.

3 2. Respondent Andrew Ellis Gewirtz, M.D. (Respondent) is represented in this
4 proceeding by attorney David M. Balfour Esq., whose address is: 1925 Palomar Oaks Way, Suite
5 220 Carlsbad, CA 92008.

6 3. On or about June 13, 1988, the Board issued Physician's and Surgeon's Certificate
7 No. G 63048 to Andrew Ellis Gewirtz, M.D. (Respondent). The Physician's and Surgeon's
8 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
9 No. 800-2016-021063, and will expire on April 30, 2022, unless renewed.

10 **JURISDICTION**

11 4. Accusation No. 800-2016-021063 was filed before the Board, and is currently
12 pending against Respondent. The Accusation and all other statutorily required documents were
13 properly served on Respondent on May 6, 2019. Respondent timely filed his Notice of Defense
14 contesting the Accusation.

15 5. A copy of Accusation No. 800-2016-021063 is attached as exhibit A and incorporated
16 herein by reference.

17 **ADVISEMENT AND WAIVERS**

18 6. Respondent has carefully read, fully discussed with counsel, and understands the
19 charges and allegations in Accusation No. 800-2016-021063. Respondent has also carefully read,
20 fully discussed with his counsel, and understands the effects of this Stipulated Settlement and
21 Disciplinary Order.

22 7. Respondent is fully aware of his legal rights in this matter, including the right to a
23 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
24 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
25 to the issuance of subpoenas to compel the attendance of witnesses and the production of
26 documents; the right to reconsideration and court review of an adverse decision; and all other
27 rights accorded by the California Administrative Procedure Act and other applicable laws.
28

1 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth above.

3 CULPABILITY

4 9. Respondent understands and agrees that the charges and allegations in Accusation
5 No. 800-2016-021063, if proven at a hearing, constitute cause for imposing discipline upon his
6 Physician's and Surgeon's Certificate No. G 63048.

7 10. For the purpose of resolving the Accusation without the expense and uncertainty of
8 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
9 basis for the charges in the Accusation and that those charges constitute cause for discipline.
10 Respondent hereby gives up his right to contest that cause for discipline exists based on those
11 charges.

12 11. Respondent agrees that his Physician's and Surgeon's Certificate No. G 63048 is
13 subject to discipline and he agrees to be bound by the Board's terms as set forth in the
14 Disciplinary Order below. Respondent further understands and acknowledges that failure to
15 complete the Board's terms as set forth below may lead to additional charges alleging
16 unprofessional conduct and the imposition of additional discipline.

17 12. Respondent agrees that if an Accusation in the future is filed against him before the
18 Board, all of the charges and allegations contained in Accusation No. 800-2016-021063, shall be
19 deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or
20 any other licensing proceeding involving respondent in the State of California.

21 CONTINGENCY

22 13. This stipulation shall be subject to approval by the Medical Board of California.
23 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
24 Board of California may communicate directly with the Board regarding this stipulation and
25 settlement, without notice to or participation by Respondent or his counsel. By signing the
26 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
27 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
28 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary

1 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
2 action between the parties, and the Board shall not be disqualified from further action by having
3 considered this matter.

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

7 15. In consideration of the foregoing admissions and stipulations, the parties agree that
8 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
9 enter the following Disciplinary Order:

10 **DISCIPLINARY ORDER**

11 **A. PUBLIC REPRIMAND**

12 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. G 63048,
13 issued to Respondent Andrew Ellis Gewirtz, M.D. shall be and is hereby publicly reprimanded
14 pursuant to California Business and Professions Code, section 2227, subdivision (a) (4.) This
15 public reprimand, which is issued in connection Respondent's care and treatment of Patient A and
16 B; as set forth in Accusation No. 800-2016-021063, is as follows:

17 "You failed to provide onsite supervision of the certified ophthalmic technicians for
18 telemedicine examinations in the care and treatment of patients A and B."

19 **B. EDUCATION COURSE** Within 60 calendar days of the effective date of this Decision,

20 Respondent shall submit to the Board or its designee for its prior approval, educational
21 program(s) or course(s) which shall not be less than 40 hours, in addition to the 25 hours required
22 for license renewal. The educational program(s) or course(s) shall be aimed at correcting any
23 areas of deficient practice or knowledge and shall be Category I certified. The educational
24 program(s) or course(s) shall be at Respondent's expense and shall be in addition to the
25 Continuing Medical Education (CME) requirements for renewal of licensure. Following the
26 completion of each course, the Board or its designee may administer an examination to test
27 Respondent's knowledge of the course. Within 12 months of the effective date of this Decision,
28 Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in

1 satisfaction of this condition.

2 Failure to successfully complete and provide proof of attendance to the Board or its
3 designee of the educational program(s) or course(s) within 12 months of the effective date of this
4 Decision, unless the Board or its designee agrees in writing to an extension of time, shall
5 constitute general unprofessional conduct and may serve as the grounds for further disciplinary
6 action.

7 C. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective
8 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
9 advance by the Board or its designee. Respondent shall provide the approved course provider
10 with any information and documents that the approved course provider may deem pertinent.
11 Respondent shall participate in and successfully complete the classroom component of the course
12 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
13 complete any other component of the course within one (1) year of enrollment. The medical
14 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
15 Medical Education (CME) requirements for renewal of licensure and the coursework
16 requirements as set forth in Condition B of this stipulated settlement.

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

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 Failure to provide proof of successful completion to the Board or its designee within
26 twelve (12) months of the effective date of this Decision, unless the Board or its designee agrees
27 in writing to an extension of that time, shall constitute general unprofessional conduct and may
28 serve as the grounds for further disciplinary action.

1 I have read and fully discussed with Respondent Andrew Ellis Gewirtz, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: 6/30/2020

David M Balfour
5 DAVID M. BALFOUR ESQ.
6 Attorney for Respondent

7 ENDORSEMENT

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

10 DATED: 6/30/2020

11 Respectfully submitted,

12 XAVIER BECERRA
13 Attorney General of California
14 STEVEN D. MUMI
15 Supervising Deputy Attorney General

JANNSEN TAN
16 JANNSEN TAN
17 Deputy Attorney General
18 Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-021063

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 JANNSEN TAN
Deputy Attorney General
4 State Bar No. 237826
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7549
Facsimile: (916) 327-2247
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 14 20 19
BY: [Signature] ANALYST

8
9 BEFORE THE
10 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12
13 In the Matter of the Accusation Against:
14 ANDREW ELLIS GEWIRTZ, M.D.
15
16 Physician's and Surgeon's Certificate
No. G 63048,
17
18 Respondent.

Case No. 800-2016-021063
ACCUSATION

19
20 Complainant alleges:

21 PARTIES

- 22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs (Board).
25 2. On or about June 13, 1988, the Medical Board issued Physician's and Surgeon's
26 Certificate No. G 63048 to Andrew Ellis Gewirtz, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on April 30, 2020, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 2227 of the Code states:

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

10 “(1) Have his or her license revoked upon order of the board.

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

13 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
14 order of the board.

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

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

19 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
20 review or advisory conferences, professional competency examinations, continuing education
21 activities, and cost reimbursement associated therewith that are agreed to with the board and
22 successfully completed by the licensee, or other matters made confidential or privileged by
23 existing law, is deemed public, and shall be made available to the public by the board pursuant to
24 Section 803.1.”

25 5. Section 2234 of the Code, states:

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

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

3 “(b) Gross negligence.

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

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

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

14 “(d) Incompetence.

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

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

18 “(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of the
21 proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board.”

25 6. Section 2052 of the Code states:

26 “(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
27 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
28 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,

1 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
2 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
3 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
4 authorized to perform the act pursuant to a certificate obtained in accordance with some other
5 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
6 dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
7 Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either
8 imprisonment.

9 “(b) Any person who conspires with or aids or abets another to commit any act described in
10 subdivision (a) is guilty of a public offense, subject to the punishment described in that
11 subdivision.

12 “(c) The remedy provided in this section shall not preclude any other remedy provided by
13 law.”

14 7. Section 2289 of the Code states: “The impersonation of another licensed practitioner
15 or permitting or allowing another person to use his or her certificate to engage in the practice of
16 medicine or podiatric medicine constitutes unprofessional conduct.”

17 8. Section 2290.5 of the Code states:

18 “(a) For purposes of this division, the following definitions shall apply:

19 “(1) “Asynchronous store and forward” means the transmission of a patient’s medical
20 information from an originating site to the health care provider at a distant site without the
21 presence of the patient.

22 “(2) “Distant site” means a site where a health care provider who provides health care
23 services is located while providing these services via a telecommunications system.

24 “(3) “Health care provider” means either of the following:

25 “(A) A person who is licensed under this division.

26 “(B) A marriage and family therapist intern or trainee functioning pursuant to Section
27 4980.43.

28 ///

1 “(4) “Originating site” means a site where a patient is located at the time health care
2 services are provided via a telecommunications system or where the asynchronous store and
3 forward service originates.

4 “(5) “Synchronous interaction” means a real-time interaction between a patient and a health
5 care provider located at a distant site.

6 “(6) “Telehealth” means the mode of delivering health care services and public health via
7 information and communication technologies to facilitate the diagnosis, consultation, treatment,
8 education, care management, and self-management of a patient’s health care while the patient is
9 at the originating site and the health care provider is at a distant site. Telehealth facilitates patient
10 self-management and caregiver support for patients and includes synchronous interactions and
11 asynchronous store and forward transfers.

12 “(b) Prior to the delivery of health care via telehealth, the health care provider initiating the
13 use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written
14 consent from the patient for the use of telehealth as an acceptable mode of delivering health care
15 services and public health. The consent shall be documented.

16 “(c) Nothing in this section shall preclude a patient from receiving in-person health care
17 delivery services during a specified course of health care and treatment after agreeing to receive
18 services via telehealth.

19 “(d) The failure of a health care provider to comply with this section shall constitute
20 unprofessional conduct. Section 2314 shall not apply to this section.

21 “(e) This section shall not be construed to alter the scope of practice of any health care
22 provider or authorize the delivery of health care services in a setting, or in a manner, not
23 otherwise authorized by law.

24 “(f) All laws regarding the confidentiality of health care information and a patient’s rights
25 to his or her medical information shall apply to telehealth interactions.

26 “(g) This section shall not apply to a patient under the jurisdiction of the Department of
27 Corrections and Rehabilitation or any other correctional facility.

28 ///

1 “(h) (1) Notwithstanding any other provision of law and for purposes of this section, the
2 governing body of the hospital whose patients are receiving the telehealth services may grant
3 privileges to, and verify and approve credentials for, providers of telehealth services based on its
4 medical staff recommendations that rely on information provided by the distant-site hospital or
5 telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of
6 Federal Regulations.

7 “(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to
8 grant privileges to, and verify and approve credentials for, providers of telehealth services as
9 described in paragraph (1).

10 “(3) For the purposes of this subdivision, “telehealth” shall include “telemedicine” as the
11 term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal
12 Regulations.”

13 9. Section 2541 of the Code states:

14 “A prescription ophthalmic device includes each of the following:

15 “(a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that
16 alters or changes the visual powers of the human eye.

17 “(b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the
18 federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).

19 “(c) Any plano contact lens that is marketed or offered for sale in this state. “Plano contact
20 lens” means a zero-power or noncorrective contact lens intended to change the appearance of the
21 normal eye in a decorative fashion.”

22 10. Section 2540 of the Code states:

23 “No person other than a physician and surgeon or optometrist may measure the powers or
24 range of human vision or determine the accommodative and refractive status of the human eye or
25 the scope of its functions in general or prescribe ophthalmic devices.”

26 11. Section 2400 of the Code states:

27 “Corporations and other artificial legal entities shall have no professional rights, privileges,
28 or powers. However, the Division of Licensing may in its discretion, after such investigation and

1 review of such documentary evidence as it may require, and under regulations adopted by it, grant
2 approval of the employment of licensees on a salary basis by licensed charitable institutions,
3 foundations, or clinics, if no charge for professional services rendered patients is made by any
4 such institution, foundation, or clinic."

5 12. Section 2285 of the Code states:

6 "The use of any fictitious, false, or assumed name, or any name other than his or her own
7 by a licensee either alone, in conjunction with a partnership or group, or as the name of a
8 professional corporation, in any public communication, advertisement, sign, or announcement of
9 his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes
10 unprofessional conduct. This section shall not apply to the following:

11 "(a) Licensees who are employed by a partnership, a group, or a professional corporation
12 that holds a fictitious name permit.

13 "(b) Licensees who contract with, are employed by, or are on the staff of, any clinic
14 licensed by the State Department of Health Services under Chapter 1 (commencing with Section
15 1200) of Division 2 of the Health and Safety Code.

16 "(c) An outpatient surgery setting granted a certificate of accreditation from an
17 accreditation agency approved by the medical board.

18 "(d) Any medical school approved by the division or a faculty practice plan connected with
19 the medical school."

20 13. Section 2410 of the Code states:

21 "A medical or podiatry corporation shall not do or fail to do any act the doing of which or
22 the failure to do which would constitute unprofessional conduct under any statute or regulation
23 now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such
24 statutes and regulations to the same extent as a licensee under this chapter."

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

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FIRST CAUSE FOR DISCIPLINE
(Gross Negligence - Patient A)

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3 15. Respondent has subjected his Physician's and Surgeon's Certificate No. G 63048 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
5 the Code, in that Respondent committed gross negligence in his care and treatment of Patient A¹,
6 as more particularly alleged hereinafter:

7 16. Respondent is a physician and surgeon who practices under a professional
8 corporation dba 20/20 Ophthalmology Services, PLLC., and undertook to provide professional
9 services such as telemedicine patient evaluation and screening evaluation for 20/20 NOW.
10 Respondent received a salary. 20/20 NOW is a Limited Liability Corporation advertised as a
11 system in which certified ophthalmic technicians perform refractions. Prescriptions are obtained
12 by the consumer by telemedicine. 20/20 NOW operates in California and hires, and trains
13 technicians who see patients.

14 17. Patient A was an undercover investigator for the Board of Optometry. On or about
15 May 19, 2016, at approximately 1230 hours, she visited Jin's Eyewear in San Francisco, CA. She
16 was greeted by a Jin's Associate. She told the associate that she wanted an eye examination and
17 that she did not have an appointment. The associate pointed to the back of the store. Patient
18 proceeded to the back and observed a large sign that read "20/20 NOW." Respondent's Medical
19 Board of California Physician's and Surgeon's Certificate hung on the wall.

20 18. Patient A was seen by NH, who represented herself as a certified ophthalmic
21 technician. NH explained to Patient A that Respondent is available through "chat" software. NH
22 used a machine to perform autorefraction. The machine used infrared to measure the length of
23 the eye. NH compared lenses and showed several series of letters. NH asked Patient A which
24 letter looked sharper. NH proceeded to perform a retinal scan, a "puff-of-air" (air puff
25 tonometry) test, and another test which involved a green X moving from left to right. Patient A
26 asked NH if she had any eye diseases. NH replied in the negative. NH told Patient A that she

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28 ¹ To protect the privacy of the patient involved, the patient's name has not been included in this
pleading. Respondent is aware of the identity of the patient referred to herein.

1 sent all her findings for review and that the doctor would review it, sign off on it, and send it
2 back, in about 15-20 minutes. NH subsequently returned with a prescription signed by
3 Respondent.

4 19. Respondent committed unprofessional conduct and/or gross negligence in his care
5 and treatment of Patient A, which included, but was not limited to, the following:

6 A. Respondent aided and abetted NH in providing ophthalmic testing without medical
7 indication.

8 B. Respondent aided and abetted NH in the unlicensed practice of medicine by
9 informing Patient A that she had no eye disease.

10 C. Respondent aided and abetted NH in performing refractions without onsite physician
11 supervision.

12 **SECOND CAUSE FOR DISCIPLINE**
13 **(Gross Negligence - Patient B)**

14 20. Respondent has subjected his Physician's and Surgeon's Certificate No. G 63048 to
15 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
16 the Code, in that Respondent committed gross negligence in his care and treatment of Patient B,
17 as more particularly alleged hereinafter:

18 21. On or about March 1, 2017, Patient B went to a 20/20 NOW branch at J.C. Penney's
19 in Sacramento, CA. Patient B saw AZ, a certified ophthalmic technician. Patient B complained
20 of blurry vision. AZ performed a slit lamp examination, retinal examination, both with photos,
21 color vision test, and air puff tonometry without direct physician supervision. A referral was
22 recommended based on AZ's appraisal of ocular hypertension and optic nerve drusen. The
23 request letter was dated March 1, 2017, and documented Respondent as the "Requestor." The
24 letter documented elevated pressures and possible optic nerve head drusen was reported in Patient
25 B's workup. In a subsequent interview with the Board, Respondent denied seeing Patient B and
26 making the March 1, 2017 referral.

27 22. On or about July 12, 2017, Patient B was seen again at a 20/20 NOW branch in Jin's
28 San Francisco, CA. Patient B reported a complaint of changes in distance vision and a family

1 history of glaucoma. Patient B filled out an eye health questionnaire. AZ was the technician who
2 reviewed questionnaire with her. Patient B asked AZ about floaters, flashes, watering and red
3 eyes. The form stated that the examination was not an eye health examination. AZ performed an
4 auto-refraction, then took a picture of her optic nerve, and macula, and performed puff tonometry.
5 Patient B never had any communication with Respondent. AZ informed Patient B that she will
6 consult with Respondent and advised Patient B to return in 30 minutes. Patient B returned and
7 received her prescription.

8 23. Respondent committed unprofessional conduct and/or gross negligence in his care
9 and treatment of Patient B, which included, but was not limited to, the following:

10 A. Respondent aided and abetted AZ in providing ophthalmic testing without medical
11 supervision.

12 B. Respondent failed to adequately document his examination, if any. Respondent also
13 failed to supervise and check on the letter dated March 1, 2017 was purportedly written under his
14 direction. Respondent also failed to document and/or determine the extent of follow-up care.

15 C. Respondent aided and abetted AZ in performing refractions without onsite physician
16 supervision.

17 **THIRD CAUSE FOR DISCIPLINE**
18 **(Aiding and Abetting / Corporate Practice of Medicine)**

19 24. Respondent is further subject to disciplinary action under sections 2227 and 2234(a),
20 as defined by section 2052, 2285, 2400, and 2410 of the Code, in that Respondent allowed 20/20
21 NOW to use his license to practice medicine and/or Respondent practiced medicine using a
22 fictitious name without a fictitious name permit. Paragraphs 16 through 21, above, are hereby
23 incorporated by reference and realleged as if fully set forth herein;

24 25. On or about December 7, 2018, in an interview with the Board, Respondent stated
25 that he was given a salary by 20/20 NOW for professional services rendered to patients.
26 Respondent stated that he does not supervise the 20/20 NOW technicians that see the patients.
27 The technicians are hired and trained by 20/20 NOW. Respondent stated that the 20/20 NOW
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1 technicians perform objective and subjective refractions. 20/20 NOW retained control of the
2 medical records. Respondent does not own shares of stock in 20/20 NOW.

3 **FOURTH CAUSE FOR DISCIPLINE**
4 **(Repeated Negligent Acts)**

5 26. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
6 defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated
7 negligent acts in his care and treatment of Patient A and B, as more particularly alleged
8 hereinafter: Paragraphs 16 through 25, above, are hereby incorporated by reference and realleged
9 as if fully set forth herein.

10 **FIFTH CAUSE FOR DISCIPLINE**
11 **(Failure to Maintain Adequate and Accurate Medical Records)**

12 27. Respondent is further subject to discipline under sections 2227 and 2334; as defined
13 by section 2266, of the Code, in that he failed to maintain adequate and accurate medical records
14 in the care and treatment of Patients A and B, as more particularly alleged hereinafter:
15 Paragraphs 16 through 25, above, are hereby incorporated by reference and realleged as if fully
16 set forth herein.

17 **SIXTH CAUSE FOR DISCIPLINE**
18 **(General Unprofessional Conduct)**

19 28. Respondent is further subject to discipline under sections 2227 and 2234, as defined
20 by section 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical
21 code of the medical profession, or conduct which is unbecoming a member in good standing of
22 the medical profession, and which demonstrates an unfitness to practice medicine, as more
23 particularly alleged hereinafter: Paragraphs 16 through 25, above, are hereby incorporated by
24 reference and realleged as if fully set forth herein.

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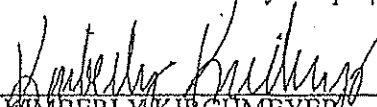
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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 63048, issued to Andrew Ellis Gewirtz, M.D.;
2. Revoking, suspending or denying approval of Andrew Ellis Gewirtz, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Andrew Ellis Gewirtz, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: May 6, 2019


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

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