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

In the Matter of the Accusation Against:	)	
	)	
CRAIG RICHARD WILDER, M.D.	)	Case No. 800-2014-008662
	)	
Physician's and Surgeon's Certificate No. A 77700	)	
	)	
Petitioner	)	
	)	

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Craig Richard Wilder, M.D., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on August 24, 2018.

IT IS SO ORDERED: August 23, 2018

Kristina D. Lawson, J.D., Chair
Panel B

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

In the Matter of the Accusation Against:	)	
	)	MBC No. 800-2014-008662
CRAIG RICHARD WILDER, M.D.	)	
	)	
Physician's and Surgeon's Certificate No. A 77700	)	**ORDER GRANTING STAY**
	)	
	)	(Government Code Section 11521)
	)	
Respondent	)	

Respondent, Craig Richard Wilder, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of July 27, 2018, at 5:00 p.m.

Execution is stayed until August 24, 2018 at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: July 27, 2018

Kimberly Kirchmeyer
Executive Director
Medical Board of California

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

In the Matter of the Accusation Against:	)	
	)	
	)	
CRAIG RICHARD WILDER, M.D.	)	**Case No. 800-2014-008662**
	)	
Physician's and Surgeon's Certificate No. A 77700	)	**OAH No. 2017110146**
	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

The attached Proposed Decision 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 July 27, 2018.

IT IS SO ORDERED June 27, 2018.

MEDICAL BOARD OF CALIFORNIA

By: _____
Krisitina D. Lawson, J.D., Chair
Panel B

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

In the Matter of the Accusation Against: CRAIG RICHARD WILDER, M.D., Physician and Surgeon's Certificate No. A77700, Respondent.	Case No. 800-2014-008662 OAH No. 2017110146

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on May 14 and 15, 2018, in Los Angeles, California. Complainant was represented by Richard D. Marino, Deputy Attorney General. Craig Richard Wilder, M.D. (Respondent) was represented by Shannon Belsheim, with the Law Offices of Daniel V. Behesnilian.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on May 15, 2018.

FACTUAL FINDINGS

1. On August 14, 2017, Complainant Kimberly Kirchmeyer filed the Accusation in this matter while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. On January 16, 2002, the Board issued Physician and Surgeon's Certificate Number A77700 to Respondent. Respondent's Physician and Surgeon's Certificate (medical license) was in full force and effect at all relevant times and is scheduled to expire on July 31, 2019.

Prior Discipline

3A. In a Decision and Order, effective February 4, 2011 (2011 Probation Order), the Board revoked Petitioner's medical license, stayed the revocation, and placed Respondent on probation for four years under specified terms and conditions.

3B. The 2011 Probation Order arose from Respondent's 2009 conviction of the following: one count of violating Penal Code section 550 (health benefits fraud); two counts of violating Penal Code 487 (grand theft); and one count of violating Revenue and Taxation Code section 19806 (failure to file tax returns).

3C. Respondent's conviction resulted from his 2003 through 2004 involvement in a "scheme to defraud Medicare and Medi-Cal by fraudulently obtaining five separate provider numbers for himself without disclosing that a provider number previously issued to him had been suspended." (Exhibit 14.) In order to escape criminal prosecution after investigators discovered the criminal plot, Respondent cooperated with the law enforcement agencies investigating and prosecuting the criminal actions. Over the course of many years, Respondent provided extensive information about his physician co-conspirators. However, Respondent was still convicted of several of the counts with which he had been charged.

4A. In a Decision and Order, effective October 24, 2013 (2013 Order), the Board revoked Petitioner's medical license, stayed the revocation, and placed Respondent on probation an additional year beyond his four-year probation as set forth in the 2011 Order, for a total probationary term of five years, effective February 4, 2011.

4B. The 2013 Order arose after the Board issued an October 18, 2011 Citation Order (Citation) against Respondent for aiding and abetting the unlicensed practice of medicine by providing services at a medical clinic owned by a layperson. The Citation ordered Respondent to pay an administrative fine of $2,500 within 30 days of receipt of the Citation. The Board attempted several times to contact Respondent to advise him that his failure to comply with the Citation would result in disciplinary action against his license. However, Respondent did not pay the administrative fine and failed to comply with the Citation, prompting the filing of an Accusation and Petition to Revoke Probation.

4C. Respondent's acts giving rise to the Citation occurred between February 4, 2011, and October 18, 2011. During that time, while he was on Board-ordered probation, Respondent provided medical marijuana recommendations at a Venice Beach medical clinic which was illegally controlled by non-physicians.

Facts re: September 18, 2014 Undercover Operation at Harbor Evaluations

5A. On September 18, 2014, an undercover investigator with the Board went to Harbor Evaluations in Costa Mesa, posing as a patient seeking a medical marijuana recommendation. The investigator used a false patient name, David Le (Patient Le).

5B. Patient Le spoke to a female clerk and filled out several forms which included a patient questionnaire but did not include any informed consent document. The clerk discussed Patient Le's history which included the sudden onset of headache which came and

went. Patient Le told the clerk that he had tried a friend's marijuana which made him feel better. He stated that he rarely took over-the-counter medication for pain, and he denied using physical therapy or acupuncture.

5C. Patient Le was told that Dr. Wilder would be contacting him by Skype from Washington, D.C., and the clerk thereafter took Patient Le to another room with computer monitor on a desk. After Patient Le waited a while, a Skype call was answered and Respondent appeared on the screen. During their conversation, Patient Le told Respondent that he had a sudden onset of headaches for about four months. He denied seeing a physician, and he reported that he tried a friend's marijuana and that it worked really well.

5D. Nobody at Harbor Evaluations physically examined Patient Le. Although he completed a patient questionnaire, Respondent did not review that form with him. Respondent did not tell Patient Le what telehealth or telemedicine was. Nobody asked Patient Le for his informed consent to use Skype or telemedicine, and nobody assured him that secured devices were used.

5E. Respondent issued Patient Le a medical marijuana recommendation for which Patient Le paid the clerk $80 in cash. The medical marijuana recommendation was pre-signed with Respondent's signature, so Patient Le was able to take a hard copy of the medical marijuana recommendation with him that day.

Facts re: February 9, 2015 Undercover Operation at Gamble Medical Group

6A. On February 9, 2015, another undercover investigator with the Board went to Gamble Medical Group in Garden Grove, posing as a patient seeking a medical marijuana recommendation. The investigator used a false patient name, Ky Linden (Patient Linden).

6B. Patient Linden spoke to a female clerk and filled out several forms which included a patient history form and two additional pages. After Patient Linden gave the clerk his paperwork, the clerk asked him about his chronic pain. Patient Linden stated that he had pain all over his body, including his back. He denied seeing a physician during the prior four years, and he reported that he had used marijuana for 10 years.

6C. Thereafter, the clerk told Patient Linden that Dr. Wilder was ready, and she took Patient Linden to another room with computer monitor on a desk. When Patient Linden sat down in front of the computer, Respondent appeared on the screen and identified himself as Dr. Wilder. Patient Linden told Respondent that he wanted to get a recommendation for marijuana.

6D. During their conversation, Respondent asked Patient Linden about his medical problem, and Patient Linden said he had stomach pain with sensitivity to dairy and inability to

drink cold water in the morning. Respondent asked if Patient Linden had back pain, and Patient Linden indicated that he did experience pain stemming from a prior skateboarding accident. Patient Linden denied undergoing any medical evaluation or MRI for his back pain or having been tested for ulcers. Patient Linden confirmed that he had tried marijuana before. Although Respondent asked if Patient Linden had "read the form" and "underst[ood] the risk," Respondent did not discuss with Patient Linden the risks, benefits or alternatives to marijuana. Respondent told Patient Linden to follow up with his doctor, and he suggested physical therapy or anti-inflammatories for his back. Respondent instructed Patient Linden to return for follow-up in three months.

6E. Nobody at Gamble Medical Group physically examined Patient Linden or measured his blood pressure, height or weight. No detailed history was taken. Respondent did not tell Patient Linden what telehealth or telemedicine was. Nobody asked Patient Linden for his informed consent to use Skype or telemedicine, and nobody assured him that secured devices were used.

6F. Respondent issued Patient Linden a medical marijuana recommendation for which Patient Linden paid the clerk $90 in cash. The medical marijuana recommendation was pre-signed with Respondent's signature, so Patient Linden was able to take a hard copy of the medical marijuana recommendation with him that day.

Certification of No Records

7A. The Board requested the medical records for patients Le and Linden from Harbor Evaluation Center, Gamble Medical Group, and Respondent.

7B. The Supreme Team Medical Group, Inc. (Supreme), which owned Harbor Evaluation Center and Gamble Medical Group, provided to the Board copies of: the medical marijuana recommendation issued to Patient Linden; a copy of Patient Linden's driver's license; a two-page completed patient intake form; a two-page typewritten Release of Liability, signed by Patient Linden; and a form discussing the different types of medical cannabis, their varying benefits, and common side effects of cannabis.

7C. Respondent did not provide the Board with any records for patients Le or Linden. Instead, he submitted a Certification of No Records, which he signed on September 23, 2015.

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Standard of Care

8A. Complainant offered the testimony and a March 27, 2017 expert report of Robert M. Franklin, M.D., to establish the standard of care in this case. Dr. Franklin received his medical degree from George Washington University School of Medicine in 1990, and he completed his residence in family practice at the University of California, San Francisco in 1993. Dr. Franklin is board certified in family medicine.

8B. Dr. Franklin's report and his credible and uncontroverted testimony established the following regarding the standard of care for recommending medical marijuana in 2014:

(1). The standard of care regarding the recommendation of medical marijuana requires that the physician recommend it only when it is clinically indicated and only as part of a treatment plan with specific identifiable goals. The standard of care also requires documentation of all aspects of the evaluation process which support the decision to recommend medical marijuana.

(2). The standard of care is the same standard followed by a reasonable and prudent physician when recommending any other medication to treat a medical condition. This includes: taking a history and performing an appropriate examination of the patient; developing a treatment plan with objectives; providing informed consent including a discussion of side effects (set forth in further detail below); periodic review of the treatment's efficacy; consultation, as necessary; and proper record keeping that supports the decision to recommend the use of medical marijuana.

(3). Informed consent is a process between the physician and patient during which the physician informs the patient of the potential benefits and risks of the proposed treatment, solicits and answers questions, and ascertains that the patient understands the risk/benefit ratio and consents to accept the risks in order to obtain the benefits of the proposed treatment. Although detailed written forms that include a list of potential adverse effects of medical marijuana are often part of the informed consent process, these forms alone are insufficient to constitute informed consent.

(4). In California during 2014, the use of medical marijuana was limited to the treatment of "seriously ill" individuals. (Exhibit 12, p.12-012.) The physician was required to determine: that medical marijuana is not masking an acute or treatable progressive condition; that medical marijuana use will lead to a worsening of the patient's condition; and that the risk/benefit ratio of medical marijuana is as good, or better, than other medications that could be used for that individual patient. Additionally, it is incumbent upon the recommending physician to consult with the patient's primary treating physical or to obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

8C. Dr. Franklin's report and his credible and uncontroverted testimony established the following regarding the standard of care for use of telehealth technologies:

(1). It is the standard of practice in California that verbal consent from the patient must be obtained and documented.

(2). Telehealth may only be used when it can adequately address the problem under evaluation (e.g., by assisted physical examination as needed). Telehealth may not be used when there is a need for physical actions that cannot be accomplished in the clinic where the recommending physician is located.

(3). All telemedicine connections must be secure. Skype is a free, unsecured platform which provides video conferencing over an Internet connection; Skype cannot be used for telemedicine in California.

8D. Dr. Franklin's report, his credible and uncontroverted testimony, and relevant law, established that the standard of care requires a physician to keep adequate medical records documenting all patient care.

8E. Dr. Franklin's report and his credible and uncontroverted testimony established that Respondent engaged in a series of separate extreme departures from the standard of care in his treatment of Patients Le and Linden when he:

(1). failed to consider a differential diagnosis or alternative;

(2). failed to obtain a thorough patient history;

(3). failed to perform any physical examination;

(4). recommended marijuana without determining that the patient was seriously ill;

(5). failed to advise the patient of the risks and benefits of marijuana use;

(6). failed to obtain informed consent from the patient regarding the use of marijuana; and

(7). failed to develop a treatment plan with measurable objectives.

8F. Dr. Franklin's report and his credible and uncontroverted testimony established that Respondent engaged in a series of separate extreme departures from the standard of care for providing telemedicine to Patients Le and Linden when he:

(1). failed to use a secure server when providing telemedicine to each patient;

(2). failed to obtained verbal informed consent from either patient before using telehealth; and

(3). used telehealth to evaluate and treat each patient without ensuring that a thorough physical examination was performed.

9. The totality of the evidence established that Respondent failed to maintain adequate medical records for both patients.

10. In the Accusation's Third Cause for Discipline, Complainant alleges that Respondent demonstrated incompetence in his care and treatment of patients Le and Linden. This allegation was not established by the evidence.

Respondent's Background, Rehabilitation & Character Evidence

11. Respondent seeks to maintain his California licensure without being placed on probation. At the administrative hearing he presented as a vague, evasive, and withdrawn witness, and he expressed no remorse for the risk to patients which his actions had caused.

12. Respondent provided a circuitous and sketchy timeline of his work history. From what could be gleaned, Respondent completed a residency in emergency medicine in 2003 at Martin Luther King, Jr. - Charles R. Drew Medical Center, and immediately began working at Centinela Hospital Medical Center in Inglewood. In 2003, Respondent became involved in the fraud scheme which eventually led to his conviction. Respondent left California in May 2004 to begin four years of employment as an assistant professor at Howard University in Washington D.C., and during that time, he also worked Washington Adventist Hospital in Maryland.

13. After 2008, Respondent had difficulty obtaining employment since he was facing criminal charges, was prohibited from billing Medicare and Medi-Cal, was subject to Board probation, and was also subject to discipline in Maryland (from 2010 until 2015). Respondent practiced medicine in the United States Virgin Islands for a while before returning to Maryland to open a private practice, which he noted was "not lucrative" due to his continued inability to bill Medicare. During that time, in about 2010, Respondent began issuing medical marijuana recommendations at the Venice Beach clinic, which Respondent noted was "a good way to make money." This led to the 2011 Citation (see Factual Finding 4). After discontinuing work at the Venice Beach clinic, Respondent went to Saudi Arabia for an unspecified time frame.

14A. Respondent eventually returned to Maryland where he held a medical license and operated a private practice. However, according to Respondent, his private practice was not generating income. In 2014, Respondent began working for Supreme, issuing medical marijuana recommendations "long distance" via Skype to approximately 20 patients per day, for five to six days per month. Respondent lived in Maryland, but flew to California once per month to pre-sign stacks of blank medical marijuana recommendations. Respondent was paid a flat fee of $2,500 per month for his work. According to Respondent, he worked for Supreme for only one year.

14B. Respondent would not admit any wrongdoing in issuing the medical marijuana recommendations to patients Le and Linden. He did not address his failure to conduct physical examinations of the patients prior to issuing pre-signed medical marijuana recommendations. Instead, Respondent insisted that he reviewed patient histories prior to initiating the Skype interactions, that he believed every patient signed a consent form for telemedicine, and that he was not responsible for maintaining the Supreme database.

15. It is unclear from Respondent's testimony what employment he held from 2015 through 2017.

16. Respondent has been employed as an emergency room physician at the University of Maryland for approximately seven months (i.e., since about the end of 2017).

17. Respondent does not currently practice medicine in California. If placed on probation in this action, he intends to continue living and working in Maryland, and he does not intend to resume practicing medicine in California. Respondent noted that he could suffer discipline on his Maryland medical license based on any discipline imposed in California. Respondent stated that the only reason he is contesting this case is that if his California license is revoked or placed on probation "that will follow [him] to Maryland."

18. Respondent does not believe his California medical license should be disciplined because he has completed his probation and he now treats patients "in the emergency room every day." Respondent acknowledged that he failed to comply with Board probation once before.

19. J. Timothy Fives, retired Special Agent for the California Department of Justice, testified on Respondent's behalf and lauded Respondent's lengthy cooperation with law enforcement in the healthcare fraud case (see Factual Finding 3.)

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LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2234, subdivision (b), in that Respondent committed gross negligence in his care of patients Le and Linden, as set forth in Factual Findings 5 through 8.

2. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2234, subdivision (c), in that Respondent committed repeated negligent acts in his care of patients Le and Linden, as set forth in Factual Findings 5 through 8.

3. Cause does not exist to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2234, subdivision (d), in that Complainant failed to establish, by clear and convincing evidence, that Respondent demonstrated incompetence in his care of patients Le and Linden, as set forth in Factual Findings 5 through 10.

4. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2266, in that Respondent failed to maintain adequate and accurate records in his care of patients Le and Linden, as set forth in Factual Findings 5 through 9.

5A. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2290.5, subdivision (b), in that Respondent failed to obtain consent for the use of telehealth in his care of patients Le and Linden, as set forth in Factual Findings 5 through 9, and Legal Conclusion 5B.

5B. Business and Professions Code section 2290.5, subdivision (b) provides:

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

6. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2242, in that Respondent provided recommendations for marijuana, a Schedule I controlled substance under Health and Safety Code section 11054, subdivision (d)(13), without performing adequate physical examinations on patients Le and Linden, as set forth in Factual Findings 5 through 9.

7. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2234, in that Respondent engaged in unprofessional conduct in his care of patients Le and Linden, as set forth in Factual Findings 5 through 9.

8A. Respondent committed gross negligence and repeated negligent acts, failed to obtain consent for telemedicine, failed to conduct any physical examination prior to issuing pre-signed medical marijuana recommendations, and failed to maintain adequate patient records. The remaining question is the nature of the discipline to be imposed against Respondent's medical license for his violations. Respondent seeks a public letter of reprimand; Complainant seeks revocation of Respondent's medical license.

8B. In her opening statement, Respondent's counsel noted that acquisition of recreational marijuana is now legal in California. However, this case is not about the current legality and non-medical availability of marijuana. Instead, this case examines Respondent's flouting of the laws and standards of medical practice at the time of his misconduct. Respondent's current violations are underscored by his prior disciplinary history all of which comprehensively evidence his continued disregard for the law and for patient safety.

8C. Since 2003 (when he began engaging in healthcare fraud), Respondent has used his California medical license as a tool for making easy money rather than for its intended purpose, as certification of his clinical skills. While physicians are not required to practice medicine for solely altruistic purposes, they are required to act with regard for patient welfare and with honesty and integrity. Respondent has failed to do so. After his 2009 fraud conviction, Respondent aided and abetted the unlicensed practice of medicine in a medical marijuana clinic, and he more recently engaged in gross negligence by providing pre-signed medical marijuana recommendations without any physical examination of the patients.

8D. Additionally, Respondent's testimony illustrates his continued focus on his own gain rather than on patient welfare. Respondent testified that he wishes to retain his unrestricted licensure in California solely in order to prevent reciprocal discipline of his Maryland license. While Respondent is purportedly practicing medicine appropriately in another state, this does not indicate that he would be willing or able to practice in California in a manner that would take into account the welfare of California patients.

8E. Moreover, Respondent expressed no remorse and refused to fully admit his current violations. This precludes a finding of rehabilitation or at least the possibility of working toward rehabilitation. Furthermore, Respondent failed to provide any assurance that, if he was allowed to remain licensed in California, he would become more compliant with the laws governing the practice of medicine. The foregoing, coupled with his prior failed probation, bodes poorly for Respondent's future compliance.

8F. Business and Professions Code section 2229, subdivision (a), provides, "Protection of the public shall be the highest priority for the [Board] . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority." Based on the totality of the evidence, the Board's priority of public protection necessitates revocation of Respondent's medical license.

ORDER

Physician's and Surgeon's Certificate Number A77700, issued to Respondent, Craig Richard Wilder, M.D., is hereby revoked.

DATED: May 25, 2018

DocuSigned by:
Julie Cabos-Owen
18236595DE98452...

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
RICHARD D. MARINO
Deputy Attorney General
State Bar No. 90471
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-8644
Facsimile: (213) 897-9395
Attorneys for Complainant

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

In the Matter of the Accusation Against: **Craig Richard Wilder, M.D.** **P.O. Box 948** **Oxon Hill, MD 20750-0948** **Physician's and Surgeon's Certificate No. A 77700,** Respondent.	Case No. 800-2014-008662 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about January 16, 2002, the Medical Board issued Physician's and Surgeon's Certificate Number A 77700 to Craig Richard Wilder, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2019, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code provides:

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

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

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

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

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

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

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

5. Section 2234 of the Code, in pertinent part, provides:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

". . .

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

6. Section 2242 of the Code, in pertinent part, provides:

"a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct."

7. Section 2290.5 of the Code states:

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

"(1) 'Asynchronous store and forward' means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

"(2) 'Distant site' means a site where a health care provider who provides health care

services is located while providing these services via a telecommunications system.

"(3) 'Health care provider' means a person who is licensed under this division.

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

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

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

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

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

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

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

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

"(g) This section shall not apply to a patient under the jurisdiction of the Department

of Corrections and Rehabilitation or any other correctional facility.

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

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

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

8. 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."

STANDARD OF CARE

9. Regarding the use of medical marijuana in California, the standard of medical practice is to recommend medical marijuana only when it is clinically indicated, and only as part of a rational treatment plan that has specific, identifiable goals. The standard of medical practice in California is to document all aspects of the process of evaluation and management that support the decision to recommend medical marijuana. These standards applicable to recommending marijuana to treat a medical condition are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, and include the following:

i. History and an appropriate prior examination of the patient.

ii. Development of a treatment plan with objectives.

iii. Provision of informed consent including a discussion of side effects.[1]

iv. Periodic review of the treatment's efficacy.

v. Consultation, as necessary.

vi. Proper record keeping that supports the decision to recommend the use of medical marijuana."

10. Regarding the use of medical marijuana in California, it is for the treatment of seriously ill individuals.[2] The physician should determine that medical marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition; the physician must determine that the risk/benefit ratio of medical marijuana is as good, or better, than other medications that could be used for that individual patient; and, further, while a physician who is not the primary treating physician may still recommend medical marijuana, it is incumbent upon that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

11. Regarding the use of medical marijuana in California, recommendations must be limited to the time necessary to appropriately monitor the patient.

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[1]Informed consent is a dynamic process between provider and patient during which the provider informs the patient of the potential benefits and risks of the proposed treatment, solicits and answers questions, and ascertains that the patient understands the relevant risk/benefit ratio and consents to accept the risks in order to obtain the benefits of the proposed treatment. While detailed written forms that include a list of potential adverse effects of medical marijuana use are often part of the informed consent process, even they are not sufficient alone.

[2] Seriously ill individuals, of course, may include patients with disabilities. However, the Americans with Disabilities Act (ADA) is quite specific as to what constitutes a disability. Its definition of "disability" both reflects the standard of practice in California and codifies that standard in clear language. In order for the recommendation of marijuana by a physician in California to adhere to the standard of practice, a patient must have such a condition. The standard of practice in California is to reserve the recommendation of marijuana for patients who are seriously ill and who have an equal or favorable risk to benefit ratio for the use of medical marijuana as they do for the use of standard therapy. It is the standard of practice that marijuana use is not to be recommended for minor medical problems or for problems that can be controlled more safely and as effectively by other methods.

12. Regarding the use of telehealth technologies, it is the standard of practice in California that verbal consent from the patient be obtained and documented.[3]

13. Regarding the use of telehealth technologies, it is the standard of practice in California to document clearly in the medical record which visits, or which part of a particular visit, are performed or augmented using telehealth technology. That is, telehealth does not excuse any incomplete or substandard practice. Telehealth may only be used when it can adequately address the problem under evaluation, sometimes by the use of robotic or otherwise assisted physical examination as needed. Telehealth may not be used when there is a need for physical actions that cannot be accomplished in the clinical at hand.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

14. Respondent Craig Richard Wilder, M.D. is subject to disciplinary action pursuant to Business and Professions Code section 2234, subdivision (b), in that he committed gross negligence during his care, treatment and management of Patients K.L. and D.L.,[4] as follows:

A. On two occasions, during the course of an undercover operation in a matter not involving Respondent, Respondent provided a medical marijuana recommendation to medical board investigators posing as patients. Each recommendation was made via Skype[5] and without an adequate physical evaluation. The first undercover operation took place on September 18, 2014; the second undercover operation took place on February 9, 2015. Both operations were videotaped.

B. Respondent's medical records for each of the undercover operations—i.e., patients K.L. and D.L.—were requested by representatives of the Medical Board of California. Respondent did not provide the requested records and, instead, told the representatives of the Medical Board that he had no records.

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[3]The standards of practice for telehealth are identical to the standards of practice for face-to-face medicine. In short, telehealth, in compliance with Business and Professions Code section 2290.5, is a tool in the practice of medicine and does not change the standard of care.

[4]All patient references are by initials only in order to protect his or her privacy rights.

[5] Skype is an instant messaging application that provides online text message and video chat services. Users may transmit both text and video messages.

C. As shown by the videos taken during the undercover operations, Respondent demonstrated a complete disregard for the standard of practice of general medicine. The patient history taken was scant. He performed no physical examination. He did not formulate a differential diagnosis and safe, effective, and rational treatment plan for either patient. Instead, he simply recommended marijuana. Respondent, however, did tell Patient D.L, the second undercover investigator, to see his regular physician for his reported abdominal pain but take anti-inflammatory medication for his reported back pain.

D. The following acts and omissions, considered singularly and collectively, constitute extreme departures from the standard of care:

1) Failing to consider a differential diagnosis and/or alternative treatments for either Patient K.L. or D.L.

2) Failing to obtain a thorough history, including a relevant review of systems, for either K.L. or D.L.

3) Failing to perform a physical examination. With regard to K.L., at a minimum, Respondent should have performed a head and neck examination. With regard to D.L., at a minimum, Respondent should have performed an abdominal and musculoskeletal examination.

4) Recommending marijuana without first determining that either patient was seriously ill.

5) Failing to advise the patients of the risks and benefits of marijuana use.

6) Failing to obtain informed consent from either patient.

7) Failing to develop a treatment plan with measurable objectives.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

15. Respondent Craig Richard Wilder, M.D. is subject to disciplinary action pursuant to Business and Professions Code section 2234, subdivision (c), in that he committed repeated negligent acts during his care, treatment and management of Patients K.L. and D.L., as follows:

A. Complainant refers to and, by this reference, incorporates here Paragraph 14, above, as though fully set forth.

B. The following acts and omissions, considered singularly and collectively, constitute extreme departures from the standard of care:

1) Failing to consider a differential diagnosis and/or alternative treatments for either Patient K.L. or D.L.

2) Failing to obtain a thorough history, including a relevant review of systems, for either K.L. or D.L.

3) Failing to perform a physical examination. With regard to K.L., at a minimum, Respondent should have performed a head and neck examination. With regard to D.L., at a minimum, Respondent should have performed an abdominal and musculoskeletal examination.

4) Recommending marijuana without first determining that either patient was seriously ill.

5) Failing to advise the patients of the risks and benefits of marijuana use.

6) Failing to obtain informed consent from either patient.

7) Failing to develop a treatment plan with measurable objectives.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

16. Respondent Craig Richard Wilder, M.D. is subject to disciplinary action pursuant to Business and Professions Code section 2234, subdivision (d), in that he failed to demonstrate the necessary, education, expertise and training to discharge his duties, functions and responsibilities as a physician and surgeon during his care, treatment and management of Patients K.L. and D.L., as follows:

A. Complainant refers to and, by this reference, incorporates here Paragraph 14, above, as though fully set forth.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

17. Respondent Craig Richard Wilder, M.D. is subject to disciplinary action pursuant to Business and Professions Code section 2266 in that he failed to maintain adequate and accurate patient records for his care, treatment and management of Patients K.L. and D.L., as follows:

A. Complainant refers to and, by this reference, incorporates here Paragraph 14, above, as though fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Obtain Consent for Use of Telehealth)

18. Respondent Craig Richard Wilder, M.D. is subject to disciplinary action pursuant to Business and Professions Code section 2290.5, subdivision (b), in that he failed to obtain consent for the use of Telehealth during his care, treatment and management of Patients K.L. and D.L., as follows:

A. Complainant refers to and, by this reference, incorporates here Paragraph 14, above, as though fully set forth.

B. Both patient examinations were done via Skype.

C. Respondent did not obtain verbal informed consent to use Telehealth in either case. In both cases, the clerk announced that Skype would be used, giving the patients the opportunity to consent or object. Also, neither patient agent was given the opportunity to ask questions about the process. Neither agent was informed of the risks and benefits of Telehealth. Neither agent was told that the software in use was secure.[6]

D. The following act and omissions, in addition to those listed in Paragraph 13, subparagraph D, above, considered individually and collectively, constitute extreme departures from the standard of care:

1) Failing to obtain verbal informed consent from Patient K.L. before using Telehealth.

[6] Skype is not a secure platform.

2) Failing to obtain verbal informed consent from Patient D.L. before using Telehealth.

3) Using Telehealth to evaluate and treat a patient's potentially serious illness without ensuring that a thorough physical examination was performed.

4) Failing to use a secure server with either patient.

E. The following act and omissions, in addition to those listed in Paragraph 15, subparagraph B, above, constitute departures from the standard of care:

1) Failing to obtain verbal informed consent from Patient K.L. before using Telehealth.

2) Failing to obtain verbal informed consent from Patient D.L. before using Telehealth.

3) Using Telehealth to evaluate and treat patients potentially serious illness taking ensuring that a thorough physical examination was performed.

4) Failing to use a secure server with either patient.

SIXTH CAUSE FOR DISCIPLINE

(Failing to Perform an Adequate Physical Examination)

19. Respondent Craig Richard Wilder, M.D. is subject to disciplinary action pursuant to Business and Professions Code section 2242 in that, on two occasions, he recommended marijuana, a Schedule I controlled substance without performing an adequate physical examination on either Patient K.L. or Patient D.L., as follows:

A. Complainant refers to and, by this reference, incorporates here Paragraph 14, above, as though fully set forth.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

20. Respondent Craig Richard Wilder, M.D. is subject to disciplinary action pursuant to Business and Professions Code section 2234, generally, in that he committed unprofessional conduct during his care, treatment and management of Patients K.L. and D.L., as follows:

A. Complainant refers to and, by this reference, incorporates here Paragraph 14, above, as though fully set forth.

PRIOR DISCIPLINARY ACTION

21. In a Decision issued by the Medical Board of California, effective February 4, 2011, *In the Matter of the Accusation Against Craig Wilder, M.D.,* Case No. 11-2008-190045, Respondent's physician's and surgeon's certificate was revoked with revocation being stayed and Respondent placed on probation for four (4) years with certain terms and conditions.

22. In a Decision issued by the Medical Board of California, effective October 24, 2013, *In the Matter of the Accusation and Petition to Revoke Probation Against Craig Wilder, M.D.,* Case No. 22-2010-210628, Respondent's physician's and surgeon's certificate was revoked with revocation being stayed and Respondent placed on probation for one additional year for a total of five (5) years with certain terms and conditions.

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 Number A 77700, issued to Craig Richard Wilder, M.D.;

2. Revoking, suspending or denying approval of Craig Richard Wilder, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Craig Richard Wilder, 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: August 14, 2017

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

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