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

11 In the Matter of the First Amended Accusation Against:

Case No. 800-2013-000063

12 **HOWARD RAGLAND JR., M.D.**
4801 Angeles Vista Blvd.
13 Los Angeles, CA 90043

OAH Case No. 2015070701

14 Physician's and Surgeon's Certificate No. A51837,

**FIRST AMENDED
A C C U S A T I O N**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about April 19, 1993, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A51837 to Howard Ragland Jr., M.D. (Respondent). On April 19, 2002, an
24 accusation was filed against Respondent. On June 23, 2004, Respondent's license was placed on
25 five years probation with several terms and conditions. On June 23, 2009, Respondent
26 successfully completed probation. The Physician's and Surgeon's Certificate was in full force and
27 effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless
28 renewed.

JURISDICTION

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

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

5. Section 2234 of the Code, states:

"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.

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

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

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

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

9 6. Section 2238 of the Code states:

10 "A violation of any federal statute or federal regulation or any of the statutes or regulations
11 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
12 conduct."

13 7. Section 2242 of the Code states:

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

17 "(b) No licensee shall be found to have committed unprofessional conduct within the
18 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
19 the following applies:

20 "(1) The licensee was a designated physician and surgeon or podiatrist serving in the
21 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the
22 drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient
23 until the return of his or her practitioner, but in any case no longer than 72 hours.

24 "(2) The licensee transmitted the order for the drugs to a registered nurse or to a
25 licensed vocational nurse in an inpatient facility, and if both of the following conditions
26 exist:

27 "(A) The practitioner had consulted with the registered nurse or licensed
28 vocational nurse who had reviewed the patient's records.

1 "(B) The practitioner was designated as the practitioner to serve in the absence
2 of the patient's physician and surgeon or podiatrist, as the case may be.

3 "(3) The licensee was a designated practitioner serving in the absence of the patient's
4 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
5 the patient's records and ordered the renewal of a medically indicated prescription for an amount
6 not exceeding the original prescription in strength or amount or for more than one refill.

7 "(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
8 Code."

9 8. Section 2261 of the Code states:

10 "Knowingly making or signing any certificate or other document directly or indirectly
11 related to the practice of medicine or podiatry which falsely represents the existence or
12 nonexistence of a state of facts, constitutes unprofessional conduct."

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

16 10. Health and Safety Code section 11362.5 provides as follows:

17 "(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

18 "(b)(1) The people of the State of California hereby find and declare that the purposes of the
19 Compassionate Use Act of 1996 are as follows:

20 "(A) To ensure that seriously ill Californians have the right to obtain and use
21 marijuana for medical purposes where that medical use is deemed appropriate and has been
22 recommended by a physician who has determined that the person's health would benefit
23 from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain,
24 spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides
25 relief.

26 "(B) To ensure that patients and their primary care-givers who obtain and use
27 marijuana for medical purposes upon the recommendation of a physician are not subject to
28 criminal prosecution or sanction.

1 “(C) To encourage the federal and state governments to implement a plan to provide
2 for the safe and affordable distribution of marijuana to all patients in medical need of
3 marijuana.

4 “(2) Nothing in this section shall be construed to supersede legislation
5 prohibiting persons from engaging in conduct that endangers others, nor to condone
6 the diversion of marijuana for nonmedical purposes.

7 “(c) Notwithstanding any other provision of law: no physician in this state shall be
8 punished, or denied any right or privilege, for having recommended marijuana to a patient for
9 medical purposes.

10 “(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to
11 the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who
12 possesses or cultivates marijuana for the personal medical purposes of the patient upon the
13 written or oral recommendation or approval of a physician.

14 “(e) For the purposes of this section, "primary caregiver" means the individual designated
15 by the person exempted under this section who has consistently assumed responsibility for the
16 housing, health, or safety of that person.”

17 11. Health and Safety Code section 11362.7, subdivision (a) provides that:

18 “‘Attending physician’ means an individual who possesses a license in good standing to
19 practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic
20 Medical Board of California and who has taken responsibility for an aspect of the medical care,
21 treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical
22 examination of that patient before recording in the patient's medical record the physician's
23 assessment of whether the patient has a serious medical condition and whether the medical use of
24 marijuana is appropriate.”

25 12. Health and Safety Code section 11362.7, subdivision (h), provides that:

26 “‘Serious medical condition’ means all of the following medical conditions: (1)
27 Acquired immune deficiency syndrome (AIDS); (2) Anorexia.; (3) Arthritis; (4) Cachexia; (5)
28 Cancer; (6) Chronic pain; (7) Glaucoma; (8) Migraine; (9) Persistent muscle spasms, including,

1 but not limited to, spasms associated with multiple sclerosis; (10) Seizures, including, but not
2 limited to, seizures associated with epilepsy; (11) Severe nausea; (12) Any other chronic or
3 persistent medical symptom that either: (A) Substantially limits the ability of the person to
4 conduct one or more major life activities as defined in the Americans with Disabilities Act of
5 1990 (Public Law 101-336); (B) If not alleviated, may cause serious harm to the patient's safety
6 or physical or mental health.”

7 FACTUAL ALLEGATIONS COMMON TO ALL CHARGES

8 13. The Medical Board received a complaint that Respondent was providing marijuana
9 recommendations to patients without a good faith exam. The Medical Board enforcement staff
10 commenced an investigation of the clinics, which were operated by the Respondent.

11 14. None of the patients were documented to have a significant degree of disability. They
12 did not have a persistent problem that limited their ability to conduct one or more major life
13 activities. In fact, Respondent didn't even ask questions of any of the patients about the degree of
14 their suffering or what their suffering prevented them from doing.

15 15. Marijuana is a potent centrally-acting drug with negative effects on concentration and
16 memory and a sometimes-potent analgesic effect, capable of masking the symptoms of serious
17 illnesses, for example, tuberculosis, meningitis or untreated extreme hypertension, until it results
18 in catastrophic brain damage.

19 16. Respondent made no effort to ensure adequate treatment of these patients. He simply
20 gave them the paper they wanted and sent them on their way. Marijuana for medical purposes
21 should only be recommended when clinically indicated and for seriously ill Californians. There
22 is no single element that conforms to the standard of practice in any of these cases.

23 FACTUAL ALLEGATIONS REGARDING PATIENT R.J.

24 17. The Medical Board received a complaint from patient R.J. that Respondent gave her a
25 marijuana for medical purposes recommendation without an adequate medical examination.

26 18. R.J. saw Respondent on October 1, 2013. She was 66 years old and had multiple
27 sclerosis and low back pain. When she first went into the office, she completed some forms and
28 was taken to another room.

1 19. R.J. was not told that Respondent would be doing the exam by Skype.¹ He asked her
2 a few questions. He did not take a thorough history; he did not inquire about her prior experience
3 with marijuana; he did not inquire about past or current substance abuse. There was no review of
4 systems or detailed medical history form. No vital signs were taken. Although a physical exam
5 was documented, none was performed. The risks and benefits of marijuana for medical purposes
6 were not discussed. After only 1-2 minutes, Respondent told R.J. to go to the receptionist to get
7 her recommendation.

8 20. The medical records show that they discussed the routes of administration including
9 smoking, vaporizing, and eating. However, the patient denies this. The records show they
10 discussed medication and drug interactions, however, the patient denies this. The records indicate
11 she was skeptical about the benefits of marijuana for medical purposes, however the patient
12 denies saying that. The records are detailed with what strain of marijuana should be used,
13 however, she denied that they discussed this topic. The records indicate that Respondent told her
14 to follow up with her primary doctor, but she denies this. When questioned, Respondent
15 explicitly acknowledged that she was not seriously ill.

16 FACTUAL ALLEGATIONS REGARDING INVESTIGATOR N. (K.L.)

17 21. On September 18, 2014, K.L. went to the Harbor Evaluation Center. He told the
18 receptionist he wanted a marijuana for medical purposes recommendation. She gave him forms
19 to fill out and took his blood pressure.

20 22. The "exam" was done by Skype. K.L. told Respondent he has anxiety and sometimes
21 his body aches. Respondent asked him if he used marijuana and was it helpful, and K.L. said
22 "yes." After only 29 seconds, Respondent said he would issue a recommendation.

23 23. The medical records were five pages of handwritten notes. Although height and
24 weight are recorded, they were never taken. The detailed history states the patient had limited
25 success with pills for anxiety but that was not discussed. The entire exchange between
26 Respondent and K.L. was exactly 29 seconds with Respondent only asking a total of four

27 ¹ Skype is a software application and online service that enables voice and video phone
28 calls over the Internet.

1 questions.

2 FACTUAL ALLEGATIONS REGARDING INVESTIGATOR B. (T.B.)

3 24. On January 3, 2014, patient T.B. went to Respondent's clinic and did an undercover
4 operation. He was greeted by the receptionist Becky and given some forms to fill out. There was
5 a question on the form that asked why the patient was seeking medical marijuana, what symptoms
6 he wanted relief from, and asked him to describe how his symptoms interfered with his life. But
7 T.B. left those answers blank. No vital signs were taken. The page that contained the treatment
8 plan was mostly blank.

9 25. After T.B. filled out the forms, the receptionist brought him into a small room. There
10 was a laptop on the table and she initiated a "Skype" call to Respondent. Respondent asked "how
11 you doin there Buddy?", and added, "doing pretty good with that marijuana?" T.B. asked about
12 Skype and it was over. The encounter lasted less than 30 seconds. Respondent ended with "O.K.
13 Buddy, so head up front man, you take care." T.B. went to the front and got his recommendation.

14 26. The medical records Respondent filled out were quite different from the encounter
15 TB described. Respondent provided four pages of notes. Respondent claimed the nurse took the
16 patient's blood pressure, but T.B. denied this.

17 27. There is no consent form indicating T.B. agreed to a Skype exam. Respondent wrote
18 in the chart that T.B. did not have an aura or visual disturbance, although TB never mentioned
19 migraines. Respondent wrote that T.B. was in no apparent stress, his sclera (the white of the eye)
20 were clear, his extra-ocular muscles were intact and lids were normal; however, T.B. was not
21 asked to pull his eyelids down. Under 'skin' Respondent wrote no rashes, although it is not clear
22 how he could see this on the screen. Respondent described his "neurologic" exam as grossly
23 intact although he did no such examination. Extremity exam is listed as normal, although T.B. did
24 not perform any actions to determine this. Respondent did not ask for the patient to bring in any
25 medical records.

26 FACTUAL ALLEGATIONS REGARDING INVESTIGATOR T. (J.H.)

27 28. J.H. entered the clinic and spoke with the receptionist, Becky. She gave him
28 paperwork to fill out. She brought J.H. back to a room with a computer on a table and she

1 initiated a "Skype" call to Respondent. Respondent showed up on the screen. Respondent asked
2 J.H., "is the marijuana working good, eh?" and J.H. responded "yeah."

3 29. Respondent then said "so head up front and Rebecca will hook you up, man. Take
4 care." This encounter lasted less than 30 seconds.

5 30. The medical records began with an exam note and treatment plan, but the only thing
6 completed was the patient name, and date of birth. The family history had several diagnoses but
7 none are circled. J.H. did not answer the questions: why are you seeking medical marijuana, what
8 symptoms do you want relief from, and do these symptoms interfere with your life.

9 31. There was no discussion of risks or benefits. There was no good faith exam, and no
10 inquiry as to why this patient needed a recommendation.

11 STANDARD OF PRACTICE

12 32. The standard of medical practice in California is to recommend marijuana for medical
13 purposes only when it is clinically indicated, and only as part of a rational treatment plan that has
14 specific, identifiable goals. The standard of medical practice in California is to document all
15 aspects of the process of evaluation and management that support the decision to recommend
16 marijuana for medical purposes.

17 33. Informed consent is a process in which risks and benefits of a proposed therapy are
18 discussed, questions are solicited and answered, and the physician determines that the patient
19 wishes to proceed with the proposed therapy. Informed refusal, of course, would be when the
20 patient considers the risk/benefit ratio to be unacceptable and declines the procedure. In order for
21 informed consent to be obtained, the physician must be cognizant of the risks involved in the
22 proposed therapy and communicate those risks to the patient. Informed consent is an active
23 process and requires physician input. It does not consist simply of initialing boxes on a form that
24 has not been explained in detail.

25 34. It is the standard of practice in California, when using telehealth technologies
26 (previously called telemedicine), that verbal consent from the patient be obtained and documented
27 in the patient's medical record. California Business and Professions Code Section 2290.5,
28 subdivision (f), specifically provides that the failure to do so shall constitute unprofessional

1 conduct. It is the standard of practice to document clearly in the medical record which visits, or
2 which part of a particular visit, are performed or augmented using telehealth. In general terms,
3 the standards of practice for telehealth are otherwise identical to the standards of practice for face-
4 to-face medicine.

5 35. The standard of practice required that Respondent perform a detailed physical
6 examination. Practicing telehealth without a professional standing by with the patient ready to
7 perform whatever physical examination maneuver was required, rendered the care provided by
8 telehealth ineffective. Respondent performed evaluations by Skype for the purpose of
9 recommending marijuana for medical purposes, which fails to conform to the standard of
10 practice. As a marijuana for medical purposes recommendation is specifically to be used for
11 people who are seriously ill, it is not possible to provide high quality care to seriously ill patients
12 without being able to physically examine them.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Gross Negligence Regarding Patients R.J. and K.L.)**

15 36. Respondent Howard Ragland Jr., M.D. is subject to disciplinary action under section
16 2234, subdivision (b), of the Code in that Respondent was grossly negligent in the care and
17 treatment of patients R.J. and K.L. The circumstances are as follows:

18 A. Complainant hereby realleges the allegations in paragraphs 13-23, as though fully set
19 forth herein. It was an extreme departure from the standard of care for Respondent:

20 B. To fail to discuss the risks and benefits of marijuana for medical purposes with either
21 patient;

22 C. To fail to document a sufficient history and diagnosis to justify the recommendation
23 of marijuana for medical purposes for either patient;

24 D. To fail to develop and document a rational plan of care that included re-evaluation
25 and re-assessment of the efficacy of treatment for either patient;

26 E. To fail to provide informed consent for either patient;

27 F. To fail to document why marijuana would be more effective for either patient;

28 G. To recommend marijuana for medical purposes use for a period of one year for either

1 patient;

2 H. To recommend marijuana for medical purposes use to the two patients whom
3 Respondent knew were not seriously ill;

4 I. To fail to exclude mental illness and substance abuse disorder prior to recommending
5 marijuana for medical purposes for either patient;

6 J. To dishonestly document for both patients that he had performed physical
7 examinations which he never performed;

8 K. To fail to create and maintain adequate medical records in these two cases to support
9 the decision to recommend the use of marijuana for medical purposes at all, and/or to support the
10 decision to recommend its use for a year;

11 L. To fail to obtain and document verbal consent to use telehealth technologies, where
12 patient R.J. was not told Respondent would appear by using Skype, and there is no documentation
13 that Respondent obtained consent from R.J.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Gross Negligence Regarding Patient T.B.)**

16 37. Respondent Howard Ragland Jr., M.D., is subject to disciplinary action under section
17 2234, subdivision (b), of the Code in that Respondent was grossly negligent in the care and
18 treatment of patient T.B. The circumstances are as follows:

19 A. Respondent did not meet the standard of care in recommending to patient T.B.
20 marijuana for medical purposes and was grossly negligent for the following reasons:

- 21 1. Respondent did not perform a good faith exam;
- 22 2. Respondent did not elicit information that would indicate T.B. had any serious
23 medical condition or that the use of marijuana for medical purposes would be appropriate;
- 24 3. Although T.B. put 'headache' on the intake form, Respondent did not verify
25 whether T.B. actually had headaches or do any examination;
- 26 4. T.B did not fill out the part of the form that asked why he was seeking a
27 marijuana for medical purposes recommendation, nor did Respondent ask him why he did not fill
28 it out;

1 5. Respondent did not obtain informed consent, nor did he discuss the side effects,
2 risks and benefits.

3 B. Respondent falsified portions of the patient's medical records. The progress notes had
4 no relationship to the actual interaction Respondent had with T.B.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Gross Negligence Regarding Patient J.H.)**

7 38. Respondent Howard Ragland Jr., M.D. is subject to disciplinary action under section
8 2234, subdivision (b), of the Code in that Respondent was grossly negligent in the care and
9 treatment of patient J.H. The circumstances are as follows:

10 A. Respondent did not meet the standard of care in recommending for patient J.H.
11 marijuana for medical purposes and was grossly negligent for the following reasons:

12 1. Respondent did not elicit information that would indicate J.H. had a serious
13 medical condition to justify a marijuana for medical purposes recommendation;

14 2. Respondent did not ask the patient to bring medical records;

15 3. Respondent did not perform a physical exam, nor did he elicit a family history,
16 past medical history, surgical history, or allergies;

17 4. Respondent did not obtain informed consent, nor did he discuss the side effects,
18 risks and benefits.

19 B. Respondent falsified the medical records. The records bear no resemblance to the
20 events of the actual encounter.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Dishonest Conduct)**

23 39. Respondent Howard Ragland Jr., M.D. is subject to disciplinary action under Code
24 section 2261 for knowingly making or signing a certificate or other document related to the
25 practice of medicine which falsely represents the existence or non-existence of a state of facts.
26 Complainant hereby realleges the allegations in paragraphs 17 through 31, above, as though fully
27 set forth herein.

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Medical Records)**

3 40. Respondent Howard Ragland Jr., M.D., is subject to disciplinary action under Code
4 section 2266 for failure to maintain adequate and accurate medical records relating to the
5 provision of medical services. Complainant realleges the allegations in paragraphs 17 through 31,
6 above, as though fully set forth herein.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Prescribing Without an Appropriate Examination and Medical Indication)**

9 41. Respondent Howard Ragland Jr., M.D., is subject to disciplinary action under Code
10 section 2242, subdivision (a), for prescribing, dispensing or furnishing dangerous drugs without
11 an appropriate prior examination and medical indication. Complainant hereby realleges the
12 allegations in paragraphs 17 through 31, above, as though fully set forth herein.

13 **PRAYER**

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

- 16 1. Revoking or suspending Physician's and Surgeon's Certificate Number A51837,
17 issued to Howard Ragland Jr., M.D.;
- 18 2. Revoking, suspending or denying approval of Howard Ragland Jr., M.D.'s authority
19 to supervise physician assistants, pursuant to section 3527 of the Code;
- 20 3. Ordering Howard Ragland Jr., M.D., if placed on probation, to pay the Board the
21 costs of probation monitoring; and
- 22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: September 29, 2015

24 
KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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