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

In the Matter of the Accusation Against:	)	
DEBORAH ANN METZGER, M.D. Certificate No. C-50171	)	No: 03-2002-130173
Respondent	)	

DECISION

The attached Stipulated Settlement and Order is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on February 25, 2005

IT IS SO ORDERED January 26, 2005

By: _____
RONALD L. MOY, M.D.
Chair - Panel B
Division of Medical Quality

BILL LOCKYER, Attorney General
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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In The Matter of the Accusation Against: DEBORAH ANN METZGER, M.D. 851 Fremont Avenue, Suite 104 Los Altos, CA 94024 Physician and Surgeon's Certificate No. C 50171, Respondent.	Case Nos. 03 2002 130173 and Related Cases OAH No. N 2004 060338 **STIPULATED SETTLEMENT AND ORDER**

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

PARTIES

1. Complainant David T. Thornton is the Executive Director of the Medical Board of California ("Medical Board" or "Board"). He brought this action solely in his official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Thomas P. Reilly, Deputy Attorney General.

2. Respondent Deborah A. Metzger, M.D. ("respondent") is represented in this proceeding by attorney Tyler G. Draa of the firm of Hinshaw, Draa, Marsh, Still & Hinshaw,

12901 Saratoga Avenue, Saratoga, CA 95070.

3. On November 20, 1998, the Medical Board issued Physician's and Surgeon's Certificate Number C 50171 to Deborah A. Metzger, M.D. Unless renewed, the certificate will expire on March 31, 2006.

JURISDICTION

4. An accusation in Case Nos. 03-2002-130173 and related cases was filed on June 9, 2004 before the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, ("the Division"). That accusation has been superseded by an amended and supplemental accusation filed August 13, 2004. A copy of the First Amended and Supplemental Accusation ("the Accusation") is attached as Exhibit A and is incorporated by reference in this stipulation.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and discussed with her counsel the nature of the charges and allegations in the Accusation and the effects of this Stipulated Settlement and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation, the right to be represented by counsel at her own expense, the right to confront and cross-examine the witnesses against her, the right to present evidence and to testify on her own behalf, the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to reconsideration and court review of an adverse decision, and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

SETTLEMENT OF DISPUTED CLAIMS

8. The parties desire to reach a final settlement of this matter in order to avoid the time, expense, and uncertainty of litigation.

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CULPABILITY

9. For purposes of resolving the First Amended and Supplemental Accusation without the expense and uncertainty of further proceedings, respondent agrees that, at a hearing, complainant could establish a factual basis for the charges in the First Amended and Supplemental Accusation. Respondent hereby gives up her right to contest those charges.

10. Respondent agrees that her Physician's and Surgeon's Certificate is subject to discipline and she agrees to be bound by the Division's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by respondent here are only for the purposes of this proceeding or any other proceedings in which the Division of Medical Quality, Medical Board of California, or other professional licensing agency is involved, and shall not be admissible in any other criminal, civil, or administrative proceeding. Respondent specifically makes no admissions, and there are no findings with respect to, the allegations made regarding the patients identified in the First Amended and Supplemental Accusation as K.W., B.O., S.S., K.R., G.W., and S.E.

CONTINGENCY

12. This stipulation shall be subject to the approval of the Division. Respondent understands and agrees that the Medical Board's staff and counsel for complainant may communicate directly with the Division regarding this stipulation and settlement, without notice to or participation by respondent or her counsel. If the Division fails to adopt this stipulation as its Order, the Stipulated Settlement and Order, except for this paragraph, shall be of no force or effect. The Stipulated Settlement and Order shall be inadmissible in any legal action between the parties and the Division shall not be disqualified from further action by having considered this matter.

13. The parties agree that facsimile copies of this Stipulated Settlement and Order, including facsimile signatures on it, shall have the same force and effect as the original Stipulated Settlement and Order and signatures.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Division shall, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate Number C 50171 issued to respondent Deborah A. Metzger, M.D. is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

15. Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Stipulated Settlement and Order and Accusation to the chief of staff or the chief executive officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the chief executive officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

16. **MONITORING - PRACTICE/BILLING** Within 30 calendar days of the effective date of this decision, respondent shall submit to the Division or its designee for prior approval as a practice and billing monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are American Board of Medical Specialties (ABMS) certified in Obstetrics and Gynecology. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Division, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Division or its designee shall provide the approved monitor with copies of this decision and the Accusation and a proposed monitoring plan. Within 15 calendar days of

receipt of the decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the decision and the Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, respondent's practice and billing shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor shall submit a quarterly written report to the Division or its designee which includes an evaluation of respondent's performance, indicating whether her practices are within the standards of practice of medicine and billing, and whether respondent is practicing medicine safely and billing appropriately. It shall be respondent's sole responsibility to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Division or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, she shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

17. **PROHIBITED PRACTICE** During probation, respondent is prohibited

from practicing surgery, and specifically from practicing laparoscopy, laparotomy, and hernia repair surgery. For purposes of this stipulated settlement and order, the term "surgery" shall not be interpreted to include the procedures listed in Attachment 1.

After the effective date of this decision, the first time that a patient seeking the prohibited services makes an appointment, respondent shall orally notify the patient that she does not perform these services. Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after the effective date of this decision, the first time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that she does not perform these services. Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

18. **PRESCRIBING PRACTICES COURSE** Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the Division or its designee. Failure to complete the course successfully during the first 6 months of probation is a violation of probation.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this decision.

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

19. **SUPERVISION OF PHYSICIAN ASSISTANTS** During probation, respondent is prohibited from supervising physician assistants.

20. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws and all rules governing the practice of medicine in California, and shall remain in full compliance with any court-ordered criminal probation, payments, and other orders.

21. **QUARTERLY REPORTS** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

22. **PROBATION UNIT COMPLIANCE** Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,

more than thirty (30) calendar days.

23. **INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS DESIGNATED PHYSICIAN(S)** Respondent shall be available in person for interviews, either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

24. **TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE NON-PRACTICE** In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the state. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically canceled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be canceled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

25. **FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT**

In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non- practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation shall not be considered a period of non-practice.

Respondent's license shall be automatically canceled if respondent resides in California and for a total of two years fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

26. **COMPLETION OF PROBATION** Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored. Pursuant to Business and Professions Code section 2307, respondent may petition the Board for termination or modification of probation after two years of the probation term.

27. **VIOLATION OF PROBATION** Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, or petition to revoke probation, or an interim suspension order is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

28. **COST RECOVERY** Respondent shall reimburse the Division the amount of $25,000.00 for its investigative and prosecution costs to be paid in installments as follows: Within 90 calendar days from the effective date of the decision or other period agreed to by the Division or its designee, respondent shall reimburse the Division the amount of $5,000; she shall reimburse the Division the remaining $20,000 in four equal installments of $5,000 each, payable at six month intervals following the first payment of $5,000. Complainant understands that respondent has been advised by her bankruptcy counsel that she must file a Motion for Compromise of Controversy, and obtain a corresponding order approving these payments, from the judge presiding over her bankruptcy proceedings in the case entitled *In re Deborah Ann Metzger*, Debtor, United States Bankruptcy Court, Northern District of California, Case No. 04-31719 as a condition precedent to making these cost recovery payments. Complainant does not concede that this procedure is necessary, but will provide reasonable cooperation to respondent in obtaining this order. Both parties expect the bankruptcy judge to issue this order. If the order is not issued, the Division reserves the right to rescind this stipulation and order. Any filing of bankruptcy or any period of non-practice by respondent subsequent to the date of this order shall not relieve the respondent of her obligation to reimburse the Division for these costs.

29. **PROBATION MONITORING COSTS** Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

30. **LICENSE SURRENDER** Following the effective date of this decision, if respondent ceases practicing due to retirement or for health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of her license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall

within 15 calendar days deliver her wallet and wall certificate to the Division or its designee and she shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of her license shall be deemed disciplinary action. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Order and have fully discussed the terms and conditions and other matters contained in it with my attorneys and I understand the effect this stipulation will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement voluntarily, knowingly, and intelligently and agree to be bound by the Order and Decision of the Division of Medical Quality, Medical Board of California. I further agree that a facsimile copy of this Stipulated Settlement and Order, including facsimile copies of signatures, may be used with the same force and effect as the originals.

DATED: 11/4/04

DEBORAH A. METZGER, M.D.
Respondent

I have read and fully discussed with respondent Deborah A. Metzger, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Order. I approve its form and content.

DATED: 11/5/04

TYLER G. DRAA
Hinshaw, Draa, Marsh, Still & Hinshaw
Attorneys for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Order is hereby respectfully submitted for consideration by the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs.

DATED: 11/5/04

BILL LOCKYER, Attorney General
of the State of California
VIVIEN H. HARA
Supervising Deputy Attorney General

THOMAS P. REILLY
Deputy Attorney General

Attorneys for Complainant

Procedure list for Deborah A. Metzger, PhD, MD

Procedure	CPT code
Breast Cyst Aspiration	19000
Cervical biopsy	57500
Cervical colposcopy	57452
Cervical colposcopy & biopsy	57455
Cervical colpo & ECC	57456
Cervical colpo, bx, & ECC	57454
Endometrial biopsy	58100
Skin lesion ≤ 0.5mm	11420
Skin lesion 0.6-1.0 cm	11421
Skin lesion 1.1-2.0 cm	11422
Skin lesion 2.1-3.0 cm	11423
Vaginal biopsy	57100
Vulvar colposcopy	56820
Vulvar colposcopy & biopsy	56821
Straight cath	51701
Foley catheter insertion	51702
Foley catheter insertion, complex	51703
Residual via US	51798
Diaphragm fit & inst.	57170
IUD insertion	58300
IUD removal	58301
Sperm wash	58323
Intrauterine Insemination	58322
Bartholin duct probe (one side)	56440
Bartholin duct probe (bilateral)	56440-50
I & D postop wound infection	10180
I & D hematoma	10140
IV sedation & monitoring	99141-59
IV hydration	90780
Lysis of clitoral adhesions	56441
Pessary fitting	57160
Ilioinguinal-single	64425
Ilioinguinal-bilateral	64425-50
Paracervical block	64435
Pudendal-single	64430
Pudendal-bilateral	64430-50
Other Peripheral nerve-S	64450
Transabdominal ultrasound	76775
Transvaginal ultrasound	76830
Transvag-Pregnancy	76817
Transvag-Pregnancy add fetus	76817-59
Transvaginal follicular monitoring	76857
Transvaginal Cyst Aspiration	76942
Saline/Catheter Insertion	58340
Saline Ultrasound	76831
Transvaginal Cyst Aspiration	58800
Hysteroscopy	58555
D&C	58120
Endocervical curretage	57505
SQ/IM inj x 1 Medication	90782
SQ/IM inj X2 Medication	90782
Immunization	90471
IV injection	90784

ATTACHMENT 1

Exhibit A:

First Amended and Supplemental Accusation in Case Nos. 03 2002 130173 and Related Cases

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of the State of California
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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In The Matter of the Accusation Against: DEBORAH ANN METZGER, M.D. 851 Fremont Avenue, Suite 104 Los Altos, CA 94024 Physician and Surgeon's Certificate No. C 50171, Respondent.	Case Nos. 03 2002 130173 and related cases OAH No. N 2004 060338 **FIRST AMENDED AND SUPPLEMENTAL ACCUSATION**

Complainant alleges:

PARTIES

1. David T. Thornton ("complainant") brings this accusation solely in his official capacity as the Interim Executive Director of the Medical Board of California ("board").

2. On November 20, 1998, the board issued Physician and Surgeon Certificate No. C 50171 to Deborah Ann Metzger, M.D. ("Dr. Metzger" or "respondent") and at all times relevant to the charges brought in this accusation, this license was in full force and effect. Unless renewed, it will expire on March 31, 2006. On April 8, 2004, in response to a petition filed under authority of Government Code section 11529, the Office of Administrative

Hearings issued an interim order prohibiting Dr. Metzer from performing surgery. That order remains in effect pending the hearing and determination of this accusation. There is no board record of disciplinary action against this certificate.

JURISDICTION

3. This accusation is brought before the board under the authority of the following sections of the Business and Professions Code.[1/]

A. 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 or suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, or have such other action taken in relation to discipline as the Division of Medical Quality of the board ("division") deems proper.

B. Section 2234 of the code provides, in pertinent part, that the division "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

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1. All statutory references are to the Business and Professions Code unless otherwise indicated.

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...."

C. Section 725 of the Code states, in pertinent part: "Repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist."

D. Section 2242 of the Code states, in pertinent part:

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

E. Section 2261 of the Code states: "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

F. 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."

G. Section 125.3 of the Code provides, in part, that the board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

4. Welfare and Institutions Code section 14124.12 provides, in part, that a physician whose license has been placed on probation by the Medical Board shall not be reimbursed by Medi-Cal for "the type of surgical service or invasive procedure that gave rise to the probation."

5. Dr. Metzger is a board-certified obstetrician and gynecologist. At all times pertinent to this accusation, she maintained a practice at Helena Women's Health in Los Altos.

FIRST CAUSES FOR DISCIPLINE

(PATIENT K.W.)

(Gross Negligence/Repeated Negligent Acts)

6. Patient K.W.[2/] first met with respondent on January 3, 2001. At that time, K.W. was 54 years old. She complained of pain on the left side of her urethra, vagina, and rectum with pain radiating to the inside of her left thigh and left hip and to the left of her coccyx. She also complained of chronic constipation and left lower back pain.

7. K.W. had a history of pelvic pain many years in the past and, at that time, had been diagnosed with endometriosis and adenomyosis. This had been treated surgically, at which time her uterus, tubes, and ovaries were removed and her pain was relieved. When she first consulted Dr. Metzger in 2001, K.W.'s symptoms were of about 16 months' duration.

8. After taking a history and performing a physical examination, Dr. Metzger recorded the following impressions:

Possible recurrent endometriosis;

Bilateral pudendal neuralgias;

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2. Initials, rather than full names, are used in this accusation to protect the patients' privacy insofar as possible. The patients' full names are known to respondent.

Probable adhesions;

Probable occult inguinal hernias;

Need for pain management.

9. After a series of tests, Dr. Metzger performed her first surgery on K.W. on March 20, 2001 at Recovery Inn of Menlo Park (subsequently known as Menlo Park Surgical Hospital). She reported the following surgical procedures:

Excision of endometriosis about the left ureter and rectum;

Vaporization of endometriosis from the cul de sac;

Lysis of adhesions between the recto sigmoid and the pelvic sidewall;

Bilateral pudendal nerve blocks;

Bilateral hernia repairs with placement of Parietex mesh.

K.W. was discharged the day of the surgery with a prescription for Percocet.

10. Post-surgically, K.W. reported a marked improvement in her symptoms for approximately 9 weeks. On May 25, 2001, however, her symptoms abruptly returned.

11. On June 11, 2001, K.W. consulted Dr. Metzger and reported pain and constipation. Dr. Metzger diagnosed the pain as post surgical neuropathy and attempted treatment with injections of local anesthetics. This treatment was unsuccessful on June 11, 2001 and again on June 27, 2001.

12. On July 25, 2001, Dr. Metzger examined K.W., who was again complaining of pain and bowel symptoms. Dr. Metzger referred K.W. for physical therapy and for depression. No further evaluation of bowel status was ordered or performed.

13. On August 19, 2001, K.W. suffered an acute exacerbation of her pain and was seen at the Stanford Hospital Emergency Room. Dr. Metzger's partner declined to see K.W. while she was at Stanford. On August 20, 2001, Dr. Metzger saw the patient in her office. At that time, K.W. stated that a liquid diet decreased her pain and that enemas were needed to pass stool. Dr. Metzger opined that K.W.'s pain was related to the iliolinguinal and genitofemoral nerves being trapped in the inguinal canals. Injections of local anesthetic did not relieve the pain. No diagnostic studies were ordered regarding the bowel symptoms.

14. Dr. Metzger saw K.W. again on August 22, 2001 and on August 27, 2001. On both occasions the patient complained of continuing bowel problems. No diagnostic tests were ordered or performed.

15. Dr. Metzger performed a second laparoscopic surgical procedure on August 30, 2001. There is no indication that she performed a physical examination prior to this surgery. Dr. Metzger's surgical report indicates that she performed the following surgical procedures:

> Lysis of adhesions to correct recto sigmoid kink and to remove adhesions in the area of prior surgical repair;
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> Reexploration of site of previous hernia repair, removal of scar tissue and old mesh, suture of new mesh to block access to the inguinal canal.

16. Dr. Metzger performed a third laparoscopic procedure on September 5, 2001. There is no indication that a physical examination was performed prior to this surgery. Dr. Metzger's note reports the following surgical procedures:

> Removal of adhesions with a blunt instrument;
>
> The area of mesh that was not adherent to the peritoneum was stitched to the peritoneum.

17. Shortly after this third procedure, K.W. reported a persistence of bowel pain. On October 8, 2001, a different physician performed surgery to repair a small anterior rectocele and to remove scar tissue that caused the vagina to be stenotic. On December 1, 2001, a team of different physicians removed the patient's sigmoid colon. Subsequent to this surgery, K.W. stated that most of her symptoms were gone.

18. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. During her initial examination and evaluation of K.W. in January 2001, Dr. Metzger did not perform or annotate a complete rectal examination nor did she take a complete sexual history. Both these omissions were extreme departures from the standard of care in a patient complaining of chronic constipation and pelvic pain.

B. In March 2001, Dr. Metzger performed hernia repair surgery in the absence of any symptoms to justify hernia repair. This constituted unnecessary treatment and an extreme departure from the standard of care. It also indicates a lack of knowledge and ability. In addition, her failure to discuss and/or to document any discussion of the purpose of the surgery and the odds of achieving the stated objective constituted an extreme departure. In this surgery, Dr. Metzger's surgical technique also fell below the standard of practice. Specifically, her failure to use a backstop with a surgical laser was a departure from the standard of care; her use of electro cautery on bowel tissue to control bleeding with the possibility of compromising bowel integrity was an extreme departure; and her use of Marcaine pudendal block during general anesthesia, which meant she was unable to assess the efficacy of this treatment because her patient was unconscious, was a departure.

C. Post-surgically, Dr. Metzger's failure to refer this patient to another diagnostician after complaints of severe rectal pain unrelieved by trigger point injections on June 11, 2001 and June 27, 2001 constituted a departure from the standard of care as did her failure to follow up with additional studies after the patient went to the emergency room on August 19, 2001 complaining of acute pain and the need for enemas to pass stool. Dr. Metzger also departed from the standard of care in failing to refer the patient to a specialist after her complaints on August 22, 2001 and August 27, 2001 that she could not have a bowel movement or pass flatus without a high colonic enema. Cumulatively, these failures constituted an extreme departure from the standard of care.

D. With regard to the surgeries in August and September 2001, the failure to conduct or to note a pelvic or rectal exam prior to surgery was an extreme departure from the standard of care..

19. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, and 2234(b), (c) and (d).

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SECOND CAUSES FOR DISCIPLINE

(PATIENT B.O.)

(Gross Negligence, Repeated Negligence Acts, Incompetence, Excessive Treatment, Prescribing Without Medical Indication, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

20. Patient B.O. first consulted Dr. Metzger on November 1, 1999 with complaints of pelvic pain, primarily in the left side, right-sided sciatic pain extending into her right leg, constipation, and depression. Prior to this initial consultation, B.O. had had two earlier surgeries for pelvic pain with other physicians in 1997 and in 1999. Dr. Metzger performed a physical examination, recommended dietary changes, referred the patient for physical therapy, and changed her prescription for oral contraceptives. Ms. O. returned to Dr. Metzger in February 2000. Again, Dr. Metzger performed a physical examination, referred her for physical therapy, and treated her with diet and medications including changing her birth control prescription.

21. Ms. O. left Dr. Metzger's care and was seen at UCSF. On May 25, 2002, Ms. O. had a third surgical procedure for pelvic pain at UCSF. On this occasion, the physicians observed extensive adhesions in the abdomen and pelvis that obscured visualization of the pelvic organs. For this reason, these surgeons determined not to continue the operation.

22. On July 3, 2002, Ms. O. returned to Dr. Metzger's care. On January 14, 2003, Dr. Metzger performed laparoscopic surgery at Menlo Park Surgical Hospital. According to her operative report, Dr. Metzger removed small bowel adhesions, cauterized the omentum with bipolar cautery, lysed adhesions around the rectum, sigmoid, cecum, ovaries, and tubes, removed a normal appendix and two small uterine fibroids, and repaired bilateral hernias. The bill for this procedure was in excess of $16,000.

23. Two days after this surgery, Ms. O. was admitted to St. Luke's Hospital in San Francisco suffering from life-threatening septic shock, peritonitis, and respiratory distress syndrome. A team of surgeons performed emergency surgery to repair injuries to the small bowel and the intestinal wall near the rectum. On January 30, 2003, Ms. O. was readmitted to the hospital, again very ill. Again, she had to undergo extensive emergency surgery to repair a

rupture of the bowel wall near the rectum. She was not discharged from the hospital until February 19, 2003.

24. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Dr. Metzger's records contain no documentation to indicate any preoperative discussion regarding the patient's chances of having her pain helped by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. Dr. Metzger performed surgery to repair bilateral hernias. There is no indication whatsoever that these hernias actually existed. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, Dr. Metzger exhibited extremely poor surgical technique during the surgery on January 14, 2003. Specifically, her extensive use of electro cautery on bowel tissue during surgery constituted an extreme departure from the standard of care. Her failure to employ a backstop while using a surgical laser to remove adhesions was a departure from the standard of practice. Her failure to conduct a thorough investigation of injury to bowel tissue after use of electro cautery was an extreme departure. Her failure to identify a herniation of the muscularis layer of the small intestine which had been injured by electro cautery was a departure. Her failure to conduct an adequate inspection of the bowel area just above the rectum after use of electro cautery was a departure. Her continued use of a CO_2 laser when visualization became very poor due to smoke caused by previous dissections constituted an extreme departure.

C. Post-surgically, Dr. Metzger's failure accurately to report surgical findings of submucous myomas constituted a departure from the standard of practice, creation of a false medical record, and a failure to maintain accurate medical records. Her failure to give B.O. appropriate postoperative instructions regarding lifting and absence from work was a departure from the standard of practice. Her postoperative prescriptions for Oxycontin and Percocet constituted a departure from the standard of practice and excessive and inappropriate

prescription of pain medication. Her charge of $1900.00 for repair of the right ureter, which was not touched during surgery, constituted an extreme departure from the standard of practice, creation of a false medical record, and failure to maintain accurate records.

25. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234(b), (c), and (d), 2242, 2261, and 2266.

THIRD CAUSES FOR DISCIPLINE

(PATIENT S.S.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Excessive Prescribing, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

26. Patient S. S. consulted Dr. Metzger in February 2001 after undergoing two laparoscopic surgeries performed by other physicians in 1997 and 1999. When she consulted Dr. Metzger, Ms. S. complained of painful menstruation, right lower pelvic pain radiating to her anterior right thigh, chronic constipation, and frequent urination.

27. Dr. Metzger performed a physical examination and an ultrasound of the patient's pelvis on February 14, 2001. The physical examination notes commented upon tenderness in the patient's right adnexa but said the left side was normal. The ultrasound examination notes said that the left ovary was tender and made no mention of the right. Dr. Metzger's impression was that the patient had painful periods, "endometriosis, bilateral groin pain (suspected occult inguinal hernias), right ovarian vein syndrome, hypermenorrhea"..."pelvic floor tension myalgia, pudendal neuralgia, symptomatic uterine retroversion," etc. Dr. Metzger then scheduled Ms. S. for surgery.

28. The first of Ms. S.'s two surgeries with Dr. Metzger occurred on March 20, 2001 at Recovery Inn of Menlo Park. The operation included cystoscopy; laparoscopy: vaporization of endometriosis from the anterior bladder area, excision of the peritoneum from the posterior cul-de-sac to remove endometriosis, lysis of adhesions about the pelvic sidewall and sigmoid colon, excision of endometriosis over both ureters, uterine suspension, bilateral groin explorations with hernia repair, and bilateral ovarian vein ligations; hysteroscopy: removal of

multiple endometrial polyps; and treatment of pudendal neuralgia with the injection of local anesthesia.

29. On March 26, 2001, Ms. S. had a postoperative visit in which she complained of pain and incomplete emptying of her bladder. Dr. Metzger performed a second laparoscopy on March 27, 2001 at Recovery Inn to examine for newly formed adhesions. During this procedure, Dr. Metzger lysed multiple adhesions.

30. On April 2, April 7, and April 9, 2001, Ms. S. complained to Dr. Metzger of continued pain unrelieved by narcotic medication. On April 25, 2001, Ms. S. complained that she was unable to urinate and had to self-catheterize in order to void. Dr. Metzger examined Ms. S., noted that she had "pelvic floor dysfunction," and referred her for physical therapy. She made no referral to a neurologist or to a urologist. Over the succeeding months, Ms. S. continued to complain of pelvic pain shooting down the front and back of her legs all the way to the ankles. Dr. Metzger treated this pain with prescriptions for narcotics, injections of local anesthetic, and referrals for physical therapy.

31. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Dr. Metzger's records contain no documentation to indicate any preoperative discussion regarding the patient's chances of having her pain helped by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. Dr. Metzger's records reflect a preoperative diagnosis of dyspareunia but the patient's chart does not reflect a complete and thorough history exploring the issue of pain during sexual intercourse. It is an extreme departure from the standard of care for a patient to be taken to surgery for dyspareunia without a complete and thorough history.

C. Prior to the surgery of March 20, 2001, Dr. Metzger administered an ultrasound examination by which she diagnosed ovarian vein syndrome. This is a departure from the standard of practice; C.T., MRI, or angiography is normally used to diagnose dilated blood vessels. In addition, there are no notes in this patient's record indicating that, prior to

surgery, Dr. Metzger discussed with her the chances that ligating her ovarian veins would relieve her pain. Failure to obtain informed consent for this procedure represents a departure from the standard of care.

D. During the surgery on March 20, 2001, Dr. Metzger ligated both the patient's ovarian arteries and veins. The preoperative consent and the surgical note both indicated that the physician intended to remove only the ovarian veins. Subjecting this patient to an unconsented non-emergency surgical procedure constituted an extreme departure from the standard of care. In addition, the discrepancy between what Dr. Metzger stated that she intended to do and what she actually did may indicate that she does not understand the anatomy of blood flow to the ovaries. This constitutes incompetence. Dr. Metzger dictated that "both ovarian veins were dilated." This statement is false; the videotape of the surgery shows that both ovarian vessels were of normal size. Misrepresentation of factual surgical findings constitutes another extreme departure from the standard of care.

E. During the surgery of March 20, 2001, Dr. Metzger exhibited very poor surgical technique by using a CO_2 laser without a backstop, resulting in numerous inadvertent injuries to pelvic tissue. This constituted a departure from the standard of practice.

F. During the surgery of March 20, 2001, Dr. Metzger injected an anesthetic agent as a treatment for pudendal neuralgia. There is no indication in the record that Dr. Metzger obtained the necessary informed consent for this surgical procedure. Specifically, there is no documentation of a discussion of the odds that this surgical procedure would relieve the patient's symptoms. Failure to obtain this informed consent constituted an extreme departure from the standard of practice.

G. Dr. Metzger's operative report for the surgery performed on March 20, 2001 states that this patient had "bilateral indirect inguinal hernias," "bilateral femoral hernias," "bilateral obturator hernias," and a "right direct hernia." These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings

constitutes a distinct extreme departure.

H. Dr. Metzger's operative report for the surgery performed on March 20, 2001 states "The recto sigmoid was densely adherent to the peritoneum immediately superior to the left ovarian vein." What Dr. Metzger identified as dense adhesions were actually normal peritoneal reflections. This inaccurate operative note constitutes either incompetence or a deliberate falsification of medical records, an extreme departure from the standard of practice.

I. Following the surgery of March 27, 2001, Dr. Metzger noted in her office chart that on that date she had excised "30% reform adh," indicating that a substantial percentage of the adhesions discovered in Dr. Metzger's second surgery pre-existed the surgery of March 20, 2001. This is not true. This patient had no adhesions at the time of Dr. Metzger's first surgery. All the adhesions identified in the second surgery were directly related to the surgery of March 20, 2001. Dr. Metzger's misstatement of fact constitutes an extreme departure from the standard of practice.

J. The amount of narcotic medication prescribed to this patient at the time of Dr. Metzger's first surgery was excessive and represents a departure from the standard of care. The fact that these prescriptions were continued in large amounts over a course of months despite the fact that the patient complained that the narcotics were not helping her represents an extreme departure from the standard of practice.

32. Therefore, cost for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2261, and 2266.

FOURTH CAUSES FOR DISCIPLINE

(PATIENT K.R.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Excessive Prescribing, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

33. Patient K.R. first contacted Dr. Metzger's office in November 2002, after undergoing a number of surgical procedures for pain between 1996 and 2002. In a report she completed on November 7, 2002, K. R. complained of severe cyclic pelvic pains, painful bowel

movements, and low back pains. An MRI performed in January 2000 (i.e. long before she consulted Dr. Metzger) showed degenerative disc disease, which could cause lower back pain.

34. Dr. Metzger did not physically examine this patient until December 5, 2002. Prior to that physical examination, however, she scheduled the patient for surgery. In fact, on November 13, 2002, Dr. Metzger's office completed a "surgery scheduling request" proposing a diagnostic laparoscopy, excision of endometriosis, enterolysis, ureterolysis, and possible bilateral groin exploration. On November 21, 2002, Dr. Metzger's nurse practitioner wrote a letter to the Social Security Administration stating that this patient was scheduled to have these procedures as well as excision of an ovarian remnant, possible hernia repair, and possible bilateral pudendal block on December 5, 2002.

35. On December 10, 2002, Dr. Metzger performed the first of two surgeries on this patient at Menlo Park Surgical Hospital, formerly Recovery Inn of Menlo Park. Her operative report indicates the following postoperative diagnosis: "endometriosis of the cul-de-sac, bilateral ovarian remnants, bilateral indirect, femoral and obturator hernias, pudendal neuralgia and extensive bowel adhesions." Among other procedures, her operative report notes "repair of bilateral indirect, femoral and obturator hernias using Parietex mesh." A pathology report completed on December 12, 2002 found no evidence of endometriosis.

36. Dr. Metzger performed a "second look" laparoscopy at Menlo Park Surgical Hospital on December 17, 2002. During this procedure, she reported that she lysed multiple adhesions.

37. In the succeeding months, K. R. complained of pain "worse than prior to surgery." In June 2003, she consulted with another physician regarding pain relief. This physician discussed three options: (1) do nothing; (2) treatment at a pain clinic; (3) further surgery. In his opinion, the possibility of relief of pain via further surgery was lower than 5 percent.

38. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Dr. Metzger's records contain no documentation to indicate any

preoperative discussion regarding the patient's chances of having her pain helped by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. During the surgery of December 10, 2002, Dr. Metzger exhibited very poor surgical technique by using a CO_2 laser without a backstop, resulting in numerous inadvertent injuries to pelvic tissue. This constituted a departure from the standard of practice.

C. Dr. Metzger's operative report for the surgery performed on December 10, 2002 states that this patient had "bilateral indirect, femoral and obturator hernias," which Dr. Metzger repaired. These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings constitutes a distinct extreme departure.

39. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2261, and 2266.

FIFTH CAUSES FOR DISCIPLINE

(PATIENT G.W.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

40. Patient G. W. contacted Dr. Metzger's office in July 2002 after learning of her practice through an Internet support group organized around the topic of vulvodynia. Her chief complaint was pain, including bladder and urethral pain, vulvar burning, dysmenorrhea, rectal pain, right lower quadrant abdominal pain, and clitoral pain and hypersensitivity.

41. Dr. Metzger first examined this patient on September 16, 2002. That same day, her office submitted a surgery scheduling request for procedures including laparoscopy, excision of endometriosis, entrolysis, ureterolysis, bilateral groin exploration, possible right ovarian vein ligation, bilateral pudendal block, submucous myomectomy, and cystoscopy with hydro distention.

42. Dr. Metzger performed the first of two surgeries on this patient on October 1, 2002 at Menlo Park Surgical Hospital. Her operative note listed 13 procedures including "hysteroscopy with septoplasty, " "repair of left direct, indirect, femoral and obturator hernias," and "repair of right indirect and femoral hernias." After this surgery, the patient described no improvement in her symptoms.

43. Through October, November, and December 2002, G. W. complained of "excruciating pain" which she described as significantly worse than before her operation. Dr. Metzger treated G. W. with bilateral pudendal blocks and trigger point injections.

44. Dr. Metzger performed a second surgery on G. W. at Menlo Park Surgical Hospital on December 26, 2002. Prior to this surgery, on December 19, 2002, Dr. Metzger documented a discussion with G. W. in her chart regarding possible outcomes. Dr. Metzger's notes indicate that she said it was her experience that "approximately 80 %" of patients experienced improvement following surgery. Following this second surgery, the patient complained of horrific pain and the return of all her preoperative symptoms plus more, including pain around all the incision sites, the labia minora, and the labia majora.

45. After several months, G. W. sought treatment with other physicians.

46. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Prior to the surgery of October 1, 2002, Dr. Metzger's records contain no documentation to indicate a preoperative discussion regarding the patient's chances of being "cured" by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. During the surgery of October 1, 2002, Dr. Metzger exhibited very poor surgical technique by using a backstop with her CO_2 laser only intermittently, resulting in numerous inadvertent injuries to pelvic tissue. Due to this inappropriate technique, Dr. Metzger's laser cut right into the left ovarian vein. Repair of this vein would have been very difficult. The standard of practice would have been to admit this complication and to cauterize

or ligate the vessel. Instead, Dr. Metzger removed it and made no mention of the accident in her operative report. The poor surgical technique constituted an extreme departure from the standard of practice. The failure to note the surgical complication was a departure from the standard of practice.

C. Dr. Metzger's operative report for the surgery performed on October 1, 2002 contains numerous misstatements of fact. For example, she describes "dense adhesions between the recto sigmoid and the left pelvic sidewall and the left pelvic brim." This is a gross overstatement and represents a simple departure from the standard of practice. Her statement that these dense adhesions "were interfering with the flow of blood through the ovarian vessels" is untrue. This fabrication represents an extreme departure from the standard of practice. Her statement that the ovarian veins were dilated is also untrue. This is an extreme departure from the standard of practice. The operative report states that Dr. Metzger removed both ovarian veins. In fact, she removed both ovarian arteries and veins. This misrepresentation of fact constitutes a further extreme departure from the standard of practice and also indicates incompetence.

D. Dr. Metzger states that this patient had "left direct, indirect, femoral and obturator hernias," and "right indirect and femoral hernias," which Dr. Metzger repaired. These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings constitutes a distinct extreme departure.

E. During the surgery of October 1, 2002, Dr. Metzger removed a small uterine septum. No patient consent was obtained for this procedure. This represents a departure from the standard of practice.

F. Dr. Metzger prescribed excessive and inappropriate amounts of pain medication before and after the surgery of October 1, 2002. Specifically, after her first examination of this patient on July 16, 2002, she prescribed 2 boxes of Duragesic (Fentanyl) (a Schedule II opioid analgesic) patches (25 mg/h; 10 patches in all) as well as 6 Actiq (Fentanyl)

200mcg "lollipops." Actiq is also a Schedule II opioid analgesic. On September 17, 2002, Dr. Metzger issued this patient prescriptions for 100 Oxycontin 10 mg. and for 100 Percocet 5/325. Both are Schedule II opioid analgesics. On or about September 26, 2002, Dr. Metzger issued this patient a prescription for 100 Dilaudid 2 mg. Dilaudid is a Schedule II narcotic. On September 30, 2002, she issued this patient a prescription for 100 MS Contin 15 mg. MS Contin is a Schedule II morphine-based analgesic. Post-surgically on October 2, 2004, Dr. Metzter issued this patient a prescription for 100 Demerol 50 mg. Demerol is a Schedule II narcotic which can cause seizures. As a result of the Demerol, this patient suffered a seizure requiring hospitalization. These excessive and inappropriate prescriptions for controlled substances constituted excessive prescribing and a departure from the standard of care.

G. Dr. Metzger's statement, prior to the surgery of December 26, 2002, that 80% of patients experienced improvement constituted giving a patient an unreasonable and unsubstantiated hope in order to obtain her consent to surgery and represents an extreme departure from the standard of practice.

47. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2242, 2261, and 2266.

SIXTH CAUSES FOR DISCIPLINE

(PATIENT S.E.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Excessive Prescribing, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

48. Patient S.E. first contacted Dr. Metzger's office in August 2000. At that time, she was 32 years old. She complained of back pain, pelvic pain, severe cramps, and migraine headaches. Prior to this time, S.E. had had a long history of pelvic and abdominal pain. She had had a tubal ligation at the age of 22 and, subsequently, had had three laparoscopic surgeries for pelvic pain. In August 2000, S.E. had laparoscopic pelvic surgery performed by another physician. In September 2000, she returned to Dr. Metzger's office, complaining of continued pain, fatigue, and severe migraines. In January 2001, after several nerve block

treatments, Dr. Metzger suggested additional surgery. The patient's chart contains no indication of a discussion regarding the chances that her pain would be resolved by further surgery.

49. Dr. Metzger performed surgery at Recovery Inn of Menlo Park on February 20, 2001. Her preoperative diagnosis includes "endometriosis," and "bilateral pudendal neuralgia." Her operative report indicates that, among other things, she performed the following surgical procedures: "excision of endometriosis," "enterolysis (excision of endometriosis over the rectum)," " bilateral direct hernia repair," and " bilateral indirect hernia repair."

50. Reports of subsequent treating physicians indicate that S.E. achieved no lasting pain relief as a result of this surgical procedure.

51. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Prior to the surgery of February 20, 2001, Dr. Metzger's records contain no documentation to indicate a preoperative discussion regarding the patient's chances of achieving pelvic pain relief as a result of the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. During the surgery of February 20, 2001, Dr. Metzger exhibited poor surgical technique by using a monopolar cautery directly on the rectum. Bipolar cautery or the use of hemoclips or suture are the techniques for hemostasis in this area. This constituted a departure from the standard of practice.

C. Dr. Metzger's operative report states that this patient had bilateral direct and indirect hernias. These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings constitutes a distinct extreme departure.

E. Prior to surgery, Dr. Metzger diagnosed endometriosis and, in her operative report, she states that she excised endometriosis. No biopsy or pathological findings exist to support the diagnosis of endometriosis. In fact, a pathology report from the August 2000

surgery indicated no active endometriosis at that time. Performing surgery on a patient for a condition that is not supported by medical evidence is a departure from the standard of practice.

F. Prior to surgery, Dr. Metzger diagnosed pudendal neuralgia. This is not a syndrome accepted by the majority of obstetrical and gynecological practitioners. It is an extreme departure from the standard of care to take a patient to surgery for a diagnosis that does not exist.

G. During surgery, Dr. Metzger administered bilateral pudendal nerve blocks while S.E. was under general anesthesia. Such nerve blocks are generally administered while the patient is conscious so that their efficacy can be appropriately evaluated. Administration of these nerve blocks while the patient was unconscious constituted a departure from the standard of practice.

H. From January 2001 until August 2001, Dr. Metzger prescribed an excessive amount of narcotic and non-narcotic pain medications to this patient. The quantity and the duration of these prescriptions constitute a departure from the standard of practice and excessive prescribing.

52. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2261, and 2266.

SEVENTH CAUSES FOR DISCIPLINE

(Advertising in Violation of Statutes and Regulations Pertaining to Fictitious Names)

53. Section 2272 provides that any advertising of the practice of medicine in which the licensee fails to use his or her own name or approved fictitious name constitutes unprofessional conduct.

54. Section 2285 provides that the use of any name other than the licensee's own in any public communication or announcement of her practice without a fictitious name permit constitutes unprofessional conduct.

55. Section 2415 provides that if a licensee obtains a fictitious name permit, she "may practice under that name...." (Emphasis added.) Until January 1, 2004, section 2415(b)(3) also required that the fictitious name under which the licensee proposes to practice

must include one of the following designations: "medical group," "medical clinic," "medical corporation," "medical associates," "medical center," or "medical office."

56. Section 1350.3 of Title 16 of the California Code of Regulations provides that a fictitious name must contain one of the following six designations: "Medical Group," "Medical Clinic," Podiatrist Group," "Podiatrist Clinic," "Podiatry Group," or "Podiatry Clinic." "Such designations shall be contiguous in the namestyle and not separated by intervening words."

57. Section 1344 of Title 16 of the California Code of Regulations provides that, except as provided in section 1350.3, the name of a professional corporation "and any name or names under which it may render professional services shall include words or abbreviations denoting corporate existence limited to one of the following: 'Medical Corporation,' 'Medical Corp.,' 'Podiatry Corporation,' 'Podiatry Corp.,' 'Professional Corporation,' 'Prof. Corp.,' 'Corporation,' 'Corp.', 'Incorporated,' or 'Inc.'" (Emphasis added.)

58. On April 20, 2000, Dr. Metzger obtained a fictitious name permit from the Medical Board of California in the name of "Helena Women's Health Medical Group, Inc." However, beginning in March 2000 and continuing until at least December 2003, she inappropriately used the name "Helena Women's Health" as the name of her practice without indicating the practice's corporate status and without including the words "Medical Group" as required under section 2415 and the regulations. This name was used routinely as the name of Dr. Metzger's medical practice. It appeared on her website, on letterhead, on forms, on questionnaires filled out by patients, and on handouts distributed to patients.

59. Dr. Metzger's fictitious name permit expired on April 30, 2002 and was not renewed. Nonetheless, she continued to use the name "Helena Women's Health" as the name of her medical practice, in violation of the statutes and regulations, for more than 19 months, until at least December 24, 2003.

60. No later than January 19, 2004, Dr. Metzger began seeing patients at a practice she advertised as "Harmony Women's Health." She did not obtain a fictitious name permit for this practice before March 11, 2004. When the permit was issued, it was not in the

name "Harmony Women's Health," but in the name "Harmony Women's Health Inc." Dr. Metzger continues to use the name "Harmony Women's Health" as the name of her practice, although this name is not the name the Board has permitted her to use.

61. Therefore, Dr. Metzger is subject to disciplinary action for multiple acts of unprofessional conduct in violation of sections 2272 and 2285 and in violation of section 2234(a) for acts contrary to the statutes and regulations pertaining to use of fictitious names.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 50171 issued to Deborah Ann Metzger, M.D.;

2. Ordering respondent to pay the division the reasonable costs of the investigation and enforcement of this case, and, if she is placed on probation, the costs of probation monitoring;

3. Prohibiting respondent from supervising physician assistants;

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

DATED: August 12, 2004

DAVID T. THORNTON
Interim Executive Director
Medical Board of California

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

In The Matter of the Accusation Against: DEBORAH ANN METZGER, M.D. 851 Fremont Avenue, Suite 104 Los Altos, CA 94024 Physician and Surgeon's Certificate No. C 50171, Respondent.	Case Nos. 03 2002 130173 03 2003 144277 03 2003 144905 03 2003 147320 03 2003 149074 03 2003 150466 OAH No. **ACCUSATION**

Complainant alleges:

PARTIES

1. David T. Thornton ("complainant") brings this accusation solely in his official capacity as the Interim Executive Director of the Medical Board of California ("board").

2. On November 20, 1998, the board issued Physician and Surgeon Certificate No. C 50171 to Deborah Ann Metzger, M.D. ("Dr. Metzger" or "respondent") and at all times relevant to the charges brought in this accusation, this license was in full force and effect. Unless renewed, it will expire on March 31, 2006. On April 8, 2004, in response to a petition filed under authority of Government Code section 11529, the Office of Administrative

Hearings issued an interim order prohibiting Dr. Metzer from performing surgery. That order remains in effect pending the hearing and determination of this accusation. There is no board record of disciplinary action against this certificate.

JURISDICTION

3. This accusation is brought before the board under the authority of the following sections of the Business and Professions Code.[1/]

A. 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 or suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, or have such other action taken in relation to discipline as the Division of Medical Quality of the board ("division") deems proper.

B. Section 2234 of the code provides, in pertinent part, that the division "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

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1. All statutory references are to the Business and Professions Code unless otherwise indicated.

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...."

C. Section 725 of the Code states, in pertinent part: "Repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist."

D. Section 2242 of the Code states, in pertinent part:

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

E. Section 2261 of the Code states: "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

F. 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."

G. Section 125.3 of the Code provides, in part, that the board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

4. Welfare and Institutions Code section 14124.12 provides, in part, that a physician whose license has been placed on probation by the Medical Board shall not be reimbursed by Medi-Cal for "the type of surgical service or invasive procedure that gave rise to the probation."

5. Dr. Metzger is a board-certified obstetrician and gynecologist. At all times pertinent to this accusation, she maintained a practice at Helena Women's Health in Los Altos.

FIRST CAUSES FOR DISCIPLINE

(PATIENT K.W.)

(Gross Negligence/Repeated Negligent Acts)

6. Patient K.W.[2/] first met with respondent on January 3, 2001. At that time, K.W. was 54 years old. She complained of pain on the left side of her urethra, vagina, and rectum with pain radiating to the inside of her left thigh and left hip and to the left of her coccyx. She also complained of chronic constipation and left lower back pain.

7. K.W. had a history of pelvic pain many years in the past and, at that time, had been diagnosed with endometriosis and adenomyosis. This had been treated surgically, at which time her uterus, tubes, and ovaries were removed and her pain was relieved. When she first consulted Dr. Metzger in 2001, K.W.'s symptoms were of about 16 months' duration.

8. After taking a history and performing a physical examination, Dr. Metzger recorded the following impressions:

Possible recurrent endometriosis;

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2. Initials, rather than full names, are used in this accusation to protect the patients' privacy insofar as possible. The patients' full names are known to respondent.

Bilateral pudendal neuralgias;

Probable adhesions;

Probable occult inguinal hernias;

Need for pain management.

9. After a series of tests, Dr. Metzger performed her first surgery on K.W. on March 20, 2001 at Recovery Inn of Menlo Park (subsequently known as Menlo Park Surgical Hospital). She reported the following surgical procedures:

Excision of endometriosis about the left ureter and rectum;

Vaporization of endometriosis from the cul de sac;

Lysis of adhesions between the recto sigmoid and the pelvic sidewall;

Bilateral pudendal nerve blocks;

Bilateral hernia repairs with placement of Parietex mesh.

K.W. was discharged the day of the surgery with a prescription for Percocet.

10. Post-surgically, K.W. reported a marked improvement in her symptoms for approximately 9 weeks. On May 25, 2001, however, her symptoms abruptly returned.

11. On June 11, 2001, K.W. consulted Dr. Metzger and reported pain and constipation. Dr. Metzger diagnosed the pain as post surgical neuropathy and attempted treatment with injections of local anesthetics. This treatment was unsuccessful on June 11, 2001 and again on June 27, 2001.

12. On July 25, 2001, Dr. Metzger examined K.W., who was again complaining of pain and bowel symptoms. Dr. Metzger referred K.W. for physical therapy and for depression. No further evaluation of bowel status was ordered or performed.

13. On August 19, 2001, K.W. suffered an acute exacerbation of her pain and was seen at the Stanford Hospital Emergency Room. Dr. Metzger's partner declined to see K.W. while she was at Stanford. On August 20, 2001, Dr. Metzger saw the patient in her office. At that time, K.W. stated that a liquid diet decreased her pain and that enemas were needed to pass stool. Dr. Metzger opined that K.W.'s pain was related to the iliolinguinal and genitofemoral nerves being trapped in the inguinal canals. Injections of local anesthetic did not relieve the

pain. No diagnostic studies were ordered regarding the bowel symptoms.

14. Dr. Metzger saw K.W. again on August 22, 2001 and on August 27, 2001. On both occasions the patient complained of continuing bowel problems. No diagnostic tests were ordered or performed.

15. Dr. Metzger performed a second laparoscopic surgical procedure on August 30, 2001. There is no indication that she performed a physical examination prior to this surgery. Dr. Metzger's surgical report indicates that she performed the following surgical procedures:

> Lysis of adhesions to correct recto sigmoid kink and to remove adhesions in the area of prior surgical repair;
>
> Reexploration of site of previous hernia repair, removal of scar tissue and old mesh, suture of new mesh to block access to the inguinal canal.

16. Dr. Metzger performed a third laparoscopic procedure on September 5, 2001. There is no indication that a physical examination was performed prior to this surgery. Dr. Metzger's note reports the following surgical procedures:

> Removal of adhesions with a blunt instrument;
>
> The area of mesh that was not adherent to the peritoneum was stitched to the peritoneum.

17. Shortly after this third procedure, K.W. reported a persistence of bowel pain. On October 8, 2001, a different physician performed surgery to repair a small anterior rectocele and to remove scar tissue that caused the vagina to be stenotic. On December 1, 2001, a team of different physicians removed the patient's sigmoid colon. Subsequent to this surgery, K.W. stated that most of her symptoms were gone.

18. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. During her initial examination and evaluation of K.W. in January 2001, Dr. Metzger did not perform or annotate a complete rectal examination nor did she take a complete sexual history. Both these omissions were extreme departures from the standard of care

in a patient complaining of chronic constipation and pelvic pain.

B. In March 2001, Dr. Metzger performed hernia repair surgery in the absence of any symptoms to justify hernia repair. This constituted unnecessary treatment and an extreme departure from the standard of care. It also indicates a lack of knowledge and ability. In addition, her failure to discuss and/or to document any discussion of the purpose of the surgery and the odds of achieving the stated objective constituted an extreme departure. In this surgery, Dr. Metzger's surgical technique also fell below the standard of practice. Specifically, her failure to use a backstop with a surgical laser was a departure from the standard of care; her use of electro cautery on bowel tissue to control bleeding with the possibility of compromising bowel integrity was an extreme departure; and her use of Marcaine pudendal block during general anesthesia, which meant she was unable to assess the efficacy of this treatment because her patient was unconscious, was a departure.

C. Post-surgically, Dr. Metzger's failure to refer this patient to another diagnostician after complaints of severe rectal pain unrelieved by trigger point injections on June 11, 2001 and June 27, 2001 constituted a departure from the standard of care as did her failure to follow up with additional studies after the patient went to the emergency room on August 19, 2001 complaining of acute pain and the need for enemas to pass stool. Dr. Metzger also departed from the standard of care in failing to refer the patient to a specialist after her complaints on August 22, 2001 and August 27, 2001 that she could not have a bowel movement or pass flatus without a high colonic enema. Cumulatively, these failures constituted an extreme departure from the standard of care.

D. With regard to the surgeries in August and September 2001, the failure to conduct or to note a pelvic or rectal exam prior to surgery was an extreme departure from the standard of care.

19. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, and 2234(b), (c) and (d).

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SECOND CAUSES FOR DISCIPLINE

(PATIENT B.O.)

(Gross Negligence, Repeated Negligence Acts, Incompetence, Excessive Treatment, Prescribing Without Medical Indication, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

20. Patient B.O. first consulted Dr. Metzger on November 1, 1999 with complaints of pelvic pain, primarily in the left side, right-sided sciatic pain extending into her right leg, constipation, and depression. Prior to this initial consultation, B.O. had had two earlier surgeries for pelvic pain with other physicians in 1997 and in 1999. Dr. Metzger performed a physical examination, recommended dietary changes, referred the patient for physical therapy, and changed her prescription for oral contraceptives. Ms. O. returned to Dr. Metzger in February 2000. Again, Dr. Metzger performed a physical examination, referred her for physical therapy, and treated her with diet and medications including changing her birth control prescription.

21. Ms. O. left Dr. Metzger's care and was seen at UCSF. On May 25, 2002, Ms. O. had a third surgical procedure for pelvic pain at UCSF. On this occasion, the physicians observed extensive adhesions in the abdomen and pelvis that obscured visualization of the pelvic organs. For this reason, these surgeons determined not to continue the operation.

22. On July 3, 2002, Ms. O. returned to Dr. Metzger's care. On January 14, 2003, Dr. Metzger performed laparoscopic surgery at Menlo Park Surgical Hospital. According to her operative report, Dr. Metzger removed small bowel adhesions, cauterized the omentum with bipolar cautery, lysed adhesions around the rectum, sigmoid, cecum, ovaries, and tubes, removed a normal appendix and two small uterine fibroids, and repaired bilateral hernias. The bill for this procedure was in excess of $16,000.

23. Two days after this surgery, Ms. O. was admitted to St. Luke's Hospital in San Francisco suffering from life-threatening septic shock, peritonitis, and respiratory distress syndrome. A team of surgeons performed emergency surgery to repair injuries to the small

bowel and the intestinal wall near the rectum. On January 30, 2003, Ms. O. was readmitted to the hospital, again very ill. Again, she had to undergo extensive emergency surgery to repair a rupture of the bowel wall near the rectum. She was not discharged from the hospital until February 19, 2003.

24. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Dr. Metzger's records contain no documentation to indicate any preoperative discussion regarding the patient's chances of having her pain helped by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. Dr. Metzger performed surgery to repair bilateral hernias. There is no indication whatsoever that these hernias actually existed. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, Dr. Metzger exhibited extremely poor surgical technique during the surgery on January 14, 2003. Specifically, her extensive use of electro cautery on bowel tissue during surgery constituted an extreme departure from the standard of care. Her failure to employ a backstop while using a surgical laser to remove adhesions was a departure from the standard of practice. Her failure to conduct a thorough investigation of injury to bowel tissue after use of electro cautery was an extreme departure. Her failure to identify a herniation of the muscularis layer of the small intestine which had been injured by electro cautery was a departure. Her failure to conduct an adequate inspection of the bowel area just above the rectum after use of electro cautery was a departure. Her continued use of a CO_2 laser when visualization became very poor due to smoke caused by previous dissections constituted an extreme departure.

C. Post-surgically, Dr. Metzger's failure accurately to report surgical findings of submucous myomas constituted a departure from the standard of practice, creation of a false medical record, and a failure to maintain accurate medical records. Her failure to give B.O. appropriate postoperative instructions regarding lifting and absence from work was a

departure from the standard of practice. Her postoperative prescriptions for Oxycontin and Percocet constituted a departure from the standard of practice and excessive and inappropriate prescription of pain medication. Her charge of $1900.00 for repair of the right ureter, which was not touched during surgery, constituted an extreme departure from the standard of practice, creation of a false medical record, and failure to maintain accurate records.

25. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234(b), (c), and (d), 2242, 2261, and 2266.

THIRD CAUSES FOR DISCIPLINE

(PATIENT S.S.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Excessive Prescribing, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

26. Patient S. S. consulted Dr. Metzger in February 2001 after undergoing two laparoscopic surgeries performed by other physicians in 1997 and 1999. When she consulted Dr. Metzger, Ms. S. complained of painful menstruation, right lower pelvic pain radiating to her anterior right thigh, chronic constipation, and frequent urination.

27. Dr. Metzger performed a physical examination and an ultrasound of the patient's pelvis on February 14, 2001. The physical examination notes commented upon tenderness in the patient's right adnexa but said the left side was normal. The ultrasound examination notes said that the left ovary was tender and made no mention of the right. Dr. Metzger's impression was that the patient had painful periods, "endometriosis, bilateral groin pain (suspected occult inguinal hernias), right ovarian vein syndrome, hypermenorrhea"..."pelvic floor tension myalgia, pudendal neuralgia, symptomatic uterine retroversion," etc. Dr. Metzger then scheduled Ms. S. for surgery.

28. The first of Ms. S.'s two surgeries with Dr. Metzger occurred on March 20, 2001 at Recovery Inn of Menlo Park. The operation included cystoscopy; laparoscopy: vaporization of endometriosis from the anterior bladder area, excision of the peritoneum from the posterior cul-de-sac to remove endometriosis, lysis of adhesions about the pelvic sidewall

and sigmoid colon, excision of endometriosis over both ureters, uterine suspension, bilateral groin explorations with hernia repair, and bilateral ovarian vein ligations; hysteroscopy: removal of multiple endometrial polyps; and treatment of pudendal neuralgia with the injection of local anesthesia.

29. On March 26, 2001, Ms. S. had a postoperative visit in which she complained of pain and incomplete emptying of her bladder. Dr. Metzger performed a second laparoscopy on March 27, 2001 at Recovery Inn to examine for newly formed adhesions. During this procedure, Dr. Metzger lysed multiple adhesions.

30. On April 2, April 7, and April 9, 2001, Ms. S. complained to Dr. Metzger of continued pain unrelieved by narcotic medication. On April 25, 2001, Ms. S. complained that she was unable to urinate and had to self-catheterize in order to void. Dr. Metzger examined Ms. S., noted that she had "pelvic floor dysfunction," and referred her for physical therapy. She made no referral to a neurologist or to a urologist. Over the succeeding months, Ms. S. continued to complain of pelvic pain shooting down the front and back of her legs all the way to the ankles. Dr. Metzger treated this pain with prescriptions for narcotics, injections of local anesthetic, and referrals for physical therapy.

31. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Dr. Metzger's records contain no documentation to indicate any preoperative discussion regarding the patient's chances of having her pain helped by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. Dr. Metzger's records reflect a preoperative diagnosis of dyspareunia but the patient's chart does not reflect a complete and thorough history exploring the issue of pain during sexual intercourse. It is an extreme departure from the standard of care for a patient to be taken to surgery for dyspareunia without a complete and thorough history.

C. Prior to the surgery of March 20, 2001, Dr. Metzger administered an ultrasound examination by which she diagnosed ovarian vein syndrome. This is a departure

from the standard of practice; C.T., MRI, or angiography is normally used to diagnose dilated blood vessels. In addition, there are no notes in this patient's record indicating that, prior to surgery, Dr. Metzger discussed with her the chances that ligating her ovarian veins would relieve her pain. Failure to obtain informed consent for this procedure represents a departure from the standard of care.

D. During the surgery on March 20, 2001, Dr. Metzger ligated both the patient's ovarian arteries and veins. The preoperative consent and the surgical note both indicated that the physician intended to remove only the ovarian veins. Subjecting this patient to an unconsented non-emergency surgical procedure constituted an extreme departure from the standard of care. In addition, the discrepancy between what Dr. Metzger stated that she intended to do and what she actually did may indicate that she does not understand the anatomy of blood flow to the ovaries. This constitutes incompetence. Dr. Metzger dictated that "both ovarian veins were dilated." This statement is false; the videotape of the surgery shows that both ovarian vessels were of normal size. Misrepresentation of factual surgical findings constitutes another extreme departure from the standard of care.

E. During the surgery of March 20, 2001, Dr. Metzger exhibited very poor surgical technique by using a CO_2 laser without a backstop, resulting in numerous inadvertent injuries to pelvic tissue. This constituted a departure from the standard of practice.

F. During the surgery of March 20, 2001, Dr. Metzger injected an anesthetic agent as a treatment for pudendal neuralgia. There is no indication in the record that Dr. Metzger obtained the necessary informed consent for this surgical procedure. Specifically, there is no documentation of a discussion of the odds that this surgical procedure would relieve the patient's symptoms. Failure to obtain this informed consent constituted an extreme departure from the standard of practice.

G. Dr. Metzger's operative report for the surgery performed on March 20, 2001 states that this patient had "bilateral indirect inguinal hernias," "bilateral femoral hernias," "bilateral obturator hernias," and a "right direct hernia." These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-

existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings constitutes a distinct extreme departure.

H. Dr. Metzger's operative report for the surgery performed on March 20, 2001 states "The recto sigmoid was densely adherent to the peritoneum immediately superior to the left ovarian vein." What Dr. Metzger identified as dense adhesions were actually normal peritoneal reflections. This inaccurate operative note constitutes either incompetence or a deliberate falsification of medical records, an extreme departure from the standard of practice.

I. Following the surgery of March 27, 2001, Dr. Metzger noted in her office chart that on that date she had excised "30% reform adh," indicating that a substantial percentage of the adhesions discovered in Dr. Metzger's second surgery pre-existed the surgery of March 20, 2001. This is not true. This patient had no adhesions at the time of Dr. Metzger's first surgery. All the adhesions identified in the second surgery were directly related to the surgery of March 20, 2001. Dr. Metzger's misstatement of fact constitutes an extreme departure from the standard of practice.

J. The amount of narcotic medication prescribed to this patient at the time of Dr. Metzger's first surgery was excessive and represents a departure from the standard of care. The fact that these prescriptions were continued in large amounts over a course of months despite the fact that the patient complained that the narcotics were not helping her represents an extreme departure from the standard of practice.

32. Therefore, cost for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2261, and 2266.

FOURTH CAUSES FOR DISCIPLINE

(PATIENT K.R.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Excessive Prescribing, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

33. Patient K.R. first contacted Dr. Metzger's office in November 2002, after

undergoing a number of surgical procedures for pain between 1996 and 2002. In a report she completed on November 7, 2002, K. R. complained of severe cyclic pelvic pains, painful bowel movements, and low back pains. An MRI performed in January 2000 (i.e. long before she consulted Dr. Metzger) showed degenerative disc disease, which could cause lower back pain.

34. Dr. Metzger did not physically examine this patient until December 5, 2002. Prior to that physical examination, however, she scheduled the patient for surgery. In fact, on November 13, 2002, Dr. Metzger's office completed a "surgery scheduling request" proposing a diagnostic laparoscopy, excision of endometriosis, enterolysis, ureterolysis, and possible bilateral groin exploration. On November 21, 2002, Dr. Metzger's nurse practitioner wrote a letter to the Social Security Administration stating that this patient was scheduled to have these procedures as well as excision of an ovarian remnant, possible hernia repair, and possible bilateral pudendal block on December 5, 2002.

35. On December 10, 2002, Dr. Metzger performed the first of two surgeries on this patient at Menlo Park Surgical Hospital, formerly Recovery Inn of Menlo Park. Her operative report indicates the following postoperative diagnosis: "endometriosis of the cul-de-sac, bilateral ovarian remnants, bilateral indirect, femoral and obturator hernias, pudendal neuralgia and extensive bowel adhesions." Among other procedures, her operative report notes "repair of bilateral indirect, femoral and obturator hernias using Parietex mesh." A pathology report completed on December 12, 2002 found no evidence of endometriosis.

36. Dr. Metzger performed a "second look" laparoscopy at Menlo Park Surgical Hospital on December 17, 2002. During this procedure, she reported that she lysed multiple adhesions.

37. In the succeeding months, K. R. complained of pain "worse than prior to surgery." In June 2003, she consulted with another physician regarding pain relief. This physician discussed three options: (1) do nothing; (2) treatment at a pain clinic; (3) further surgery. In his opinion, the possibility of relief of pain via further surgery was lower than 5 percent.

38. Dr. Metzger's treatment of this patient included the following departures

and extreme departures from the standard of care:

A. Dr. Metzger's records contain no documentation to indicate any preoperative discussion regarding the patient's chances of having her pain helped by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. During the surgery of December 10, 2002, Dr. Metzger exhibited very poor surgical technique by using a CO_2 laser without a backstop, resulting in numerous inadvertent injuries to pelvic tissue. This constituted a departure from the standard of practice.

C. Dr. Metzger's operative report for the surgery performed on December 10, 2002 states that this patient had "bilateral indirect, femoral and obturator hernias," which Dr. Metzger repaired. These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings constitutes a distinct extreme departure.

39. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2261, and 2266.

FIFTH CAUSES FOR DISCIPLINE

(PATIENT G.W.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

40. Patient G. W. contacted Dr. Metzger's office in July 2002 after learning of her practice through an Internet support group organized around the topic of vulvodynia. Her chief complaint was pain, including bladder and urethral pain, vulvar burning, dysmenorrhea, rectal pain, right lower quadrant abdominal pain, and clitoral pain and hypersensitivity.

41. Dr. Metzger first examined this patient on September 16, 2002. That same day, her office submitted a surgery scheduling request for procedures including laparoscopy, excision of endometriosis, entrolysis, ureterolysis, bilateral groin exploration,

possible right ovarian vein ligation, bilateral pudendal block, submucous myomectomy, and cystoscopy with hydro distention.

42. Dr. Metzger performed the first of two surgeries on this patient on October 1, 2002 at Menlo Park Surgical Hospital. Her operative note listed 13 procedures including "hysteroscopy with septoplasty, " "repair of left direct, indirect, femoral and obturator hernias," and "repair of right indirect and femoral hernias." After this surgery, the patient described no improvement in her symptoms.

43. Through October, November, and December 2002, G. W. complained of "excruciating pain" which she described as significantly worse than before her operation. Dr. Metzger treated G. W. with bilateral pudendal blocks and trigger point injections.

44. Dr. Metzger performed a second surgery on G. W. at Menlo Park Surgical Hospital on December 26, 2002. Prior to this surgery, on December 19, 2002, Dr. Metzger documented a discussion with G. W. in her chart regarding possible outcomes. Dr. Metzger's notes indicate that she said it was her experience that "approximately 80 %" of patients experienced improvement following surgery. Following this second surgery, the patient complained of horrific pain and the return of all her preoperative symptoms plus more, including pain around all the incision sites, the labia minora, and the labia majora.

45. After several months, G. W. sought treatment with other physicians.

46. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Prior to the surgery of October 1, 2002, Dr. Metzger's records contain no documentation to indicate a preoperative discussion regarding the patient's chances of being "cured" by the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. During the surgery of October 1, 2002, Dr. Metzger exhibited very poor surgical technique by using a backstop with her CO_2 laser only intermittently, resulting in numerous inadvertent injuries to pelvic tissue. Due to this inappropriate technique, Dr.

Metzger's laser cut right into the left ovarian vein. Repair of this vein would have been very difficult. The standard of practice would have been to admit this complication and to cauterize or ligate the vessel. Instead, Dr. Metzger removed it and made no mention of the accident in her operative report. The poor surgical technique constituted an extreme departure from the standard of practice. The failure to note the surgical complication was a departure from the standard of practice.

C. Dr. Metzger's operative report for the surgery performed on October 1, 2002 contains numerous misstatements of fact. For example, she describes "dense adhesions between the recto sigmoid and the left pelvic sidewall and the left pelvic brim." This is a gross overstatement and represents a simple departure from the standard of practice. Her statement that these dense adhesions "were interfering with the flow of blood through the ovarian vessels" is untrue. This fabrication represents an extreme departure from the standard of practice. Her statement that the ovarian veins were dilated is also untrue. This is an extreme departure from the standard of practice. The operative report states that Dr. Metzger removed both ovarian veins. In fact, she removed both ovarian arteries and veins. This misrepresentation of fact constitutes a further extreme departure from the standard of practice and also indicates incompetence.

D. Dr. Metzger states that this patient had "left direct, indirect, femoral and obturator hernias," and "right indirect and femoral hernias," which Dr. Metzger repaired. These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings constitutes a distinct extreme departure.

E. During the surgery of October 1, 2002, Dr. Metzger removed a small uterine septum. No patient consent was obtained for this procedure. This represents a departure from the standard of practice.

F. Dr. Metzger's statement, prior to the surgery of December 26, 2002, that 80% of patients experienced improvement constituted giving a patient an

unreasonable and unsubstantiated hope in order to obtain her consent to surgery and represents an extreme departure from the standard of practice.

47. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2261, and 2266.

SIXTH CAUSES FOR DISCIPLINE

(PATIENT S.E.)

(Gross Negligence, Repeated Negligent Acts, Incompetence, Excessive Treatment, Excessive Prescribing, Creating False Medical Documents, Failure to Maintain Accurate Medical Records)

48. Patient S.E. first contacted Dr. Metzger's office in August 2000. At that time, she was 32 years old. She complained of back pain, pelvic pain, severe cramps, and migraine headaches. Prior to this time, S.E. had had a long history of pelvic and abdominal pain. She had had a tubal ligation at the age of 22 and, subsequently, had had three laparoscopic surgeries for pelvic pain. In August 2000, S.E. had laparoscopic pelvic surgery performed by another physician. In September 2000, she returned to Dr. Metzger's office, complaining of continued pain, fatigue, and severe migraines. In January 2001, after several nerve block treatments, Dr. Metzger suggested additional surgery. The patient's chart contains no indication of a discussion regarding the chances that her pain would be resolved by further surgery.

49. Dr. Metzger performed surgery at Recovery Inn of Menlo Park on February 20, 2001. Her preoperative diagnosis includes "endometriosis," and "bilateral pudendal neuralgia." Her operative report indicates that, among other things, she performed the following surgical procedures: "excision of endometriosis," "enterolysis (excision of endometriosis over the rectum)," " bilateral direct hernia repair," and " bilateral indirect hernia repair."

50. Reports of subsequent treating physicians indicate that S.E. achieved no lasting pain relief as a result of this surgical procedure.

51. Dr. Metzger's treatment of this patient included the following departures and extreme departures from the standard of care:

A. Prior to the surgery of February 20, 2001, Dr. Metzger's records contain no documentation to indicate a preoperative discussion regarding the patient's chances of achieving pelvic pain relief as a result of the proposed surgery. Failure to discuss this issue and to document the patient's informed consent in light of this discussion constituted an extreme departure from the standard of care.

B. During the surgery of February 20, 2001, Dr. Metzger exhibited poor surgical technique by using a monopolar cautery directly on the rectum. Bipolar cautery or the use of hemoclips or suture are the techniques for hemostasis in this area. This constituted a departure from the standard of practice.

C. Dr. Metzger's operative report states that this patient had bilateral direct and indirect hernias. These statements are untrue. This patient had no such hernias. The improper diagnosis and improper treatment of non-existent hernias constituted an extreme departure from the standard of practice, excessive and unnecessary treatment, and incompetence. In addition, the misrepresentation of surgical findings constitutes a distinct extreme departure.

E. Prior to surgery, Dr. Metzger diagnosed endometriosis and, in her operative report, she states that she excised endometriosis. No biopsy or pathological findings exist to support the diagnosis of endometriosis. In fact, a pathology report from the August 2000 surgery indicated no active endometriosis at that time. Performing surgery on a patient for a condition that is not supported by medical evidence is a departure from the standard of practice.

F. Prior to surgery, Dr. Metzger diagnosed pudendal neuralgia. This is not a syndrome accepted by the majority of obstetrical and gynocological practitioners. It is an extreme departure from the standard of care to take a patient to surgery for a diagnosis that does not exist.

G. During surgery, Dr. Metzger administered bilateral pudendal nerve blocks while S.E. was under general anesthesia. Such nerve blocks are generally administered while the patient is conscious so that their efficacy can be appropriately evaluated. Administration of these nerve blocks while the patient was unconscious constituted a departure from the standard of practice.

H. From January 2001 until August 2001, Dr. Metzger prescribed an excessive amount of narcotic and non-narcotic pain medications to this patient. The quantity and the duration of these prescriptions constitute a departure from the standard of practice and excessive prescribing.

52. Therefore, cause for disciplinary action exists pursuant to Business and Professions Code sections 725, 2234 (b), (c), and (d), 2261, and 2266.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 50171 issued to Deborah Ann Metzger, M.D.;

2. Ordering respondent to pay the division the reasonable costs of the investigation and enforcement of this case, and, if she is placed on probation, the costs of probation monitoring;

3. Prohibiting respondent from supervising physician assistants;

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

DATED: June 9, 2004

DAVID T. THORNTON
Interim Executive Director
Medical Board of California