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

12 In the Matter of the Accusation Against:

Case No. 4402018002387

13 **JEFFREY ALAN SULITZER, DMD**
15569 SE Chelsea Morning Dr.
Happy Valley, OR 97086

ACCUSATION

14 **Dental License No. 51841,**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Karen M. Fischer (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Dental Board of California (Board), Department of Consumer
21 Affairs.

22 2. On or about October 7, 2003, the Board issued Dental License No. 51841 to Jeffrey
23 Alan Sulitzer, DMD (Respondent). The Dental License was in full force and effect at all times
24 relevant to the charges brought herein and will expire on June 30, 2021, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender
2 or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued
4 or reinstated.

5 5. Code section 1670 states:

6 Any licentiate may have his license revoked or suspended or be
7 reprimanded or be placed on probation by the board for unprofessional
8 conduct, or incompetence, or gross negligence, or repeated acts of
9 negligence in his or her profession, or for the issuance of a license by
10 mistake, or for any other cause applicable to the licentiate provided in this
11 chapter. The proceedings under this article shall be conducted in
12 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
13 Division 3 of Title 2 of the Government Code, and the board shall have all
14 the powers granted therein.

15 6. Code section 1807 states:

16 A dental corporation shall not do or fail to do any act the doing of which or
17 the failure to do which would constitute unprofessional conduct under any
18 statute, rule or regulation now or hereafter in effect. In the conduct of its
19 practice, it shall observe and be bound by such statutes, rules and
20 regulations to the same extent as a person holding a license under Section
21 1634 of this code. The board shall have the same powers of suspension,
22 revocation and discipline against a dental corporation as are now or
23 hereafter authorized by Section 1670 of this code, or by any other similar
24 statute against individual licensees, provided, however, that proceedings
25 against a dental corporation shall be conducted in accordance with Chapter
26 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
27 the Government Code, and the board shall have all the powers granted
28 therein.

STATUTORY PROVISIONS

29 7. Code section 1625 states:

30 Dentistry is the diagnosis or treatment, by surgery or other method, of
31 diseases and lesions and the correction of malpositions of the human teeth,
32 alveolar process, gums, jaws, or associated structures; and such diagnosis
33 or treatment may include all necessary related procedures as well as the use
34 of drugs, anesthetic agents, and physical evaluation. Without limiting the
35 foregoing, a person practices dentistry within the meaning of this chapter
36 who does any one or more of the following:

37 (a) By card, circular, pamphlet, newspaper or in any other way advertises
38 himself or represents himself to be a dentist.

1 (b) Performs, or offers to perform, an operation or diagnosis of any kind, or
2 treats diseases or lesions of the human teeth, alveolar process, gums, jaws,
or associated structures, or corrects malposed positions thereof.

3 (c) In any way indicates that he will perform by himself or his agents or
4 servants any operation upon the human teeth, alveolar process, gums, jaws,
5 or associated structures, or in any way indicates that he will construct, alter,
6 repair, or sell any bridge, crown, denture or other prosthetic appliance or
orthodontic appliance.

7 (d) Makes, or offers to make, an examination of, with the intent to perform
8 or cause to be performed any operation on the human teeth, alveolar
process, gums, jaws, or associated structures.

9 (e) Manages or conducts as manager, proprietor, conductor, lessor, or
10 otherwise, a place where dental operations are performed.

11 8. Code section 1626 states, in pertinent part:

12 It is unlawful for any person to engage in the practice of dentistry in the
13 state, either privately or as an employee of a governmental agency or
14 political subdivision, unless the person has a valid, unexpired license or
special permit from the board.

15 The following practices, acts and operations, however, are exempt from the
16 operation of this chapter: ...

17 (e) The construction, making, verification of shade taking, alteration or
18 repairing of bridges, crowns, dentures, or other prosthetic appliances, or
orthodontic appliances, when the casts or impressions for this work have
19 been made or taken by a licensed dentist, but a written authorization signed
20 by a licensed dentist shall accompany the order for the work or it shall be
performed in the office of a licensed dentist under his or her supervision.
21 The burden of proving written authorization or direct supervision is upon
the person charged with the violation of this chapter.

22 It is unlawful for any person acting under the exemption of this subdivision
23 to represent or hold out to the public in any manner that he or she will
24 perform or render any of the services exempted by this subdivision that are
25 rendered or performed under the provisions of this chapter by a licensed
dentist, including the construction, making, alteration or repairing of dental
prosthetic or orthodontic appliances.

26 9. Code section 1657 states, in pertinent part:

27 (a) For the purposes of this section, the following definitions shall apply:
28

1 (1) "Mobile dental unit" means a self-contained facility, which may include
2 a trailer or van, in which dentistry is practiced that may be moved, towed,
or transported from one location to another...

3 (b) A mobile dental unit, or a dental practice that routinely uses portable
4 dental units to provide treatment in nondental office locations, shall be
5 registered and operated in accordance with regulations established by the
6 board. These regulations shall not be designed to prevent or lessen
7 competition in service areas. The regulations shall require the registrant to
8 identify a licensed dentist responsible for the mobile dental unit or portable
9 practice, and shall include, but shall not be limited to, requirements for
10 availability of followup and emergency care, maintenance and availability
11 of provider and patient records, and treatment information to be provided
to patients and other appropriate parties. A mobile dental unit, or a dental
practice using portable dental units, registered and operated in accordance
with the board's regulations and that has paid the fees established by the
board, including a mobile dental unit registered for the purpose specified in
subdivision (e), shall otherwise be exempt from this article and Article 3.5
(commencing with Section 1658).

12 10. Code section 1658 states, in pertinent part:

13 (a) When a licensee desires to have more than one place of practice, he or
14 she shall, prior to the opening of the additional office, apply to the board,
pay the fee required by this chapter, and receive permission in writing from
the board to have the additional place of practice.

15 "Place of practice" means any dental office where any act of dentistry is
16 practiced as defined by Section 1625, and includes a place of practice in
17 which the applicant holds any proprietary interest of any nature
18 whatsoever, or in which he or she holds any right to participate in the
19 management or control thereof. A dentist who is the lessor of a dental
office shall not be deemed to hold a proprietary interest in that place of
practice, unless he or she is entitled to participate in the management or
control of the dentistry practiced there.

20 11. Code section 1658.1 states:

21 Nothing in this chapter shall be construed to prohibit a licensed dentist
22 from maintaining more than one dental office in this state if all of the
following conditions are met:

23 (a) In addition to any existing legal responsibility or liability, a dentist
24 maintaining more than one office shall assume legal responsibility and
25 liability for the dental services rendered in each of the offices maintained
by the dentist.

26 (b) A dentist maintaining more than one office shall ensure that each office
27 is in compliance with the supervision requirements of this chapter.
28

1 (c) A dentist maintaining more than one office shall post, in an area which
2 is likely to be seen by all patients who use the facility, a sign with the
3 dentist's name, mailing address, telephone number, and dental license
4 number.

12. Code section 1680 states, in pertinent part:

5 Unprofessional conduct by a person licensed under this chapter is defined
6 as, but is not limited to, any one of the following: ...

7 (c) The aiding or abetting of any unlicensed person to practice dentistry
8 unlawfully.

9 (f) The use of any false, assumed, or fictitious name, either as an
10 individual, firm, corporation, or otherwise, or any name other than the
11 name under which he or she is licensed to practice, in advertising or in any
12 other manner indicating that he or she is practicing or will practice
13 dentistry, except that name as is specified in a valid permit issued pursuant
14 to Section 1701.5...

15 (h) The making use by the licensee or any agent of the licensee of any
16 advertising statements of a character tending to deceive or mislead the
17 public...

18 (n) The violation of any of the provisions of this division.

19 (w) Use of fraud in the procurement of any license issued pursuant to this
20 chapter...

21 (y) The aiding or abetting of a licensed dentist, dental assistant, registered
22 dental assistant, registered dental assistant in extended functions, dental
23 sedation assistant permitholder, orthodontic assistant permitholder,
24 registered dental hygienist, registered dental hygienist in alternative
25 practice, or registered dental hygienist in extended functions to practice
26 dentistry in a negligent or incompetent manner...

27 (ae) The utilization by a licensed dentist of any person to perform the
28 functions of any registered dental assistant, registered dental assistant in
extended functions, dental sedation assistant permitholder, orthodontic
assistant permitholder, registered dental hygienist, registered dental
hygienist in alternative practice, or registered dental hygienist in extended
functions who, at the time of initial employment, does not possess a
current, valid license or permit to perform those functions. ...

13. Code section 1684.5 states, in pertinent part:

(a) In addition to other acts constituting unprofessional conduct under this
chapter, it is unprofessional conduct for any dentist to perform or allow to
be performed any treatment on a patient who is not a patient of record of

1 that dentist. A dentist may, however, after conducting a preliminary oral
2 examination, require or permit any dental auxiliary to perform procedures
3 necessary for diagnostic purposes, provided that the procedures are
4 permitted under the auxiliary's authorized scope of practice... .

5 (b) For purposes of this section, "patient of record" refers to a patient who
6 has been examined, has had a medical and dental history completed and
7 evaluated, and has had oral conditions diagnosed and a written plan
8 developed by the licensed dentist.

9 14. Code section 1685 states:

10 In addition to other acts constituting unprofessional conduct under this
11 chapter, it is unprofessional conduct for a person licensed under this
12 chapter to require, either directly or through an office policy, or knowingly
13 permit the delivery of dental care that discourages necessary treatment or
14 permits clearly excessive treatment, incompetent treatment, grossly
15 negligent treatment, repeated negligent acts, or unnecessary treatment, as
16 determined by the standard of practice in the community.

17 15. Code section 1741 states, in pertinent part:

18 (b) "Direct supervision" means supervision of dental procedures based on
19 instructions given by a licensed dentist, who must be physically present in
20 the treatment facility during the performance of those procedures.

21 (c) "General supervision" means supervision of dental procedures based on
22 instructions given by a licensed dentist but not requiring the physical
23 presence of the supervising dentist during the performance of those
24 procedures.

25 16. Code section 1701.5 states:

26 Any association or partnership or corporation or group of three or more
27 dentists, engaging in practice under any name that would otherwise be in
28 violation of Section 1701 may practice under this name if, and only if, the
association, partnership, corporation or group holds an outstanding,
unexpired, unsuspended, and unrevoked permit issued by the board under
this section. On and after July 1, 1995, any individual dentist or pair of
dentists engaging in the practice of dentistry under any name that would
otherwise be in violation of Section 1701 may practice under that name if
and only if the dentist or pair of dentists hold an outstanding, unexpired,
unsuspended, and unrevoked permit issued by the board under this section.
The board shall issue written permits authorizing the holder to use a name
specified in the permit in connection with the holder's practice if, and only
if, the board finds to its satisfaction that:

(a) The applicant or applicants are duly licensed dentists.

1 (b) The place or establishment, or the portion thereof, where the applicant
2 or applicants practice, is owned or leased by the applicant or applicants,
and the practice conducted at the place or establishment, or portion thereof,
is wholly owned and entirely controlled by the applicant or applicants.

3 (c) The name that the applicant or applicants propose to operate contains at
4 least one of the following designations: "dental group," "dental practice,"
5 or "dental office" and contains the family name of one or more of the past,
6 present, or prospective associates, partners, shareholders, or members of
the group, and is in conformity with Section 651 and subdivisions (i) and
(l) of Section 1680.

7 (d) All licensed persons practicing at the location designated in the
8 application hold valid and outstanding licenses and that no charges of
9 unprofessional conduct are pending against any persons practicing at that
location.

10 Permits issued under this section by the board shall expire and become
11 invalid unless renewed at the times and in the manner provided for the
12 renewal of certificates issued under this chapter.

13 Any permits issued under this section may be revoked or suspended at any
14 time that the board finds that any one of the requirements for original
issuance of a permit is no longer being fulfilled by the holder to whom the
15 permit was issued. Proceedings for revocation or suspension shall be
governed by the Administrative Procedure Act.

16 In the event charges of unprofessional conduct are filed against the holder
17 of a permit issued under this section, or a member of an association or
partnership or a member of a group or corporation to whom a permit has
18 been issued under this section, proceedings shall not be commenced for
19 revocation or suspension of the permit until final determination of the
20 charges of unprofessional conduct and unless the charges have resulted in
revocation or suspension of license.

21 17. Code section 1750 states:

22 (a) A dental assistant is an individual who, without a license, may perform
23 basic supportive dental procedures, as authorized by Section 1750.1 and by
24 regulations adopted by the board, under the supervision of a licensed
dentist. "Basic supportive dental procedures" are those procedures that
25 have technically elementary characteristics, are completely reversible, and
are unlikely to precipitate potentially hazardous conditions for the patient
being treated.

26 (b) The supervising licensed dentist shall be responsible for determining
27 the competency of the dental assistant to perform the basic supportive
28 dental procedures, as authorized by Section 1750.1.

1 (c) The employer of a dental assistant shall be responsible for ensuring that
2 the dental assistant who has been in continuous employment for 120 days
3 or more, has already successfully completed, or successfully completes, all
4 of the following within a year of the date of employment:

5 (1) A board-approved two-hour course in the Dental Practice Act.

6 (2) A board-approved eight-hour course in infection control.

7 (3) A course in basic life support offered by an instructor approved by the
8 American Red Cross or the American Heart Association, or any other
9 course approved by the board as equivalent and that provides the student
10 the opportunity to engage in hands-on simulated clinical scenarios.

11 (d) The employer of a dental assistant shall be responsible for ensuring that
12 the dental assistant maintains certification in basic life support.

13 (e) This section shall become operative on January 1, 2010.

14 18. Code section 1750.1 states, in pertinent part:

15 (b) A dental assistant may perform the following duties under the direct
16 supervision of a supervising licensed dentist: ...

17 (3) Take intraoral impressions for all nonprosthodontic appliances...

18 (8) Perform measurements for the purposes of orthodontic treatment.

19 19. Code section 1753.5 states, in pertinent part:

20 (b) A registered dental assistant in extended functions licensed on or after
21 January 1, 2010, is authorized to perform the following additional
22 procedures under direct supervision and pursuant to the order, control, and
23 full professional responsibility of a licensed dentist:

24 (1) Conduct preliminary evaluation of the patient's oral health, including,
25 but not limited to, charting, intraoral and extra-oral evaluation of soft
26 tissue, classifying occlusion, and myofunctional evaluation...

27 (c) All procedures required to be performed under direct supervision shall
28 be checked and approved by the supervising licensed dentist prior to the
patient's dismissal from the office.

29 20. Code section 2290.5 states, in pertinent part:

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

(3) "Health care provider" means either of the following:

1 (A) A person who is licensed under this division...

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

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

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

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

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

24 **REGULATORY PROVISIONS**

25 21. Title 16, California Code of Regulations ("CCR") section 1005, subsection (b)(3)
26 states, "[a] copy of this regulation (i.e., pertaining to minimum standards for infection control)
27 shall be posted in each dental office."

28 22. Title 16, CCR section 1049 states:

(a) Definition. For purposes of Section 1657 of the code, a "mobile dental
clinic" or "mobile dental unit" means any self-contained facility in which
dentistry will be practiced which may be moved, towed, or transported
from one location to another.

(b) Application for Permit. A licensed dentist who wishes to operate a
mobile dental clinic shall apply to the board for a permit by providing
evidence of compliance with the requirements of this section and paying

1 the fee prescribed in Section 1021 for application for an additional office
2 permit.

3 The board shall inform an applicant for a permit in writing within 7 days
4 whether the application is complete and accepted for filing or is deficient
5 and what specific information is required.

6 The board shall decide within 60 days after the filing of a completed
7 application whether the applicant meets the requirements of a permit.

8 (c) Requirements.

9 (1) The applicant shall certify that:

10 (A) There is a written procedure for emergency follow-up care for patients
11 treated in the mobile dental clinic and that such procedure includes
12 arrangements for treatment in a dental facility which is permanently
13 established in the area.

14 (B) The mobile dental clinic has communication facilities which will
15 enable the operator thereof to contact necessary parties in the event of a
16 medical or dental emergency.

17 (C) The mobile dental clinic conforms to all applicable federal, state and
18 local laws, regulations and ordinances dealing with radiographic
19 equipment, flammability, construction, sanitation and zoning and the
20 applicant possesses all applicable county and city licenses or permits to
21 operate the unit.

22 (D) The driver of the unit possesses a valid California driver's license.

23 (2) The applicant shall maintain an official business or mailing address of
24 record which shall be filed with the board. The board shall be notified
25 within 30 days of any change in the address of record. All written or
26 printed documents available from or issued by the mobile dental clinic
27 shall contain the official address of record for the mobile dental clinic.

28 (3) Each mobile dental clinic shall:

(A) Have ready access to a ramp or lift if services are provided to disabled
persons.

(B) Have a properly functioning sterilization system.

(C) Have ready access to an adequate supply of potable water, including
hot water.

(D) Have ready access to toilet facilities.

1 (E) Have a covered galvanized, stainless steel, or other noncorrosive metal
2 container for deposit of refuse and waste materials.

3 (d) Transferability. A permit to operate a mobile dental clinic is not
4 transferable.

5 (e) Renewal. A permit to operate a mobile dental clinic expires at the same
6 time as the permit holder's dental license. The permit holder may apply for
7 renewal and shall pay the fee set for renewal of an additional office permit.

8 23. Title 16, CCR section 1055 states:

9 Nothing in the laws or rules relating to dental corporations alters the
10 dentist's duties and responsibilities to and professional relationships with
11 his patients. Nor do such laws or rules in any way impair the disciplinary
12 powers of the board over its licentiates or impair any other law or rule
13 pertaining to the standards of professional conduct of dentists.

14 24. Title 16, CCR section 1057 states:

15 A dental corporation is subject to the additional office requirements of
16 Article 3.5, Chapter 4 of Division 2 of the Code. A dental corporation
17 which desires to have more than one place of practice shall, prior to
18 opening any additional office, apply for and receive permission in writing
19 from the board.

20 25. Title 16, CCR section 1065 states:

21 (a) A licensed dentist engaged in the practice of dentistry shall provide
22 notice to each patient of the fact that the dentist is licensed and regulated
23 by the Board. The notice shall include the following statement and
24 information:

25 NOTICE
26 Dentists are licensed and regulated
27 by the Dental Board of California
28 (877) 729-7789
www.dbc.ca.gov

(b) The notice required by this section shall be provided by prominently
posting the notice in a conspicuous location accessible to public view on
the premises where the dentist provides the licensed services, in which case
the notice shall be in at least 48-point type font.

26 26. Title 16, CCR section 1068 states:

27 All dentists utilizing the services of dental auxiliaries shall post a notice in
28 a common area of the office which delineates duties and functions deemed
by the board as delegable within stipulated settings and/or circumstances.

Such notice shall be readily accessible to all individuals under supervision of the dentist.

COST RECOVERY

27. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL BACKGROUND

28. The timeframe relevant to the charges and allegations set forth herein includes the period of April 13, 2017 until the date of the filing of this Accusation.

29. As alleged hereinabove, Jeffrey Sulitzer, DMD (Respondent) is a California licensed dentist. Respondent has formed a professional corporation and is registered with the California Secretary of State as "Jeffrey Sulitzer, D.M.D., Professional Corporation." The Articles of Incorporation for Respondent's professional corporation state that the purpose of the corporation is to engage in the profession of dentistry.

30. A Statement of Information that Respondent filed for his professional corporation (dated August 2, 2018) states that the address for the professional corporation is 414 Union Street, 8th Floor, Nashville, TN 37219 – the same address as the "Company" that is described below.

31. Respondent held himself out as being the Chief Clinical Officer for an out-of-state business consisting of a parent company and wholly owned subsidiaries that advertises, treatment plans, fabricates, manufactures and sells custom-made clear orthodontic aligners directly to patients (hereinafter, the "Company").

32. The Company is owned and controlled by non-dentist persons and entities and is not registered with the California Department of Managed Health Care as a health care service plan.

Nor does the Company possess a Knox-Keene Act license that would exempt it from the Moscone-Knox Act requirements of ownership.

1 33. To further its sale of orthodontic aligners, the Company, utilizing its trademarks and
2 trade dress, owns and/or operates scores of dental offices throughout the United States, including
3 over 20 offices in California. The Company also furthers its sale of orthodontic aligners through
4 the internet and mobile dental units.

5 34. The Company provides (and during the timeframe relevant to this accusation
6 provided) its aligners directly to patients utilizing one of two models, ostensibly using a
7 teledentistry platform. In the first model, after a patient completes an online dental self-
8 assessment, the patient is directed to order an at-home dental impression kit that the Company
9 sends to the patient. The Company then requests the patient to make their own dental impression
10 using the at-home dental impression kit and to return the resulting cast to the Company. The
11 Company then uses the cast to create a 3D computer image of the patient's dentition intended for
12 the purpose of orthodontic treatment planning and for the fabrication and manufacture of custom-
13 made orthodontic aligners for the patient.

14 35. In the second model, the patient visits either a dental office or mobile dental unit. At
15 these locations, a dental assistant obtains the patient's medical history and signature on an
16 informed consent form that describes the benefits and risks pertaining to orthodontic treatment.
17 This informed consent form also includes provisions whereby the patient consents to the use of
18 telehealth and purports to "release [the Company] from liability for any claims by me or any third
19 party in connection with my participation or use of the invisible aligner treatment." Dental
20 assistants also request the patient to self-verify their own dental health by stating, in writing, that
21 they have had a prior exam with a licensed dentist who purportedly cleared the patient for the
22 Company's orthodontic aligner treatment. Once the patient completes the necessary forms, a
23 dental assistant, using an iTero 3D (or like) scanner, performs an intraoral dental scan that creates
24 a 3D dental image for purposes of orthodontic treatment planning and the fabrication and
25 manufacture of custom-made orthodontic aligners.

26 36. In both models described above, the Company sends the 3D dental image to its own
27 facilities for orthodontic aligner treatment planning. Once the treatment plan is completed, it is
28 supposedly reviewed by a state-licensed dentist who has contracted with the Company. Without

1 first examining the patient, the dentist either approves or denies the orthodontic aligner treatment
2 plan. If approved, the Company uses the 3D dental image of the patient's dentition to create a set
3 of clear dental aligners to treat the patient. The Company sends those aligners directly to the
4 patient.

5 37. In both models, patients do not interact with the dentists who reviewed their 3D
6 dental image. Nor do patients receive the name, address, or contact information of the dentists
7 who approve their treatment plan.

8 38. In both models, dental or orthodontic follow-up appointments are not scheduled for
9 patients during their orthodontic treatment. Instead, the patient is requested to photograph their
10 own dentition approximately every 90 days and to transmit those photographs to the Company so
11 that a dentist can review them. If problems occur during treatment, the patient is referred to the
12 Company's customer service department and not to any particular licensed dentist.

13 39. In and around 2017 and 2018, Respondent, through his professional corporation,
14 began applying to the Board for several Fictitious Name Permits (FNPs) utilizing the Company's
15 name and characterizing it as his own dental group. With respect to each of these FNP
16 applications, Respondent stated, under penalty of perjury, that "[t]he dental practice at the
17 location specified on this application is wholly owned and entirely controlled by this
18 corporation." Respondent's representations, however, were false; the FNPs were instead for
19 dental offices that the Company in fact owned and controlled, either entirely or in part. Based on
20 Respondent's representations, the Board issued the following FNPs to Respondent's professional
21 corporation: FNP Nos. 13995, 13996, 13997, 13998, 13999, 14180, 14181, 14182 and 14209.
22 Three of these FNPs were issued for the following dental offices:

23 (i) FNP no. 13995 for a dental office located at 1111 Broadway, Oakland, CA
24 ("Oakland Office");

25 (ii) FNP no. 13996 for a dental office located at 655 Montgomery Street, San
26 Francisco, CA ("San Francisco Office"); and,

27 (iii) FNP no. 13999 for a dental office located at 1601 Vine Street, 6th Fl., Los
28 Angeles, CA ("L.A. Office").

1 During the timeframe relevant to this Accusations, these dental offices that Respondent claimed
2 to wholly own and entirely control were in operation and utilized the orthodontic treatment model
3 in the orthodontic treatment of patients described in the Factual Background section of this
4 Accusation.

5 40. Further, in and around 2017 and 2018, Respondent, through his professional
6 corporation, began applying to the Board for several Additional Office Permits (AOPs). With
7 respect to each of the AOP applications, Respondent stated, under penalty of perjury, that he
8 accepted legal responsibility and liability for dental services rendered in each dental office he
9 maintained. This representation, however, was contradicted by the full release language
10 contained in the Company's consent forms that patients were requested to sign at the dental
11 offices that Respondent claimed to wholly own and entirely control.

12 41. Respondent also represented in the AOP applications that all dental offices he
13 operated were in compliance with Code section 1658.1, and that in each office, there was posted
14 in an area visible to patients a sign setting forth Respondent's name, mailing address, telephone
15 number and dental license number. These representations, as alleged in greater detail in
16 paragraphs 46-48 below, were also false. Based on Respondent's false representations, the Board
17 issued the following AOPs to Respondent's professional corporation: AOP Nos. 79557, 79646,
18 79647, 79648 and 79664. Respondent has since applied to the Board for several other FNP's and
19 AOPs making these same misrepresentations.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Use of Fraud in the Procurement of Fictitious Name Permits and Additional Office 22 Permits)**

23 42. Respondent, both individually and through his professional corporation, is subject to
24 disciplinary action for unprofessional conduct under Code section 1680, subdivision (w), in that
25 he used fraud in the procurement of permits issued pursuant to the Dental Practice Act, Code
26 sections 1600, et seq.

27 43. Specifically, and as alleged in greater detail above, when applying for FNP's for
28 various dental offices located throughout California, Respondent represented under penalty of

1 perjury that he wholly owned and entirely controlled the subject offices. These representations
2 were false. The subject dental offices were in fact owned and controlled, either entirely or in part,
3 by the Company.

4 44. Further, when applying for AOPs for the various dental offices located throughout
5 California, Respondent represented under penalty of perjury that:

6 (i) He accepted legal responsibility and liability for dental services rendered in the
7 offices;

8 (ii) The offices were in compliance with section 1658.1 and all other applicable State
9 and Federal laws, including that the offices were in compliance with the supervision requirements
10 of the Dental Practice Act; and,

11 (iii) In the offices there was visibly posted in an area likely to be seen by all patients
12 using the facility a sign with Respondent's name, mailing address, telephone number, and dental
13 license number.

14 45. Respondent's representations set forth in paragraph 46 were false. The true facts
15 were that Respondent did not accept legal responsibility and liability for dental services rendered
16 in the dental offices. Instead, patients presenting at the offices were requested to execute
17 informed consent forms in which it was stated: "I release [the Company] from liability for any
18 claims by me or any third party in connection with my participation or use of the invisible aligner
19 treatment," tending to deceive patients into believing that they have no legal recourse for the
20 aligner treatment that Respondent was supposedly to render.

21 46. Further, the San Francisco Office, Oakland Office, and L.A. Office were not in
22 compliance with section 1658.1 and all other applicable state and federal laws as Respondent had
23 affirmatively represented because:

24 (i) As alleged in greater detail below in paragraph 57, the offices failed to comply
25 with the supervision requirements of the Dental Practice Act in that dental assistants were
26 permitted to take without direct supervision health histories and intraoral 3D scan impressions of
27 patients' dentition for the purpose of orthodontic diagnosis and treatment planning, including for
28 the fabrication and manufacture of orthodontic aligners, in violation of Code section 1750.1,

1 subsections (b)(3) and (b)(8); and/or,

2 (ii) Respondent failed to post in the dental offices any:

3 (a) Signage as required by section 1658.1, subsection (c);

4 (b) Notice of Licensure as required by title 16, CCR section 1065;

5 (c) Copy of title 16, CCR section 1005 (pertaining to minimum standards for
6 infection control) as required by title 16, CCR section 1005, subsection (b)(3); and/or,

7 (d) Dental auxiliary duties as required by title 16, CCR section 1068.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Illegal Use of False, Assumed or Fictitious Name)**

10 47. Respondent, both individually and through his professional corporation, is subject to
11 disciplinary action for unprofessional conduct under Code section 1680, subsection (f), in that he
12 illegally used a false, assumed or fictitious name in the practice of dentistry prior to issuance of
13 any FNP by the Board as follows:

14 (i) On or about December 7, 2017, Respondent was operating the San Francisco
15 Office using a fictitious name prior to issuance of any FNP by the Board for that particular
16 location as required by Code section 1701.5; and,

17 (ii) On or about January 17, 2018, Respondent was operating the Oakland Office
18 using a fictitious name prior to issuance of any FNP by the Board for that particular location as
19 required by Code section 1701.5.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Use of Advertisement Tending to Deceive or Mislead the Public)**

22 48. Respondent, both individually and through his professional corporation, is subject to
23 disciplinary action for unprofessional conduct under Code section 1680, subsection (h), in that he
24 used advertising tending to deceive or mislead the public as follows.

25 49. As alleged in greater detail above, Respondent applied for and obtained FNPs using the
26 Company's name and representing the subject dental offices for which the FNPs were being
27 sought as belonging to his own dental group. Moreover, Respondent used in these offices,
28 whether by way of license or otherwise, the name, trademarks and trade dress belonging to and

1 associated with the Company. Patients were also requested to complete and submit health history
2 and consent forms bearing the Company's name and trademarks and which did not include
3 Respondent's name. Included in those forms was language whereby the patient agreed to waive
4 any liability to the Company for orthodontic aligner treatment. Further, patients presenting at the
5 dental offices were provided with materials and products bearing the Company's name,
6 trademarks and trade dress.

7 50. These circumstances tended to deceive or otherwise mislead the public into concluding
8 that they were presenting at the Company's business instead of Respondent's dental practice.

9 51. Alternatively, since Respondent was holding himself out as being the owner of the
10 offices that the Company in fact owned and controlled, entirely or in part, patients were led to
11 believe that they were at Respondent's dental practice when in fact they were at the Company's
12 place of business.

13 52. Alternatively, patients presenting at the dental offices were led to believe that
14 Respondent and the Company were one and the same when they are not.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Treatment of Patients Not of Record)**

17 53. Respondent, both individually and through his professional corporation, is subject to
18 disciplinary action for unprofessional conduct under Code section 1684.5, in that he
19 performed or allowed to be performed treatment on patients that were not his patient of record as
20 follows.

21 54. As alleged in greater detail above, patients presented at dental offices that Respondent
22 claimed to own and control to obtain orthodontic aligner treatment. At these dental offices,
23 patients were requested to self-verify their own dental health, following which dental assistants
24 utilized 3D scanners to generate digital scans of patients' dentition, intended for diagnosing tooth
25 misalignments, orthodontic treatment planning, and the fabrication of custom-made orthodontic
26 aligners. However, neither Respondent nor any dentist working under him was present to
27 conduct any examination of the patient prior to orthodontic treatment or preliminary examination

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1 prior to procedures being performed by dental assistants, as Code section 1684.5, subsections (a)
2 and (b) require.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Aiding and Abetting the Unlicensed Practice of Dentistry)**

5 55. Respondent, both individually and through his professional corporation, is subject to
6 disciplinary action for unprofessional conduct under Code section 1680, subsection (c), in that he
7 aided and abetted the Company in the unlicensed practice of dentistry, as defined by Code section
8 1625. The Company performed the unlicensed practice of dentistry as follows:

9 (i) The Company practiced dentistry by performing, or offering to perform,
10 orthodontic diagnosis and the treatment of malposed teeth, which is the practice of dentistry as
11 defined by Code section 1625, subsection (b);

12 (ii) The Company indicated that it would perform orthodontic treatment and
13 construct, alter, repair, or sell orthodontic appliances, which is the practice of dentistry as defined
14 by Code section 1625, subsection (c);

15 (iii) The Company managed or conducted as manager, proprietor, conductor, lessor,
16 or otherwise, places where dental procedures were performed, which is the practice of dentistry as
17 defined by Code section 1625, subsection (e); and/or,

18 (iv) The Company advertised, fabricated, manufactured and sold orthodontic
19 appliances directly to consumers when the casts and/or impressions for the work had not been
20 made or taken by any licensed dentist (Respondent or otherwise) and without any written
21 authorization for the work by Respondent or any other dentist, which is the practice of dentistry
22 as defined by Code section 1626, subsection (e).

23 56. Respondent aided and abetted in this unlawful scheme in that he:

24 (i) Held himself out as the dentist of record for the Company's various dental
25 offices and mobile dental units in California;

26 (ii) Falsely represented that he wholly owned and entirely controlled the subject
27 dental offices and mobile dental units when he did not;

28 (iii) Performed or otherwise permitted orthodontic treatment on persons who

1 were not his patient of record; and/or,

2 (iv) Allowed the construction of orthodontic appliances without any written
3 authorization for the work by Respondent or any dentist working under him.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Aiding and Abetting Dental Assistants to Practice Dentistry in a Negligent or Incompetent
6 Manner)**

7 57. Respondent, both individually and through his professional corporation, is subject to
8 disciplinary action for unprofessional conduct under Code section 1680, subsection (y), in that he
9 aided and abetted dental assistants to practice dentistry in a negligent and/or incompetent manner.
10 Specifically, Respondent relied on non-registered dental assistants to perform functions that
11 required the direct supervision of a licensed dentist as follows:

12 (i) Dental assistants took intraoral (digital) impressions for orthodontic appliances
13 without any direct supervision, as Code section 1750.1, subsection (b)(3) requires; and,

14 (ii) Dental assistants performed preliminary measurements for the purpose of
15 orthodontic treatment (i.e., the digital 3D scanning of a patient's dentition) without any direct
16 supervision, as Code section 1750.1, subsection (b)(8) requires.

17 **SEVENTH CAUSE FOR DISCIPLINE**

18 **(Requiring or Permitting the Delivery of Dental Care that Discourages Necessary
19 Treatment or Permits Clearly Excessive Treatment, Incompetent Treatment, Grossly
20 Negligent Treatment, Repeated Negligent Acts, or Unnecessary Treatment as Determined
21 by the Standard of Practice in the Community)**

22 58. Respondent, both individually and through his professional corporation, is subject to
23 disciplinary action for unprofessional conduct under Code section 1685, in that he required,
24 directly or through office policy, or otherwise permitted the delivery of dental care that
25 discouraged necessary treatment or permitted clearly excessive treatment, incompetent treatment,
26 grossly negligent treatment, repeated negligent acts, or unnecessary treatment, as determined by
the standard of practice in the community, as follows:

27 (i) Respondent utilized dental assistants who were not directly supervised to obtain
28 health histories and perform intraoral 3D scans for the purpose of orthodontic diagnosis and

1 treatment planning and for the fabrication and manufacture of orthodontic appliances.

2 Respondent's general practice in this regard constituted gross negligence, repeated negligence
3 and/or incompetence;

4 (ii) Respondent encouraged, provided, authorized and/or otherwise permitted the
5 treatment of patients who were not his patient of record and without the proper patient-dentist
6 relationship being established and proper orthodontic diagnostic records created. Respondent's
7 general practice in this regard constituted gross negligence, repeated negligence and/or
8 incompetence;

9 (iii) Respondent encouraged, provided, authorized and/or otherwise permitted
10 orthodontic aligner treatment to patients without first obtaining a proper health history and dental
11 history for the patient. Respondent's general practice in this regard constituted gross negligence,
12 repeated negligence and/or incompetence;

13 (iv) Respondent encouraged, provided, authorized and/or otherwise permitted
14 orthodontic aligner treatment to patients without first performing a full oral examination of the
15 patient including, *inter alia*, the taking of proper radiographs (e.g., full-mouth x-rays, panorex
16 and/or cephalometric x-rays) and periodontal probings so as to rule out health or dental conditions
17 that are contraindicated to orthodontic treatment (e.g., periodontitis, shortened roots, root
18 resorption, etc.). Respondent's general practice in this regard constituted gross negligence,
19 repeated negligence and/or incompetence;

20 (v) Respondent encouraged, provided, authorized and/or otherwise permitted
21 orthodontic aligner treatment to patients without proper orthodontic records, cephalometric
22 analysis or tracing (photographs and digitally scanned models standing alone do not constitute
23 full orthodontic records sufficient to adequately diagnose a patient). Respondent's general
24 practice in this regard constituted gross negligence, repeated negligence and/or incompetence;

25 (vi) Respondent encouraged, provided, authorized and/or otherwise permitted
26 orthodontic aligner treatment to patients whereby treatment plans entailing only the Company's
27 orthodontic aligners were presented without any alternative treatment options (including, for
28 example, extractions, surgery, other orthodontic approaches such as traditional braces, or no

1 treatment at all). Respondent's general practice in this regard constituted gross negligence,
2 repeated negligence and/or incompetence. Further, Respondent's general practice in this regard
3 tended to discourage necessary treatment or to otherwise encourage unnecessary treatment;

4 (vii) Respondent encouraged, provided, authorized and/or otherwise permitted
5 orthodontic aligner treatment to patients without first obtaining the patients' adequate informed
6 consent. Respondent's general practice in this regard constituted repeated negligence;

7 (viii) Respondent encouraged, provided, authorized and/or otherwise permitted
8 orthodontic aligner treatment to patients without the proper follow up and/or monitoring of the
9 orthodontic movement of teeth. Respondent's general practice in this regard constituted gross
10 negligence, repeated negligence and/or incompetence; and/or,

11 (ix) Respondent encouraged, provided, authorized and/or otherwise permitted
12 orthodontic aligner treatment to patients without final records so as to document case results.
13 Respondent's general practice in this regard constituted gross negligence, repeated negligence
14 and/or incompetence.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 **(Violations of the Telehealth Statute)**

17 59. Respondent, both individually and through his professional corporation, is subject to
18 disciplinary action for unprofessional conduct under Code section 2290.5, subsection (d), in that
19 he violated the law pertaining to telehealth in the following respects:

20 (i) Respondent delivered orthodontic treatment via the use of telehealth. However,
21 neither Respondent nor any licensed health care provider working under him obtained the
22 patient's consent to the use of telehealth, contrary to the provisions of Code section 2290.5,
23 subsection (b);

24 (ii) In utilizing telehealth to deliver orthodontic treatment to patients, Respondent,
25 contrary to the provisions of Code section 2290.5, subsection (e), altered the scope of practice for
26 orthodontics by limiting the acts that an orthodontist is obligated to perform during orthodontic
27 treatment in that Respondent:

28 (a) Encouraged, provided, authorized and/or otherwise permitted orthodontic

1 treatment on patients without the proper patient-dentist relationship being established, which
2 under Code section 1684.5, subsections (a) and (b) would include a preliminary examination,
3 proper evaluation of medical and dental history, diagnosis of oral conditions and written
4 treatment planning by a licensed dentist;

5 (b) Encouraged, provided, authorized and/or otherwise permitted orthodontic
6 treatment on patients without proper orthodontic diagnostic records and/or treatment plans
7 (including alternatives);

8 (c) Encouraged, provided, authorized and/or otherwise permitted orthodontic
9 treatment on patients without obtaining the patient's adequate informed consent;

10 (d) Failed to provide direct supervision over dental assistants who performed
11 functions that require direct supervision; and/or,

12 (e) Failed to adequately monitor the orthodontic movement of teeth; and/or,

13 (iii) Respondent's treatment approach through telehealth precluded patients from
14 receiving in-person treatment, contrary to the provisions of Code section 2290.5, subsection (c).

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Operation of Non-Permitted Mobile Dental Unit)**

17 60. Respondent, both individually and by and through his professional corporation, is
18 subject to disciplinary action for unprofessional conduct under Code section 1680, subsection (n)
19 for violating Code section 1657, subsection (b), in that on or about on or about July 1, 2019, he
20 operated a mobile dental unit at the Arden Fair Mall in Sacramento, California when that mobile
21 dental unit was not registered with the Board in accordance with title 16, CCR section 1049.

22 **PRAYER**

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

25 1. Revoking or suspending Dental License No. 51841, issued to Jeffrey Alan Sulitzer,
26 DMD (Respondent);

27 2. Ordering Respondent to pay the Dental Board of California the reasonable costs of

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1 the investigation and enforcement of this case, and, if placed on probation, the costs of probation
2 monitoring; and,

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

4
5 DATED:

11/12/19

Karen M. Fischer

KAREN M. FISCHER
Executive Officer
Dental Board of California
Department of Consumer Affairs
State of California
Complainant

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