

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

In the Matter of the Accusation Against:	)	
	)	
	)	
	)	
BENJAMIN G. COX, M.D.	)	Case No. 09-2010-204544
	)	
Physician's and Surgeon's	)	
Certificate No. G 6433	)	
	)	
Respondent.	)	
_____	)	

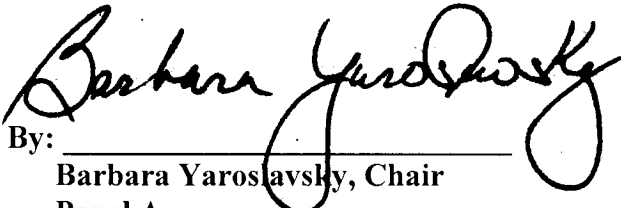
DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on June 5, 2013.

IT IS SO ORDERED May 6, 2013.

MEDICAL BOARD OF CALIFORNIA


By: _____
Barbara Yaroslavsky, Chair
Panel A

1 KAMALA D. HARRIS.
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 SAMUEL K. HAMMOND
Deputy Attorney General
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 09-2010-204544

12 **BENJAMIN G. COX, M.D.**
13 **29501 Springside Drive**
14 **Menifee, CA 92584**

OAH No. 211120071

15 **Physician's and Surgeon's**
16 **Certificate No. G6433**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 Respondent.

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

20 PARTIES

21 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
22 California (Board). She is represented in this matter by Kamala D. Harris, Attorney General of
23 the State of California, by Samuel K. Hammond, Deputy Attorney General.

24 2. Respondent Benjamin G. Cox, M.D. (Respondent) is represented in this proceeding
25 by attorney Courtney Pilchman, Esq., Pilchman & Kay, PLC, 2030 Main Street, Suite 1300,
26 Irvine, CA 92614.

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3. On or about October 25, 1960, the Board issued Physician's and Surgeon's Certificate No. G6433 to Respondent Benjamin G. Cox, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 09-2010-204544 and will expire on November 30, 2013, unless renewed.

JURISDICTION

4. On August 1, 2011, Accusation No. 09-2010-204544 was filed before the Medical Board of California, Department of Consumer Affairs, State of California (Board). A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent's address of record on file with the Board: 29501 Springside Drive, Menifee, CA 92584. On or about August 9, 2011, a Notice of Defense was filed on Respondent's behalf by his attorney of record, Courtney G. Pilchman, Esq. A true and correct copy of Accusation No. 09-2010-204544 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 09-2010-204544. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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. Having the benefit of counsel, Respondent hereby voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the complete truth and accuracy of each and every charge and
3 allegation in Accusation No. 09-2010-204544 and agrees that he has thereby subjected his
4 Physician's and Surgeon's Certificate No. G6433 to disciplinary action. Respondent further
5 agrees to the Board's imposition of discipline as set forth in the Disciplinary Order below.

6 CONTINGENCY

7 9. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
8 submitted to the Board for its consideration in the above-entitled matter and, further, that the
9 Board shall have a reasonable period of time in which to consider and act on this Stipulated
10 Settlement and Disciplinary Order after receiving it.

11 10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
12 and void and not binding upon the parties unless approved and adopted by the Board, except for
13 this paragraph, which shall remain in full force and effect. Respondent fully understands and
14 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
15 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
16 the Attorney General's office. Communications pursuant to this paragraph shall not disqualify
17 the Board, any member thereof, and/or any other person from future participation in this or any
18 other matter affecting or involving Respondent. In the event that the Board, in its discretion, does
19 not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of
20 this paragraph, it shall not become effective, shall not be of evidentiary value whatsoever, and
21 shall not be relied upon or introduced in any disciplinary action by either party hereto.
22 Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary
23 Order for any reason, Respondent will assert no claim that the Board, or any member thereof, was
24 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and
25 Disciplinary Order or of any matter or matters related hereto.

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12. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original documents and signatures and, further, that facsimile copies shall have the same force and effect as originals.

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

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G6433 issued to Respondent Benjamin G. Cox, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years from the effective date of this Decision and Disciplinary Order on the following terms and conditions.

1. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the Program with any information that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping 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 Board

1 or its designee, be accepted towards the fulfillment of this condition if the course would have
2 been approved by the Board or its designee had the course been taken after the effective date of
3 the Decision.

4 Respondent shall submit a certification of successful completion to the Board or its
5 designee not later than 15 calendar days after successfully completing the course, or not later than
6 15 calendar days after the effective date of the Decision, whichever is later.

7 2. PREScribing PRACTICES COURSE Within 60 calendar days of the effective
8 date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the
9 Prescribing Practices Course offered by the Physician Assessment and Clinical Education
10 Program, University of California, San Diego School of Medicine (Program), approved in
11 advance by the Board or its designee. Respondent shall provide the Program with any
12 information that the Program may deem pertinent. Respondent shall participate in and
13 successfully complete the classroom component of the course not later than six (6) months after
14 initial enrollment. Respondent shall successfully complete any other component of the course
15 within one (1) year of enrollment. The prescribing practice course shall be at Respondent's
16 expense and shall be in addition to the Continuing Medical Education (CME) requirements for
17 renewal of licensure.

18 A prescribing practices course taken after the acts that gave rise to the charges in the
19 Accusation, but prior to the effective date of the Decision may in the sole discretion of the Board
20 or its designee, be accepted towards the fulfillment of this condition if the course would have
21 been approved by the Board or its designee had the course been taken after the effective date of
22 the Decision. Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 3. PROFESSIONALISM PROGRAM (ETHICS COURSE) Within 60 calendar days of
26 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
27 meets the requirement of Title 16, California Code of Regulations (CCR) section 1358.
28 Respondent shall participate in and successfully complete the program. Respondent shall provide

1 any information and documents the program may deem pertinent. Respondent shall successfully
2 complete the classroom component of the course not later than six (6) months after initial
3 enrollment, and the longitudinal component of the program not later than the time specified by
4 the program, but no later than one (1) year after attending the classroom component. The
5 professionalism program shall be at Respondent's expense and shall be in addition to the
6 Continuing Medical Education (CME) requirements for renewal of licensure.

7 A professionalism program taken after the acts that gave rise to the charges in the
8 Accusation, but prior to the effective date of the Decision may in the sole discretion of the Board
9 or its designee, be accepted towards the fulfillment of this condition if the program would have
10 been approved by the Board or its designee had the course been taken after the effective date of
11 the Decision.

12 Respondent shall submit a certification of successful completion to the Board or its
13 designee not later than 15 calendar days after successfully completing the program or not later
14 than 15 calendar days after the effective date of the Decision, whichever is later

15 4. EDUCATION COURSE Within 60 calendar days of the effective date of this
16 Decision and on an annual basis, Respondent shall submit to the Board or its designee for its prior
17 approval, an education program(s) or course(s) in Family Practice which shall not be less than 40
18 hours per year, for each year of probation. The educational program(s) or course(s) shall be
19 aimed at correcting any areas of deficient practice or knowledge and shall be Category 1 certified.
20 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition
21 to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
22 completion of each course, the Board or its designee may administer an examination to test
23 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
24 hours of CME of which 40 hours were in satisfaction of this condition.

25 5. CONTROLLED SUBSTANCES – Total Restriction

26 Respondent shall not order, prescribe, dispense, administer, furnish, or possess any
27 controlled substances as defined in the California Uniform Controlled Substances Act.

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1 Respondent shall not issue an oral or written recommendation or approval to a patient or a
2 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
3 purposes of the patient within the meaning of Health and Safety Code section 11362.5.

4 If respondent forms the medical opinion, after an appropriate prior examination and a
5 medical indication, that a patient's medical condition may benefit from the use of marijuana,
6 respondent shall so inform the patient and shall refer the patient to another physician who,
7 following an appropriate prior examination and a medical indication, may independently issue a
8 medically appropriate recommendation or approval for the possession or cultivation of marijuana
9 for the personal medical purposes of the patient within the meaning of Health and Safety Code
10 section 11362.5. In addition, respondent shall inform the patient or the patient's primary
11 caregiver that respondent is prohibited from issuing a recommendation or approval for the
12 possession or cultivation of marijuana for the personal medical purposes of the patient and that
13 the patient or the patient's primary caregiver may not rely on respondent's statements to legally
14 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall
15 fully document in the patient's chart that the patient or the patient's primary caregiver was so
16 informed. Nothing in this condition prohibits respondent from providing the patient or the
17 patient's primary caregiver information about the possible medical benefits resulting from the use
18 of marijuana.

19 6. CONTROLLED SUBSTANCES – Surrender of DEA Permit

20 Respondent is prohibited from practicing medicine until respondent provides documentary
21 proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug
22 Enforcement Administration for cancellation, together with any state prescription forms and all
23 controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA
24 permit without the prior written consent of the Board or its designee.

25 7. PROHIBITED PRACTICE – During probation, respondent's practice shall be
26 restricted to practice as a qualified medical examiner only which shall consist solely of examining
27 patients, documents and writing reports. Respondent is prohibited from providing direct patient
28 care or treatment during the period of probation. Respondent is also prohibited from writing any

1 prescription for any dangerous drug, as defined by Business and Professions Code section 4022,
2 during the period of probation. After the effective date of this Decision, all patients being treated
3 by respondent shall be notified that respondent is prohibited from providing direct patient care or
4 treatment, or writing any prescription for any dangerous drug or controlled substance. Any new
5 patients must be provided this notification at the time of their initial appointment.

6 Respondent shall maintain a log of all patients to whom the required oral notification
7 was made. The log shall contain the: 1) patient's name, address and phone number; patient's
8 medical record number, if available; 3) the full name of the person making the notification; 4) the
9 date the notification was made; and 5) a description of the notification given. Respondent shall
10 keep this log in a separate file or ledger, in chronological order, shall make the log available for
11 immediate inspection and copying on the premises at all times during business hours by the Board
12 or its designee, and shall retain the log for the entire term of probation.

13 8. NOTIFICATION Prior to engaging in the practice of medicine, the Respondent
14 shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief
15 Executive Officer at every hospital where privileges or membership are extended to Respondent,
16 at any other facility where Respondent engages in the practice of medicine, including all
17 physician and locum tenens registries or other similar agencies, and to the Chief Executive
18 Officer at every insurance carrier which extends malpractice insurance coverage to Respondent.
19 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar
20 days.

21 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

22 9. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is
23 prohibited from supervising physician assistants.

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

27 11. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations
28 under penalty of perjury on forms provided by the Board, stating whether there has been

1 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
2 not later than 10 calendar days after the end of the preceding quarter.

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

8 Respondent shall not engage in the practice of medicine in Respondent's place of residence.
9 Respondent shall maintain a current and renewed California physician's and surgeon's license.
10 Respondent shall immediately inform the Board, or its designee, in writing, of travel to any areas
11 outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar
12 days.

13 13. INTERVIEW WITH THE BOARD, OR ITS DESIGNEE Respondent shall be
14 available in person for interviews either at Respondent's place of business or at the probation unit
15 office, with the Board or its designee, upon request at various intervals, and either with or without
16 prior notice throughout the term of probation.

17 14. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should
18 leave the State of California to reside or to practice, Respondent shall notify the Board or its
19 designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is
20 defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in
21 any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

22 All time spent in an intensive training program outside the State of California which has
23 been approved by the Board or its designee shall be considered as time spent in the practice of
24 medicine within the State. A Board-ordered suspension of practice shall not be considered as a
25 period of non-practice. Periods of temporary or permanent residence or practice outside
26 California will not apply to the reduction of the probationary term. Periods of temporary or
27 permanent residence or practice outside California will relieve Respondent of the responsibility to
28 comply with the probationary terms and conditions with the exception of this condition and the

1 following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and
2 Cost Recovery.

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

9 15. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

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

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

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

25 16. COMPLETION OF PROBATION Respondent shall comply with all financial
26 obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior
27 to the completion of probation. Upon successful completion of probation, Respondent's
28 certificate shall be fully restored.

1 17. VIOLATION OF PROBATION Failure to fully comply with any term or condition
2 of probation is a violation of probation. If Respondent violates probation in any respect, the
3 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
4 carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation,
5 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
6 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
7 the matter is final.

8 18. LICENSE SURRENDER Following the effective date of this Decision, if
9 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
10 the terms and conditions of probation, Respondent may request the voluntary surrender of
11 Respondent's license. The Board reserves the right to evaluate Respondent's request and to
12 exercise its discretion whether or not to grant the request, or to take any other action deemed
13 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
14 Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the
15 Board or its designee and Respondent shall no longer practice medicine. Respondent will no
16 longer be subject to the terms and conditions of probation and the surrender of Respondent's
17 license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the
18 application shall be treated as a petition for reinstatement of a revoked certificate.

19 19. PROBATION MONITORING COSTS Respondent shall pay the costs associated
20 with probation monitoring each and every year of probation, as designated by the Board which
21 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
22 California and delivered to the Board or its designee no later than January 31 of each calendar
23 year.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Courtney G. Pilchman, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G6433. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

DATED:

Jan 28, 2013Benjamin G. Cox, M.D.
Respondent

I have read and fully discussed with respondent Benjamin G. Cox, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

1-28-13Courtney G. Pilchman
COURTNEY G. PILCHMAN, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: 1/28/13

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General


SAMUEL K. HAMMOND
Deputy Attorney General
Attorneys for Complainant

SKH: ev
SD2011800512

Exhibit A

Accusation No. 09-2010-204544

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 SAMUEL K. HAMMOND
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO AUGUST 1 2011
BY: K. MONTAUBONO ANALYST

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

12 In the Matter of the Accusation Against:

Case No. 09-2010-204544

13 **B. G. COX, JR., M.D.**
14 **aka BENJAMIN G. COX, JR., M.D.**
15 **29501 Springside Drive**
Menifee, CA 92584

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate No.**
G6433

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Linda K. Whitney (hereinafter "Complainant") brings this Accusation solely in
22 her official capacity as the Executive Director of the Medical Board of California, Department of
23 Consumer Affairs.

24 2. On or about October 25, 1960, the Medical Board of California issued
25 Physician's and Surgeon's Certificate Number G6433 to B. G. COX, JR., M.D. (hereinafter
26 "Respondent"). The Physician's and Surgeon's Certificate was in full force and effect at all times
27 relevant to the charges brought herein and will expire on November 30, 2011, unless renewed.

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JURISDICTION

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

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

5. Section 2234 of the Code states:

“The Division of Medical Quality¹ shall take action against any licensee who is charged with unprofessional conduct.² 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 [Chapter 5, the Medical Practice Act].

“(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 California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical Practice Act (Bus. & Prof. Code, §§ 2000, *et seq.*) means the “Medical Board of California,” and references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

² Unprofessional conduct is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d, 564, 575.)

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

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

“ ”
...

6. Section 2242, subdivision (a), of the Code states: “Prescribing, dispensing, or furnishing dangerous drugs as defined in section 4022 without an appropriate prior examination and medical indication, constitutes unprofessional conduct.”

7. 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.”

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he has committed gross negligence in his care and treatment of patient J.W. The circumstances are as follows:

A. On or about August 30, 2005, patient J.W., then the 36-year old and stepdaughter of respondent, was seen by respondent at respondent's house³ for complaints of cough, sweating, runny nose, chest congestion, and a fever of 102° F. Respondent noted that patient J.W. was not under the care of a doctor at that time. Patient J.W.'s past medical history included back pain in 1993, right sided sciatic problem in 1994, anxiety in 1995, and interstitial cystitis⁴ in 2004. Respondent also noted that patient J.W. had a history of

³ During his interview with the Medical Board investigator, respondent stated that he saw patient J.W. in a bedroom of his house during her visits.

⁴ Interstitial cystitis (IC) is a chronic, painful inflammatory condition of the bladder wall (continued...)

1 depression and that she was on Paxil⁵ for anxiety and Ambien for insomnia. Respondent
2 noted that the patient's lungs were clear. Respondent's diagnoses were bronchitis and
3 sinusitis, and he placed patient J.W. on Levaquin⁶ 500 mg. daily for fourteen days. No vital
4 signs were documented and no diagnostic tests were ordered.

5 B. On or about January 25, 2006, patient J.W. was seen by respondent at
6 respondent's house for complaints associated with inflammation of the throat and nose
7 exudate. Respondent noted that the patient's lungs were clear and the presence of "throat
8 sounds." Respondent's diagnoses were bronchitis and sinusitis, and he prescribed Levaquin
9 500 mg. daily for fourteen days. No vital signs were documented and no diagnostic tests
10 were ordered.

11 C. On or about July 10, 2006, patient J.W. was seen by respondent at respondent's
12 house for complaints associated with inflammation of the throat, hoarseness, back pain, and
13 insomnia. Respondent noted that the patient's lungs were clear, her voice hoarse, and "head
14 clear." Respondent's diagnoses were bronchitis and pharyngitis, back pain, and insomnia,
15 and he prescribed Azithromycin⁷ Z-pack 6; 100 pills of Vicodin⁸ 5/500, one or two pills
16 every 4 hours for pain; and 30 pills of Zolpidem⁹ 10 mg., one at bedtime. No vital signs
17 were documented, and no diagnostic tests were ordered.

18
19 characterized by pressure and pain above the pubic area along with increased frequency and
20 urgency of urination.

21 ⁵ Paxil (paroxetine hydrochloride), is a dangerous drug under section 4022 of the Code. It
is indicated for the treatment of depression.

22 ⁶ Levaquin (levofloxacin) is in a group of antibiotics called fluoroquinolones.

23 ⁷ Azithromycin is in a group of drugs called macrolide antibiotics. It is indicated for
24 treatment of mild infection.

25 ⁸ Vicodin, a brand name for hydrocodone bitartrate, is a Scheduled III Controlled
Substance pursuant to Health and Safety Code section 11056. It is used to relieve moderate to
26 severe pain.

27 ⁹ Zolpidem (Ambien) is a Scheduled Controlled Substance pursuant to Health and Safety
Code section 11056 and is used for the short-term treatment of insomnia.
28

1 D. On or about September 12, 2006, patient J.W. was seen by respondent at
2 respondent's house. Respondent's diagnoses were "stress over remodeling expenses,"
3 insomnia, and back pain. He prescribed 100 pills of Vicodin 5/500, one to two pills every 4
4 hours for pain; and 30 pills of Zolpidem 10 mg., one pill at bedtime. Respondent did not
5 document a thorough history, a physical examination or an evaluation including vital signs,
6 failed to order any diagnostic tests, and failed to consider and/or document he considered a
7 treatment plan or follow-up care.

8 E. On or about October 22, 2006, patient J.W. was seen by respondent at
9 respondent's house. Respondent noted an examination of the right buttock and sacrum, and
10 his diagnoses were "sleeping poorly" and "right SIJ" upslip.¹⁰ Respondent prescribed
11 Zolpidem and Vicodin. Respondent did not document a thorough history, a physical
12 examination or an evaluation, including vital signs, failed to order any diagnostic tests, and
13 he failed to consider and/or document he considered a treatment plan or follow-up care.

14 F. Patient J.W. was next seen by respondent at respondent's house nine months
15 later, on or about July 25, 2007. Respondent's diagnoses were anxiety and insomnia.
16 Respondent renewed patient J.W.'s prescription for 30 pills of Zolpidem 10 mg., one pill at
17 bedtime. Respondent did not document a thorough history, a physical examination or an
18 evaluation including vital signs, and failed to order and/or document he ordered diagnostic
19 tests. No referral was made for patient J.W.'s persistent complaints.

20 G. Respondent continued to prescribe medications for patient J.W. the remainder
21 of 2007 through 2008 without any evaluation of the patient and without referring the patient
22 to psychiatry or a pain management specialist. On or about October 4, 2007, patient J.W.
23 obtained a prescription for 30 pills of Zolpidem 10 mg. plus four (4) refills. This
24 prescription was filled on or about October 4, 2007, November 16, 2007, and December 31,
25 2007.

26
27 ¹⁰ SIJ (sacroiliac joint) upslip involves half of the pelvis moving upward relative to the
28 opposing side. This has a ripple effect on the rest of the lower body.

1 H. On or about April 15, 2008, patient J.W. received 30 pills of Zolpidem 10 mg.
2 and 100 pills of Vicodin 5/500 by an oral prescription from respondent. On or about
3 September 15, 2008, patient J.W. filled prescriptions for 30 pills of Zolpidem 10 mg. and
4 100 pills of Vicodin 5/500. On or about December 1, 2008, patient J.W. filled prescriptions
5 for 30 pills of Zolpidem 10 mg. and 100 pills of Vicodin 5/500. There is no notation of
6 these prescriptions in respondent's chart note for the patient.

7 I. Respondent next documented visit by patient J.W. was approximately 18
8 months later, on or about January 19, 2009. Patient J.W. was seen by respondent at
9 respondent's house for complaints of inability to sleep due to domestic problem, cold with
10 rough cough and green nasal mucus for the last two weeks, right SIJ upslip, and shingle
11 paresthesia.¹¹ Respondent's diagnoses were insomnia, bronchitis, and back pain SIJ.
12 Respondent noted that patient J.W. was going to have bladder and vaginal suspension
13 surgery that month. Respondent's treatment was Zolpidem 10 mg. at bedtime for insomnia,
14 Azithromycin #6 for bronchitis, and Vicodin 5/500 one to two pills every 4 hours for pain.
15 Respondent did not document a thorough history, a physical examination or an evaluation
16 including vital signs, failed to order diagnostic tests, and failed to consider and/ or note he
17 considered a treatment plan or follow-up care. No referral was made for patient J.W.'s
18 persistent complaints. Patient J.W. filled a prescription for 30 pills of Zolpidem 10 mg. on
19 this day.

20 J. On or about January 23, 2009, patient J.W. filled a prescription for a 6 dose
21 pack of Azithromycin 250 mg., and on or about January 27, 2009, filled a prescription for
22 100 pills of Vicodin 5/500.

23 K. On or about July 13, 2009, patient J.W. was seen by respondent at respondent's
24 house for complaints of achy pain in the back and right hip on walking, stress, and feet pain.
25 Respondent's diagnosis was insomnia and/or stress, and he prescribed 100 pills of Vicodin
26 5/100, one to two pills every 4 hours for pain; and 30 pills of Zolpidem 10 mg. one pill at

27
28 ¹¹ Paresthesia is a sensation of numbness or tingling on the skin.

1 bedtime. Respondent did not document a thorough history, a physical examination or an
2 evaluation including vital signs, failed to order any diagnostic tests, and failed to consider
3 and/or note he considered a treatment plan or follow-up care and treatment plan.

4 Respondent also failed to refer the patient to psychiatry or pain management specialist.

5 L. On or about July 15, 2009, patient J.W. filled prescriptions for 30 pills of
6 Zolpidem 10 mg. and 100 pills of Hydrocodone 5/500.

7 M. On or about September 8, 2009, patient J.W. was seen by respondent at
8 respondent's house for minor bladder suspension surgery discomfort, complaints related to
9 right SIJ upslip, and insomnia due to domestic problem. Respondent prescribed 30 pills of
10 Zolpidem 10 mg. to be taken at bedtime, and 100 pills of Vicodin 5/500, one to two pills
11 every 4 hours for pain. Respondent did not document a thorough history, a physical
12 examination or an evaluation including vital signs, failed to order diagnostic tests, and failed
13 to consider and/or document he considered a treatment plan or follow-up care. There was
14 no referral for patient J.W.'s persistent complaints.

15 N. On or about September 10, 2009, patient J.W. filled a prescription for 100 pills
16 of Vicodin 5/500, and a prescription for 30 pills of Zolpidem 10 mg.

17 O. On or about October 6, 2009, patient J.W. was seen by respondent at
18 respondent's house for complaints of sore throat and cough. Respondent noted that the
19 patient's lungs were clear and that her abdomen was soft. Respondent's diagnoses were
20 cough, chest heaviness, sore throat, insomnia, and back and groin pain. Respondent
21 prescribed Zolpidem 10 mg to be taken at bedtime, Azithromycin Z-pack, and 100 pills of
22 Vicodin 5/500, one to two tablets every 4 hours for pain. Respondent did not document a
23 thorough history, a physical examination or an evaluation including vital signs, failed to
24 order any diagnostic tests, and failed to consider and/or document he documented a
25 treatment plan or follow-up care. There was no referral for patient J.W.'s persistent
26 complaints.

27 P. On or about October 7, 2009, patient J.W. filled a prescription for 6 dose pack
28 of Azithromycin 250 mg, 100 pills of Vicodin 5/500, and 30 pills of Zolpidem 10 mg.

1 Q. On or about October 29, 2009, patient J.W. was seen by respondent at
2 respondent's house for complaints of major stress. Respondent noted that a friend had
3 shared a Xanax¹² pill with patient J.W. and that it helped a lot. Respondent prescribed 90
4 pills of Xanax 0.5 mg. one-half to one pill three times a day. This prescription was filled on
5 the same day. Respondent did not document a thorough history, a physical examination or
6 an evaluation including vital signs, failed to order any diagnostic tests, and failed to
7 consider and /or document he considered a treatment plan and follow-up care. There was no
8 referral to psychiatry.

9 R. On or about November 27, 2009, patient J.W. was seen by respondent at
10 respondent's house for complaints of sore throat, cold and nasal congestion, back and feet
11 pain, and mixed anxiety and depression. Respondent noted that patient J.W. had a panic
12 attack earlier in the month and was given Lexapro¹³ by her OB/GYN physician which made
13 her sick. Respondent noted that the patient's lungs were clear. Respondent's diagnoses
14 were extended cold, major depression, back and feet pain, and insomnia. Respondent
15 prescribed 6 dose pack of Azithromycin; 90 pills of Xanax 0.5 mg., one-half to one pill
16 three times a day; 100 pills of Vicodin 5/500, one to two pills every 4 hours for pain; and 30
17 pills of Zolpidem 10 mg. one pill at bedtime. Respondent did not document a thorough
18 history, a physical examination or an evaluation including vital signs, failed to order any
19 diagnostic tests, and failed to consider and /or document he considered a treatment plan and
20 follow-up care. There was no referral for patient J.W.'s persistent complaints and no referral
21 to psychiatry. Patient J.W. filled the prescriptions for Xanax, Vicodin, and Zolpidem on
22 this day, and her prescription for Azithromycin was filled on or about November 30, 2009.

23 S. On or about December 12, 2009, respondent documented a list of medications
24 and number of pills that were previously prescribed to patient J.W. There is no

25 ¹² Xanax, a brand name for Alprazolam, is a Scheduled IV controlled substance pursuant
26 to Health and Safety Codes section 11057, subdivision (d). It is a potent short-acting drug of the
benzodiazepine class. It is primarily used to treat moderate to severe anxiety disorders.

27 ¹³ Lexapro, a brand name for Escitalopram, is used to treat anxiety and major depressive
28 disorder.

1 documentation of a chief complaint, an assessment, a diagnosis, treatment, or history and
2 physical in the patient's chart on this date. There was no referral for patient J.W.'s
3 complaints.

4 9. Respondent committed gross negligence in his care and treatment of patient
5 J.W., which included, but was not limited to, the following:

6 (a) Respondent prescribed benzodiazepine (Xanax) and Zolidem (Ambien) for
7 patient J.W. without a psychiatric evaluation or follow-up, a thorough physical examination
8 and evaluation including vital signs, and failed to provide counseling and explanation to the
9 patient about the potential side effects of the medications she was taking.

10 (b) Respondent initiated and continued to prescribe a narcotic (Vicodin) to patient
11 J.W. without a thorough history, a physical examination or an evaluation including vital
12 signs, and excessively prescribed medications without consideration to follow-up care and
13 treatment plan.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Repeated Negligent Acts)

16 10. Respondent is further subject to disciplinary action under section under sections
17 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he engaged in
18 repeated negligent acts in his care and treatment of patient J.W., as more particularly alleged
19 hereinafter.

20 11. Paragraphs 8 and 9, above, is hereby incorporated by reference as if fully set
21 forth herein.

22 12. Respondent committed repeated negligent acts in his care and treatment of
23 patient J.W. which included, by not limited to, the following:

24 (a) Respondent prescribed benzodiazepine (Xanax) and Zolidem (Ambien) for
25 patient J.W. without a psychiatric evaluation or follow-up, a thorough physical examination
26 and an evaluation including vital signs, and failed to provide counseling and explanation to
27 the patient about the potential side effects of the medications she was taking.
28

1 (b) Respondent initiated and continued to prescribe a narcotic (Vicodin) to patient
2 J.W. without a thorough history, physical examination and evaluation including vital signs,
3 and excessively prescribed medications without consideration to follow-up care and
4 treatment plan.

5 (c) Respondent repeatedly prescribed controlled substances, including Vicodin,
6 Xanax and Ambien, to a close family member.

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Prescribing dangerous drugs without appropriate prior examination)

9 13. Respondent is further subject to disciplinary action under section 2227 and
10 2242, as defined by section 2242, subdivision (a), of the Code, in that respondent prescribed,
11 dispensed, or furnished dangerous drugs for patient J.W. without an appropriate prior examination
12 and medical indication, as more particularly alleged in paragraphs 8 through 12 above, which are
13 hereby incorporated by reference and realleged as if fully set forth herein.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 (Failure to Maintain Adequate and Accurate Medical Records)

16 14. Respondent is further subject to disciplinary action under section 2227 and
17 2266, as defined by section 2266, of the Code, in that respondent failed to maintain adequate and
18 accurate records in his care and treatment of patient J.W., as more particularly alleged paragraphs
19 8 through 12, above, which are hereby incorporated by reference and realleged as if fully set forth
20 herein.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 (General Unprofessional Conduct)

23 15. Respondent is further subject to disciplinary action for unprofessional conduct
24 under sections 2227 and 2234, as defined by section 2234, of the Code, in that respondent
25 engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct
26 which is unbecoming a member in good standing of the medical profession, and which
27 demonstrates an unfitness to practice medicine in that respondent repeatedly evaluated patient
28 J.W., a close family member, in a bedroom of respondent's home, and repeatedly prescribed

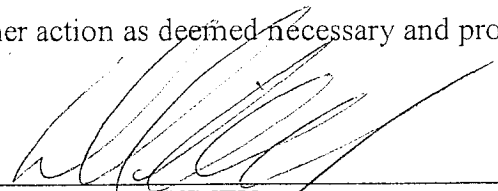
1 controlled substances and dangerous drugs, including Vicodin, Xanax and Ambien, to patient
2 J.W., as more particularly alleged in paragraphs 8 thorough 12, above which are incorporated as
3 though fully set forth herein.

4 **PRAYER**

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

- 7 1. Revoking or suspending Physician's and Surgeon's Certificate Number G6433,
8 heretofore issued to respondent B. G. COX, JR., M.D.;
- 9 2. Revoking, suspending or denying approval of respondent B. G. COX, JR.,
10 M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 11 3. Ordering respondent B. G. COX, JR., M.D. to pay the Board the costs of
12 probation, if placed on probation; and
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: August 1, 2011


16 LINDA K. WHITNEY
17 Executive Director
18 Medical Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant

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