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

In the Matter of the Accusation Against:	)	
JOHN CHIH CHIU M.D.	)	File No. 19-2011-214264
Physician's and Surgeon's Certificate No. C31784	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on June 26, 2015.

IT IS SO ORDERED May 28, 2015.

MEDICAL BOARD OF CALIFORNIA

By: _____
Jamie Wright, J.D., Chair
Panel A

KAMALA D. HARRIS
Attorney General of California
CONNIE A. BROUSSARD
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Amended Accusation Against: **JOHN CHIU, M.D** **1001 Newbury Road** **Newbury Park, CA 91360** **Physician's and Surgeon's Certificate No. C 31784** Respondent.	Case No. 19-2011-214264 OAH No. 2015020397 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of the entire matter entitled In the Matter of the Amended Accusation Against : John Chiu, M.D., Case No: 19-2011-214264, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Amended Accusation.

PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Steve Diehl, Deputy Attorney General.

2. Respondent JOHN CHIU, M.D ("Respondent") is represented in this proceeding by attorney Linda Randlett Kollar, whose address is: 1875 Century Park East, Suite 1600 Los Angeles, CA 90067.

3. On or about November 4, 1969, the Medical Board of California issued Physician's and Surgeon's Certificate No. C 31784 to JOHN CHIU, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Amended Accusation No. 19-2011-214264 and will expire on August 31, 2015, unless renewed.

JURISDICTION

4. Amended Accusation No. 19-2011-214264 was filed before the Medical Board of California (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Amended Accusation and all other statutorily required documents were properly served on Respondent on December 18, 2014. Respondent timely filed his Notice of Defense contesting the Amended Accusation.

5. A copy of Amended Accusation No. 19-2011-214264 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Amended Accusation No. 19-2011-214264. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Amended Accusation; the right to be represented by counsel at his own expense; 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.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in paragraphs 25-34 of Amended Accusation No. 19-2011-214264, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a factual basis for the allegations in paragraphs 25-34 of the Amended Accusation, and that Respondent hereby gives up his right to contest those allegations only. Respondent agrees that he failed to adequately document in patient D.B.'s record that he communicated and that D.B. understood that D.B. was diagnosed with cauda equina syndrome, the potential consequences of the diagnosis, and that D.B. needed to seek treatment immediately. Respondent understands and agrees that these failures constitute unprofessional conduct pursuant to Business and Professions Code section 2266, which provides that "The failure of a physician and surgeon to maintain adequate records relating to the provision of services to their patients constitutes unprofessional conduct."

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal

action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

1. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C31784, issued to Respondent John Chih Chiu, M.D., is Publically Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with Respondent's care and treatment of patient D.B. as set forth in Amended Accusation No. 19-2011-214264, as follows:

On or about July 23, 2008, you committed acts constituting a violation of Business and Professions Code section 2266 by failing to appropriately document in patient D.B.'s record that you communicated, and that D.B. understood, that D.B. was diagnosed with cauda equina syndrome, the potential consequences of the diagnosis, and that D.B. needed to seek treatment immediately, as set forth in paragraphs 25-34 of Amended Accusation 19-2011-214264.

2. EDUCATION COURSE

Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll, at his own expense, in a recordkeeping course, approved in advance by the Board or its designee. Respondent shall successfully complete said course no later than six months after his initial enrollment unless the Board or its designee agrees in writing to a later time for completion. Upon successfully completing said course, Respondent agrees to forward, no later than 15 days after successfully completing the course, a copy of the Certificate of Successful Completion of the course to the Board or its designee.

Failure to participate in and successfully complete the recordkeeping course outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Linda Randlett Kollar. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. 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.

DATED: 4/15/2015

JOHN CHIU, M.D
Respondent

I have read and fully discussed with Respondent JOHN CHIU, 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: 4/16/2015

Linda Randlett Kollar
Attorney for Respondent

ENDORSEMENT

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

Dated: 4/17/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
CONNIE A. BROUSSARD
Supervising Deputy Attorney General

STEVE DIEHL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Amended Accusation No. 19-2011-214264

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

In the Matter of the First Amended Accusation Against: **JOHN CHIH CHIU, M.D.** **1001 Newbury Road** **Newbury Park, CA 91320** **Physician's and Surgeon's Certificate No. C 31784** Respondent.	Case No. 19-2011-214264 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California.

2. On or about November 4, 1969, the Medical Board of California issued Physician's and Surgeon's Certificate Number C 31784 to JOHN CHIH CHIU, M.D (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2015, unless renewed.

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JURISDICTION

3. This First Amended 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 unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program.

5. Section 2227 of the Code states:

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

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

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

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

"(4) Be publicly reprimanded by the division.

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

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

6. Section 2234 of the Code states, in pertinent part:

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

"...

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

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

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

"...."

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CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

7. Respondent is subject to disciplinary action under section 2234, subdivision (c), in that he engaged in repeated negligent acts. The circumstances are as follows:

Patient D.K.[1]

8. On or about October 6, 2006, patient D.K., a 51-year-old male, presented to Dr. Chiu with complaints of low back and buttock pain with occasional tingling of the left leg. Dr. Chiu examined the patient and noted paralumbar tenderness, muscle spasm, decreased range of motion of the left leg, and decreased sensation in the left groin, left upper thigh, and left foot and ankle. Dr. Chiu recommended X-rays of appropriate areas, magnetic resonance imaging (MRI) scans of the lumbar spine with and without weight bearing, a computed tomography (CT) scan of the cervical spine, an electromyography (EMG) study of the left arm and leg, and a nerve conduction study of the left ulnar nerve. D.K. underwent these diagnostic tests the same day. Dr. Chiu interpreted the EMG as demonstrating left L4, L5, and S1 radiculopathy and left C6 and C7 radiculopathy. He ruled out left ulnar neuropathy. Dr. Chiu interpreted a weight-bearing MRI result as demonstrating an L5-S1 6-7mm disc herniation with asymmetry towards the right, and with a high intensity zone (HIZ) and impingement of the nerve root. He also noted an L4-5 5-6mm disc herniation, and an L1-2 3mm disc protrusion, also both asymmetric towards the right. Dr. Chiu interpreted the CT scan results as showing fusion of C5-6 and C6-7 levels, and noted a 2mm disc/osteophyte complex at C6-7 and C7-T1.

9. Based on the diagnostic tests conducted on D.K. on or about October 6, 2006, Dr. Chiu recommended a "trial of lumbar epidurogram and epidural and intra-thecal steroid injections at left L1, L4, and L5." On or about October 17, 2006, Dr. Chiu performed a left transforaminal lumbar epidurogram and epidural steroid injections at L1, L4, and L5; and left provocative lumbar discograms and left intradiscal steroid injections at L1-2, L4-5, and L5-S1. Dr. Chiu's operative report states that the discography "was found to be positive at L1, L4, and L5 levels."

[1] Initials are used in this Accusation to protect privacy.

No control levels were noted. The report also states "the patient tolerated the procedure well and had some relief of low back and leg pain postoperatively."

10. On or about December 19, 2006, D.K. returned to Dr. Chiu's office. A "History and Physical Form" dated December 19, 2006, signed by Dr. Chiu, indicates that D.K. had "some improvement" following his treatment in October, 2006. Nonetheless, Dr. Chiu recommended "transforaminal epidurograms and epidural and intradiscal steroid injections at L4-5, L5-S1, and L1-2." A "History and Physical Examination Report" dated December 20, 2006, notes "[i]ntractable and increasing low back and buttock pain with occasional tingling of the left leg and off and on numbness of the left last two fingers and some neck stiffness. Symptoms have been increasing for the last 4-5 weeks."

11. On an Informed Consent form dated December 19, 2006, the procedure is listed as "Left transforaminal epidurograms and epidural and intradiscal steroid injections." On a patient information checklist signed on December 19, 2006, at "11:30 [sic]", the procedure is described in identical language. On another Informed Consent form also dated December 19, 2006, the procedure is listed as "Provocative lumbar discograms and microdecompressive lumbar discectomy." On a patient information checklist signed on December 19, 2006, at 4:20 p.m., the procedure is described as "Provocative lumbar discograms and microdecompressive lumbar discectomy."

12. On or about December 19, 2006, Dr. Chiu performed "left transforaminal lumbar epidurograms and lumbar discograms of L4, L5, and transforaminal epidural and intradiskal [sic] steroid injection of L4, L5." No control levels were noted. The operative report states that the discography "was found to be positive at L4, L5 levels" and that "the patient tolerated the procedure well and had some relief of low back and leg pain postoperatively." D.K. scheduled a follow-up appointment with Dr. Chiu for December 22, 2006. Apparently, the same day, December 19, 2006, D.K. also scheduled surgery with Dr. Chiu for December 21, 2006.

13. In a "History and Physical Examination Report" dated December 20, 2006, and signed by Dr. Chiu December 23, 2006, Dr. Chiu stated that D.K. presented with "Intractable and increasing low back and buttock pain with occasional tingling of the left leg and off and on

numbness and tingling of the left last two fingers and some neck stiffness. Symptoms have been increasing for the last 4-5 weeks." The same report concludes that "If his lumbar disc symptoms progressively increase or worsen in spite of conservative treatment, then procedures of provocative lumbar discogram and microdecompressive lumbar discectomy will be indicated for the relief of his degenerative herniated lumbar disc symptoms."

14. On or about December 21, 2006, Dr. Chiu performed a "provocative lumbar discogram and microdecompressive lumbar discectomy of L1, L4 and L5 under magnification [sic]", from the left side. No control levels were noted. In Dr. Chiu's Operative Report for this procedure, he refers to the "L5" level, rather than the L5-S1 level. The Report states that the discography resulted in "positive reproduction of preoperative pain and abnormal discogram of L1, L4, L5" and that "the patient tolerated the procedure well."

15. In a "History and Physical Examination Report" dated August 29, 2007, Dr. Chiu noted "some residual peroneal numbness and urinary problem [sic]" in D.K., and found that D.K. was complaining of "increasing low back and left leg pain," and that he was suffering from "mild distress from spinal pain." Based on an MRI taken on May 25, 2007, Dr. Chiu noted 3mm disc protrusions at L5-S1 and L4-5, and a 2mm disc protrusion at L1-2. No impingement of nerve roots was noted, although the "suggestion" of impingement was noted at L4-5.

16. On or about August 30, 2007, Dr. Chiu performed a "provocative lumbar discogram L4 and L5 and microdecompressive lumbar discectomy of L4 and L5 under magnification [sic]", again from the left side. In Dr. Chiu's Operative Report for this procedure, he refers to the "L5" level, rather than the L5-S1 level. No control levels were noted. The Report states that the discography resulted in "grossly positive reproduction of preoperative pain and grossly abnormal discogram of L4 and L5" and that "the patient tolerated the procedure well."

17. On or about January 17, 2008, D.K. presented to Dr. Chiu yet again regarding his lower back and leg pain. Dr. Chiu noted only "transient relief of his spinal symptoms" as a result of the two prior surgeries, as well as "some urinary problem [sic]." Dr. Chiu performed bilateral L3 and L4 medial branch, and L5 ramus blocks. The operative report states that he performed

"L3-4, L4-5, and L5-S1 facet nerve blocks", and that "the patient tolerated the procedure well." D.K. was scheduled for a follow-up appointment on February 7, 2008.

18. On or about February 7, 2008, D.K. returned to Dr. Chiu's office. The "History and Physical Form" for this visit appears to be a copy of the one from January 17, 2008, with the date changed, physical exam data updated, and the treatment plan stated as "bilateral lumbar facet injections (#2)." No indication is stated for repeating this procedure. Dr. Chiu again performed bilateral L3 and L4 medial branch, and L5 ramus blocks.

19. On or about March 12, 2008, D.K. returned again to Dr. Chiu's office. The "History and Physical Form" for this visit again appears to be a copy of the one from January 17, 2008, with the date changed, physical exam data updated, and the treatment plan stated as "lumbar radiofrequency ablation/denervation." No indication is stated for this procedure. On or about March 27, 2008, Dr. Chiu performed bilateral lumbar facet L3, L4, and L5 denervation with thermocoagulation by radiofrequency.

20. On or about February 5, 2010, D.K. underwent MRI and EMG at the direction of Dr. Chiu. There does not appear to be a "History and Physical Form" for this visit. The MRI report notes a 2-3mm disc protrusion at L4-5 and a 4mm disc protrusion at L5-S1. Dr. Chiu performed a sacroiliac joint trigger point injection, and stated "the patient tolerated the procedure well and had relief of pain."

21. On or about March 23, 2010, D.K. underwent right L3-4, L4-5, and L5-S1 facet blocks, an L5-S1 discogram, and a right L4-5 transforaminal epidural, performed by Dr. James Thacker. The "History and Physical Form" for this visit appears to be a copy of that from February and March 2008, with the date changed, physical exam data updated, and the treatment plan stated as "right lumbar facet L3-4, L4-5, L5-S1 injection, right L5-S1 intradiscal steroid injection." The treatment plan appears to be written in different handwriting from the rest of the form.

22. On or about October 11, 2010, D.K. presented to Dr. Chiu again, and underwent MRI scans of his lumbar spine with and without weight-bearing. These scans showed right-sided 3-4mm disc protrusions at L4-5 and L5-S1.

23. On or about October 13, 2010, Dr. Chiu prepared a typewritten "History and Physical Examination Report" that described D.K.'s history as having involved pain in the right leg, not the left. This report described the identical exam findings described in the original October 6, 2006, report, but now reports them on the right side instead of the left.

24. On or about October 14, 2010, Dr. Chiu performed his third provocative lumbar discogram and microdecompressive lumbar discectomy procedure on D.K., at L4-5 and L5-S1. This procedure was performed for the first time on the right side of the two discs. No control levels were noted. Dr. Chiu noted in his operative report that discography resulted in "grossly positive reproduction of preoperative pain and grossly abnormal discogram of L4-5 and L5-S1", and that "the patient tolerated the procedure well."

Patient D.B.

25. On or about May 16, 2008, D.B., a 36 year old male, presented to Dr. Chiu with radiating pain in the right leg. Dr. Chiu ordered a nerve conduction study and EMG report, which showed abnormalities consistent with irritation of L4, L5, and S1 nerve roots on both sides. An MRI of the lumbar spine, with and without weight-bearing, showed a 2 mm disk protrusion with bilateral foraminal narrowing and central canal stenosis at L3-4, a 5-6 mm disk protrusion asymmetric to the right at L4-5, and a 4-5 mm disk protrusion with bilateral foraminal narrowing and impingement at L5-S1. Dr. Chiu performed a sacroiliac joint trigger point injection.

26. On or about June 9, 2008, D. B. returned to Dr. Chiu complaining of "intractable and increasing low back and right leg pain with numbness and tingling in the right foot and toes." The following day, Dr. Chiu performed "[p]rovocative lumbar discogram and microdecompressive lumbar discectomy of L3, L4, and L5 [sic] under magnification." Dr. Chiu reported "grossly positive reproduction of preoperative pain and grossly abnormal discogram of L3, L4 and L5 noted." No control levels were noted. D.B. had no immediate complications and was discharged home the same day.

27. On or about June 16, 2008, D. B. returned to Dr. Chiu, presenting with "[s]pinal headache and CSF [cerebrospinal fluid] leakage." Dr. Chiu performed an epidural blood patch.

28. On or about July 18, 2008, Dr. Chiu ordered a CT scan of D.B.'s lumbar spine. This study showed abnormalities with nerve impingement at L4-5 and L5-S1, and a 2mm disk protrusion at L2-3 with foraminal narrowing and central canal stenosis. Dr. Chiu performed a "para-lumbar vertebral nerve block procedure."

29. On or about July 21, 2008, D. B. returned to Dr. Chiu, still complaining of "increasing low back and right leg pain with numbness and tingling of the right foot and toes as well as some aching of the right calf." D.B. "did well for about 2 weeks" after his previous surgery, but "then developed recurrent and increasing spinal symptoms." Dr. Chiu ordered a repeat MRI study of the lumbar spine, which continued to show essentially the same abnormalities at L3-4, L4-5, and L5-S1 as had appeared in the pre-surgery MRI.

30. On or about July 22, 2008, Dr. Chiu again performed "[p]rovocative lumbar discogram and microdecompressive lumbar discectomy of L3, L4 and L5 [sic] under magnification." Dr. Chiu again reported "grossly positive reproduction of preoperative pain and grossly abnormal discogram of L3, L4 and L5 noted." Again, no control levels were noted. Immediately following the surgery, D.B. demonstrated urinary retention and reported numbness. Nonetheless, he was dicharged the same day.

31. On or about July 23, 2008, D.B. reported to Dr. Chiu for his follow-up visit. Dr. Chiu again noted "urinary retention", but otherwise noted "neuro exam essentially normal."

32. On or about July 25, 2008, Dr. Chiu ordered an additional MRI study of D.B.'s lumbar spine. This study again showed disc protrusion at L3-4, L4-5, and L5-S1, with foraminal narrowing, central canal stenosis, and nerve impingement at all three levels.

33. On or about July 28, 2008, Dr. Chiu ordered yet another MRI study of D.B.'s lumbar spine. This repeat MRI showed no significant change from the previous MRI of July 25, 2008. Dr. Chiu noted numbness of the penis and perineal area, and diagnosed "partial cauda equina syndrome." He recommended immediate, emergency decompressive surgery, and referred D.B. to Patrick Johnson, M.D. The same day, D.B. presented to Dr. Johnson, reporting that he had experienced numbness in the groin immediately after the July 22 surgery, with associated bowel and bladder incontinence, which persisted since then. D.B. expressed concern to Dr. Johnson that

his presenting symptoms had been "dismissed" by Dr. Chiu. Dr. Johnson diagnosed D.B. with cauda equine syndrome. He performed emergency laminectomies from L3 to S1, discectomy of L4-5, and repair of cerebrospinal fluid leaks.

34. Subsequently, D.B. has continued to experience residual symptoms with ongoing fecal and urinary incontinence.

Patient S.O.

35. On or about May 4, 2011, S.O., a 55 year old female, presented to Dr. Chiu with complaints of "intractable and increasing low back and right leg greater than left leg pain with tingling and burning sensation of both feet, right greater than left and frequent 'Charlie horse' on both leg/calf, lower mid-back pain with muscle spasm, intractable and increasing neck and left upper extremity pain with weakness of both handgrips, left greater than right (dropping things), associated with daily fronto-occipital pressure/throbbing headaches." Dr. Chiu ordered x-ray imaging of the thoracic, cervical, and lumbar spine; EMG; bone densitometry; and MRI of the lumbar and cervical spine. The MRI study showed a 3 mm disc protrusion with "borderline" spinal stenosis at L3-4, a 5 mm disc protrusion with "high grade" spinal stenosis and moderate bilateral neuroforaminal exit zone compromise at L4-5, and a 3 mm disc protrusion at L5-S1. Dr. Chiu diagnosed S.O. with "severe advanced degenerative lumbar disc herniations, L3, L4, L5/spondylosis/lumbar stenosis, L3-4 and L4-5 lateral and central with neurogenic claudication and lumbar radiculopathy."

36. On or about May 5, 2011, Dr. Chiu performed "Provocative lumbar discogram of L3, L4 and L5 and microdecompressive lumbar discectomy of L3, L4, L5 [sic]"; "Right and left foraminoplasty L3-4, L4-5"; "Partial vertebrectomy of right and left L3-4 and L4-5 for decompressive foraminoplasty"; and "Lumbar laminotomy, L4-5, L4-5 levels [sic], bilaterally, with minimally invasive lumbar decompression (MILD) and excision of hypertrophic ligamentum flavum at L3-4 and L4-5 bilaterally." Dr. Chiu reported "grossly positive reproduction of preoperative pain and grossly abnormal discogram of L3, L4 and L5 noted." No control levels were noted. S.O. had no immediate complications and was discharged home the same day.

37. On or about May 6, 2011, Dr. Chiu performed a sacroiliac joint trigger point injection on S.O. The operative report notes that "the patient tolerated the procedure well and had relief of pain."

38. On or about July 20, 2011, S.O. returned to Dr. Chiu, reporting "recurrent intractable and increasing low back/right hip and right lower extremity pain and some left leg pain with muscle spasm and some difficulty with urination." S.O. reported that the surgery of May 5, 2011, "did give her some transient relief of her spinal symptoms for about 4-5 days." Dr. Chiu ordered repeat x-ray imaging and MRI of the lumbar spine, as well as EMG. The MRI showed no significant change compared to the pre-operative study: a broad, 4-5 mm disc protrusion with "moderate to high grade" spinal stenosis and bilateral neuroforaminal exit zone compromise at L3-4; a broad, 5-6 mm disc protrusion with "high grade" stenosis and "moderate" bilateral neuroforaminal exit zone compromise at L4-5; and a broad, 4-5 mm disc protrusion at L5-S1. Dr. Chiu recommened repeat microdecompressive lumbar discectomy with provocative discograms.

39. On or about July 21, 2011, Dr. Chiu performed "[p]rovocative lumbar discogram and microdecompressive lumbar discectomy of L3, L4 and L5 [sic]" and "[b]ilateral lumbar facet L3, L4, L5 nerve blocks." Again, Dr. Chiu reported "grossly positive reproduction of preoperative pain and grossly abnormal discogram of L3, L4 and L5 noted." Again, no control levels were noted. Again, S.O. had no immediate complications and was discharged home the same day. A post-operative MRI was performed on or about July 22, 2011, which showed reduced disc bulges at L3-4 and L4-5, but continuing stenosis and bilateral neuroforaminal exit zone compromise.

40. On or about August 19, 2011, S.O. presented to her primary care physician, reporting continuing severe back pain. S.O. was referred back to Dr. Chiu, who, on or about August 23, 2011, ordered additional thoracic and lumbar spine MRI scans. The thoracic spine MRI showed a 3mm disc bulge at T8-9, and disc narrowing and degeneration at T7-8, T8-9, and T9-10. The lumbar spine MRI was unchanged from the prior MRI of July 22, 2011. Dr. Chiu referred S.O. to another neurosurgeon, Dr. Ian Armstrong. S.O. was also seen by an infectious disease specialist, Dr. Martha Sonnenberg. S.O. was placed on a course of antibiotics, and a PICC line was installed, with a diagnosis of possible diskitis. Her pain issues remained unresolved.

Patient J.D.

41. On or about October 17, 2011, J.D., a 75 year old female, was referred to Dr. Chiu, complaining of "intractable and increasing low back/right buttock/right leg burning/aching pain and some lower mid-back pain with muscle spasm." Dr. Chiu ordered an EMG study; a CT scan and MRI of the lumbar spine; x-ray imaging of the thoracic, cervical, and lumbar spine; and a bone densitometry study. The MRI showed 4-6mm protrusions with neuroforaminal exit zone compromise at every disc from L1-L2 to L5-S1. Spinal stenosis was noted at every disc except L2-L3.

42. On or about October 18, 2011, Dr. Chiu performed "[p]rovocative lumbar discogram and microdecompressive lumbar discectomy and foraminoplasty for enlargement of the foramen of L1, L2, L3, L4 and L5 under magnification [sic]." Dr. Chiu reported "grossly positive reproduction of preoperative pain and grossly abnormal discogram of L1, L2, L3, L4 and L5 noted." No control levels were noted. J.D. had no immediate complications and was discharged home the same day.

Departures from the Standard of Care

Discography Without Controls (All Patients)

43. The standard of care is to perform lumbar discography with adequate controls to produce a valid diagnostic study. Lumbar discography is a controversial technique involving intradiscal injection of a contrast agent with fluoroscopy. Suspect discs are injected with contrast agent, and the patient is asked to report if he or she is experiencing familiar pain. Non-suspect discs are also injected as a control. Production of concordant pain at a suspect level and lack of concordant pain at control levels is necessary to elicit a valid diagnostic study. There is no documentation showing that Respondent ever injected a non-suspect disc as a control during any discography procedure with any patient. Paragraphs 8 through 42 are incorporated here by reference. By routinely failing to perform discography on non-suspect discs during discographic procedures, and thereby failing to perform valid diagnostic tests, Respondent departed from the standard of care.

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Discectomy Without Indication (All Patients)

44. The standard of care is to perform lumbar discectomy only with clear and appropriate indications. Lumbar discectomy is indicated for the treatment of symptomatic nerve root impingement from disc derangement causing nerve root compression. Patients should have symptoms and signs consistent with a specific dermatomal or myotomal distribution—i.e., pain, numbness, paresthesias, sensory loss, diminished reflexes, or weakness correlating to a specific nerve root. Imaging studies should demonstrate pathology concordant to the level and side of the symptoms and signs. Patients should have failed an adequate trial—typically 4-8 weeks at least—of conservative measures consisting of analgesics and physical therapy, unless emergent symptoms and signs of cauda equine syndrome are present. Additionally, confounding factors should be factored into the decision making process including but not limited to psychosocial factors that may magnify symptoms, such as depression, litigation, and worker's compensation claims. Various techniques of performing discectomy are utilized, including open, minimally invasive, and percutaneous endoscopic methods. Repeat discectomy is performed for either retained, unresected herniated disc material at the site of the original surgery, or recurrent disc herniation. In the former circumstance, patients do not usually improve from the original surgery. In the latter, patients typically have a period of pain relief followed by a recurrence of symptoms. Repeat imaging should demonstrate the retained or recurrent disc herniation clearly discernible in comparison to the original images. The requirement for concordance between the symptoms, signs, and imaging findings still applies.

45. Dr. Chiu performed lumbar discectomy on Patient D.K. on or about December 21, 2006; again on or about August 30, 2007; and for a third time on or about October 14, 2010. Paragraphs 8 through 24 are incorporated here by reference. When D.K. first presented to Dr. Chiu on or about October 6, 2006, he presented with signs and symptoms in the left leg, yet MRI imaging showed disc herniation in a right paramedian location at L4-5 and L5-S1, possibly compressing the right L5 or S1 nerve roots. Dr. Chiu proceeded initially with conservative treatment, consisting of two courses of epidural steroid injections on or about October 6, 2006, and again on or about December 19, 2006, respectively. Despite "some improvement", despite

the lack of concordance between the side of the signs and symptoms and the side of the pathology shown in the MRI, and despite having just performed a second round of injections, on or about December 19, 2006, Dr. Chiu recommended D.K. undergo lumbar discectomy. The very next day, Dr. Chiu authored a History and Physical Examination Report that concluded, "[i]f [D.K.'s] lumbar disc symptoms progressively increase or worsen in spite of conservative treatment, then procedures of provocative lumbar discogram and microdecompressive lumbar discectomy *will be* indicated for the relief of his degenerative herniated lumbar disc symptoms." [Emphasis added]. The day after authoring that report, and two days after performing the second round of injections on D.K., Dr. Chiu performed a lumbar discectomy, apparently at L1-2, L4-5, and L5-S1. Furthermore, Dr. Chiu performed this surgery from the left side, despite the right-sided disc herniations. Then, on or about August 30, 2007, Dr. Chiu repeated the same procedure at (apparently) L4-5 and L5-S1, despite any MRI findings that would explain a recurrence of symptoms. Finally, on or about October 14, 2010, Dr. Chiu performed yet another lumbar discectomy, this time from the right side, again without any significant changes in the MRI findings. Because Dr. Chiu performed repeated lumbar discectomies on D.K. without clear concordance between signs, symptoms, and imaging; and because he performed lumbar discectomies on D.K. despite noting improvement following the first course of conservative treatment; and because he performed a lumbar discectomy on D.K. a mere two days after the second course of conservative treatment; Dr. Chiu departed from the standard of care.

46. Dr. Chiu performed lumbar discectomy on D.B. on or about June 9, 2008, and again on or about July 22, 2008. Paragraphs 25 through 34 are incorporated here by reference. While the initial surgery was indicated, the repeat procedure was not. The MRI performed on or about July 21, 2008, showed that D.B.'s spinal pathology had not responded to microdecompressive lumbar discectomy. Repeating the identical procedure had little chance of success, and represents a departure from the standard of care.

47. Dr. Chiu performed lumbar discectomy on S.O. on or about May 5, 2011, and again on or about July 21, 2011. Paragraphs 35 through 40 are incorporated here by reference. Prior to surgery, Dr. Chiu had diagnosed S.O. with "severe advanced degenerative lumbar disc

herniations, L3, L4, L5/spondylosis/lumbar stenosis, L3-4 and L4-5 lateral and central with neurogenic claudication and lumbar radiculopathy." Such significant spinal disease is unlikely to respond to microdecompressive lumbar discectomy, and thus both surgeries represent departures from the standard of care. Furthermore, following the first surgery, S.O.'s symptoms persisted, and a post-surgical MRI showed essentially unchanged pathology. As a result, repeating the same procedure was not indicated, and represents an additional departure from the standard of care.

48. Dr. Chiu performed lumbar discectomy on J.D. on or about October 18, 2011. Paragraphs 41 and 42 are incorporated here by reference. J.D. had presented with significant disk disease at every level from L1-2 to L5-S1. A patient with such advanced disc disease would be unlikely to benefit from microdecompressive lumbar discectomy. As a result, this surgery represents a departure from the standard of care.

Failure to Diagnose and Treat Cauda Equina Syndrome (Patient D.B.)

49. Cauda equina syndrome is a dangerous condition which can lead to permanent neurological deficit, including urinary and fecal incontinence. Presentation with symptoms of cauda equina syndrome, including groin numbness and urinary hesitancy, constitute a medical emergency requiring immediate treatment. Immediately following his second surgery on or about July 22, 2008, D.B. presented with "urinary retention." Paragraphs 25 through 34 are incorporated here by reference. When he was seen nearly a week later, on or about July 28, 2008, D.B. stated that he had also experienced groin numbness dating back to the day of the second surgery. Dr. Chiu's failure to diagnose this condition on or about July 22, 2008, and his delay in diagnosis until July 28, 2008, represent departures from the standard of care.

DISCIPLINE CONSIDERATIONS

50. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 27, 2012, in a prior disciplinary action entitled *In the Matter of the Accusation/Petition to Revoke Probation Against John C. Chiu, M.D.* before the Medical Board of California, in Case Number D1-2002-141331, Respondent's license was revoked, for failing to disclose the existence of two malpractice lawsuits in his probation

quarterly reports. However, the revocation was stayed and Respondent's license was placed on probation for a period of seven months with numerous terms and conditions. That decision is now final and is incorporated by reference as if fully set forth.

51. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 21, 2008, in a prior disciplinary action entitled *In the Matter of the Accusation Against John Chih Chiu, M.D.* before the Medical Board of California, in Case Number 17-2002-141331, Respondent's license was placed on three years probation with terms and conditions related to failure to properly render post-operative care to two patients. That decision is now final and is incorporated by reference as if fully set forth.

52. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about August 16, 2002, in a prior disciplinary action entitled "*In the Matter of the Accusation Against John Chiu, M.D.*" before the Medical Board of California, in Case Number 05-1996-59826, the Medical Board issued a public letter of reprimand to Respondent stating that he violated Business and Professions Code section 650.1 by referring two patients to diagnostic imaging and physical therapy providers without disclosing to these patients that he had an ownership interest in these providers. That decision is now final and is incorporated by reference as if fully set forth.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 31784, issued to JOHN CHIH CHIU, M.D.;

2. Revoking, suspending or denying approval of John Chih Chiu, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. If placed on probation, ordering John Chih Chiu, M.D. to pay the Board the costs of probation monitoring;

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

DATED: December 18, 2014

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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