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

In the Matter of the Accusation Against:	)	
William Howard Buchner, Jr., M.D.	)	**Case No. 800-2016-020267**
Physician's and Surgeon's Certificate No. A 109750	)	
Respondent	)	

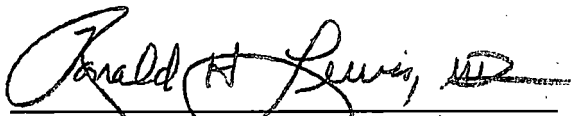
DECISION

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 October 12, 2018.

IT IS SO ORDERED: September 13, 2018.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

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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 Accusation Against: **WILLIAM HOWARD BUCHNER, JR., M.D.** **3900 Fifth Avenue, Suite 110** **San Diego, CA 92103** **Physician's and Surgeon's Certificate No. A 109750** Respondent.	Case No. 800-2016-020267 OAH No. 2018040936 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Karolyn M. Westfall, Deputy Attorney General.

2. Respondent William Howard Buchner, Jr., M.D. (Respondent) is represented in this proceeding by attorney Nicole Irmer, Esq., whose address is: 2550 Fifth Avenue, Suite 1060 San Diego, CA 92103

3. On or about October 21, 2009, the Board issued Physician's and Surgeon's Certificate No. A 109750 to William Howard Buchner, Jr., 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 Accusation No. 800-2016-020267, and will expire on April 30, 2019, unless renewed.

4. On or about July 6, 2016, the Board issued a Decision and Order that became effective on or about August 5, 2016, in an action entitled, *In the Matter of the Accusation Against William Howard Buchner, M.D.*, Medical Board of California Case No. 800-2014-005041, wherein Respondent's Physician's and Surgeon's Certificate No. A 109750 was revoked, stayed, and placed on probation for five (5) years, subject to various terms and conditions.

JURISDICTION

5. On March 6, 2018, Accusation No. 800-2016-020267 was filed against Respondent before the Board. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on March 6, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2016-020267 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-020267. 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 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.

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8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. With the exception of paragraphs 23, 40(A), and 40 (D), Respondent admits that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2016-020267 and agrees that he has thereby subjected his Physician's and Surgeon's Certificate No. A 109750 to disciplinary action.

10. Respondent further agrees that if he ever petitions for modification or early termination of probation, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2016-020267 shall be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California or elsewhere.

11. Respondent agrees that his Physician's and Surgeon's Certificate No. A 109750 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.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

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

ADDITIONAL PROVISIONS

15. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

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

17. 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:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 109750 issued to Respondent William Howard Buchner, Jr., M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions, to run concurrent with the probationary term ordered in Medical Board of California Case No. 800-2014-005041:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 20 hours per year, for each year of probation. The educational program(s) or course(s) shall be in the area of evidence-based methods and proven treatment techniques/protocols, and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 45 hours of CME of which 20 hours were in satisfaction of this condition.

2. 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 approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's 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 be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee

had the course been taken after the effective date of this Decision.

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

3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

4. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including

but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

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

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within

15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

5. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

6. PROHIBITED PRACTICE. During probation, Respondent is prohibited from holding any type of ownership interest in any medical clinic.

7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

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

10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such

addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training

program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations.

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

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

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

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Nicole Irmer, Esq. 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: 8/14/18

WILLIAM HOWARD BUCHNER, JR., M.D.
Respondent

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I have read and fully discussed with Respondent William Howard Buchner, Jr., 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: 8/15/18

NICOLE IRMER, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 8/21/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-020267

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Mar 6 2018
BY D. Richards ANALYST

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

In the Matter of the Accusation Against: **WILLIAM HOWARD BUCHNER, JR., M.D.** **3900 Fifth Avenue, Suite 110** **San Diego, CA 92103** **Physician's and Surgeon's Certificate No. A109750,** Respondent.	Case No. 800-2016-020267 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about October 21, 2009, the Medical Board issued Physician's and Surgeon's Certificate No. A109750 to William Howard Buchner, Jr., 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 April 30, 2019, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code 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 board.

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

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

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board 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 board 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."

5. 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:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

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

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

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

"..."

6. 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)

7. Respondent has subjected his Physician's and Surgeon's Certificate No. A109750 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of patient A[1], as more particularly alleged hereinafter:

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[1] To protect the privacy of all patients involved, patient names have not been included in this pleading. Respondent is aware of the identity of the patients referred to herein.

PATIENT A

8. Between in or around August 2011, through in or around June 2015, Respondent worked as a family medicine physician in a large medical group practice in La Mesa, California.

9. In or around June 2015, Respondent left the group practice to pursue solo private practice.

10. Between in or around June 2015, through in or around September 2015, Respondent hired a credentialing team to assist Respondent in getting onto various insurance panels as an in-network provider.

11. Between in or around September 2015, through in or around September 2016, Respondent ran his solo private practice clinic in La Mesa. Throughout that time period, Respondent never became an in-network provider for any insurance company, other than Medicare.

12. On or about November 21, 2015, Patient A presented to Respondent at his solo private practice clinic for an initial evaluation and treatment regarding "hormone issues," she believed were causing her to be sick for a long period of time. Patient A had a complicated medical insurance plan, and prior to receiving treatment, she requested to be a cash-pay patient. Patient A's medical record for this visit includes a list of medications, does not include any vital signs, and indicates a regular musculoskeletal and ENT exam. After completing a physical examination and discussing the patient's symptoms, Respondent diagnosed Patient A with, among other things, fatigue, pain in unspecified joint, hypothyroidism, and allergic rhinitis. Respondent recommended the patient "continue with current supplements, and undergo hormone testing utilizing a DUTCH hormone lab kit.[2] Respondent's reasoning for the hormone testing was not documented. Patient A paid Respondent $592.92 by credit card on that day for both the initial visit and the DUTCH lab kit, based upon a cash-pay patient fee schedule.

13. On or about January 4, 2016, Patient A presented to Respondent for a follow-up and to discuss her lab results. At this visit, Respondent discussed the patient's lab results, her

[2] DUTCH testing utilizes a dried urine collection process to track and evaluate hormone levels.

elevated morning cortisol levels, and adrenal hyperfunction/stress reaction. Patient A's medical record for this visit does not include a medication list or any reference to medication list from the prior visit, and does not include any vital signs. After completing a physical examination, Respondent's diagnoses at the conclusion of this visit remained unchanged from the prior encounter, and recommended the patient continue nature thyroid for subclinical hypothyroidism, and to discontinue "current herbal supplements." At some point during this visit, Patient A asked Respondent to submit claims to her insurance company for both clinical encounters. Patient A paid Respondent a $75.00 deposit on that day, pending Respondent's payment from the insurance company for both clinical encounters.

14. On or about January 4, 2016, Respondent submitted claims to Patient A's insurance company for both visits. Respondent utilized a 99204 billing code for the November 21, 2015, encounter, and a 99214 billing code for the January 4, 2016, encounter.

15. On or about January 16, 2016, Respondent received approximately $943.62 from Patient A's insurance company for payment for both clinical encounters.

16. Between on or about February 4, 2016, and on or about February 24, 2016 Patient A contacted Respondent's office multiple times by phone and through the on-line patient portal to inquire of a refund due as a result of the insurance payment Respondent received for both clinical encounters.

17. On or about February 20, 2016, Respondent contacted Patient A through the on-line patient portal and confirmed receipt of the insurance payment and a credit due to the patient.

18. On or about February 24, 2016, Patient A came to Respondent's office to inquire of the status of her refund, and was informed by Respondent's office manager that a check would be available for her to pick up in the office on March 2, 2016.

19. On or about March 2, 2016, Patient A retuned to Respondent's office to collect her refund check. Upon arrival, Patient A discovered Respondent's office to be empty and closed.[3]

[3] Sometime between on or about February 24, 2016, and on or about March 2, 2016, Respondent temporarily moved his solo private practice clinic to another office space within the same building for a pre-scheduled move.

The office did not have a posted notice directing patients to another location, and Patient A had not otherwise been informed by Respondent of a planned office move.

20. On or about March 9, 2016, Respondent refunded Patient A $75.00, and informed her that he would refund the balance as soon as possible.

21. Sometime after March 9, 2016, Patient A initiated a charge-back on her credit card for the $592.92 she paid Respondent on or about November 21, 2015. On or about March 15, 2016, $592.92 was credited back to Patient A's credit card.

22. In or around September 2016, Respondent closed his solo private practice clinic.

23. Respondent committed gross negligence in his care and treatment of Patient A, which included, but was not limited to, failing to evaluate Patient A based upon evidence-based methods and with proven treatment techniques/protocols.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

24. Respondent has subjected his Physician's and Surgeon's Certificate No. A109750 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patients A and B, which included, but was not limited to the following:

25. Paragraphs 7 through 23, above, are hereby incorporated by reference and realleged as if fully set forth herein.

PATIENT B

26. Sometime after June 2015, Patient B learned that Respondent left the group practice where she had previously received treatment from him, to pursue a solo private practice clinic.

27. On or about August 30, 2015, Patient B signed up online to be a new patient of Respondent at his private practice clinic.

28. On or about September 1, 2015, Respondent's office manager contacted Patient B and asked her to submit her insurance information. After doing so, Respondent's office manager informed Patient B that Respondent was an in-network provider with her insurance company, and that her co-pay would be $20.00 for an office visit.

29. On or about September 3, 2015, Patient B presented to Respondent at his solo private practice clinic for an initial evaluation, and treatment for anxiety and depression. After completing a physical examination and discussing the patient's symptoms, Respondent diagnosed Patient B with, among other things, acute insomnia, anxiety, and acute malaise and fatigue. Respondent recommended the patient obtain lab work, and to schedule a follow-up visit in one month to discuss the results. Patient B paid Respondent a $20.00 co-pay that day for the visit.

30. On or about September 29, 2015, Patient B presented to Respondent with complaints of a cough lasting less than two weeks. After completing a physical examination and discussing the patient's symptoms, Respondent diagnosed Patient B with acute bronchitis. Respondent recommended treatment that included a "physiologic" dose of hydrocortisone 10 mg to help with wheezing or achiness, DHEA[4] to boost her immune system, cough medicine for daytime cough, and cough syrup with codeine for bedtime. Patient B paid Respondent a $20.00 co-pay that day for the visit.

31. On or about October 1, 2015, Patient B contacted Respondent through the on-line patient portal and reported that she started to cough up green phlegm.

32. On or about October 2, 2015, Respondent responded to Patient B through the on-line patient portal and informed her that he submitted a prescription for an antibiotic.

33. On or about October 2, 2015, Patient B completed the lab work as recommended by Respondent.

34. On or about October 6, 2015, Patient B contacted Respondent through the on-line patient portal to inquire of her lab results, and reported that she was continuing to cough up green phlegm.

35. On or about October 6, 2015, Patient B's lab results were reported to Respondent.

36. On or about October 8, 2015, Respondent responded to Patient B through the on-line patient portal and informed her that he should be getting her lab results soon, and that he would submit a prescription for an inhaler.

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[4] DHEA (dehydroepiandrosterone) is a hormone produced by the body's adrenal glands. Synthetic DHEA is used as an over-the-counter supplement.

37. On or about November 1, 2015, Patient B's lab results were uploaded to the patient's medical record.

38. On or about November 10, 2015, Respondent contacted Patient B through the on-line patient portal and informed her to review her posted lab results.

39. On or about November 18, 2015, Patient B received a bill from Respondent for both of her clinical visits. Patient B then contacted her insurance company and was informed that Respondent was not an in-network provider.

40. Respondent committed repeated negligent acts in his care and treatment of Patient A, which included but was not limited to, the following:

A. Failing to evaluate Patient A based upon evidence-based methods and with proven treatment techniques/protocols.

B. Failing to notify Patient A of a planned change of practice location;

C. Failing to adequately document evaluation and treatment of Patient A, including medical reasoning for ordering tests;

D. Failing to adequately document clinical encounters with Patient A consistent with billing codes utilized; and

E. Failing to process a timely refund to Patient A for overpayment received.

41. Respondent committed repeated negligent acts in his care and treatment of Patient B, which included but was not limited to, the following:

A. Misrepresenting his in-network insurance status to Patient B;

B. Failing to communicate lab results to Patient B in a timely fashion; and

C. Failing to appropriately treat Patient B's bronchitis.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

42. Respondent has further subjected his Physician's and Surgeon's Certificate No. A109750 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records regarding his care and

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treatment of Patient A, as more particularly alleged in paragraphs 7 through 23, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

43. To determine the degree of discipline, if any, to be imposed on Respondent William Howard Buchner, Jr., M.D., Complainant alleges that on or about July 6, 2016, the Board issued a Decision and Order that became effective on or about August 5, 2016, in an action entitled, *In the Matter of the Accusation Against William Howard Buchner, Jr., M.D.*, Medical Board of California Case No. 800-2014-005041. In that matter, and as a result of Respondent's unprofessional conduct in 2010 and 2014, Respondent's Physician's and Surgeon's Certificate No. A109750 was revoked, stayed, and placed on probation for five (5) years, subject to various terms and conditions.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. A109750, issued to Respondent, William Howard Buchner, Jr., M.D.;

2. Revoking, suspending or denying approval of Respondent, William Howard Buchner, Jr., M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent, William Howard Buchner, Jr., M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: March 6, 2018

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

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