

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

**In the Matter of the First Amended
Accusation Against:**

Jay Allwyn Hendrickson, M.D.

Case No. 800-2014-007164

**Physician's and Surgeon's
Certificate No. G 83722**

Respondent

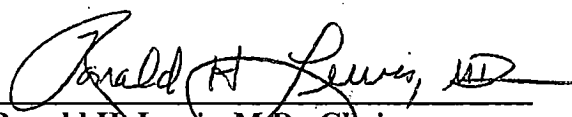
DECISION AND ORDER

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 18, 2018.

IT IS SO ORDERED: September 18, 2018.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
Deputy Attorney General
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8 *Attorneys for Complainant*

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

13
14 In the Matter of the First Amended Accusation
Against:

15 **JAY A. HENDRICKSON, M.D.**
2350 East Bidwell St.
16 Folsom, CA 95630

17 **Physician's and Surgeon's Certificate No. G**
83722

18
19 Respondent.

Case No. 800-2014-007164

OAH No. 2017061081

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

20
21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 PARTIES

25 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
26 of California (Board). She brought this action solely in her official capacity and is represented in
27 this matter by Xavier Becerra, Attorney General of the State of California, by Megan R.
28 O'Carroll, Deputy Attorney General.

2. Respondent Jay A. Hendrickson, M.D. (Respondent) is represented in this proceeding by attorney Robert B. Zaro, Esq., whose address is: 1315 "T" Street, Suite 200, Sacramento, CA 95814.

3. On or about May 2, 1997, the Board issued Physician's and Surgeon's Certificate No. G 83722 to Jay A. Hendrickson, 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 First Amended Accusation No. 800-2014-007164, and will expire on September 30, 2018, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2014-007164 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on August 28, 2017. Respondent timely filed his Notice of Defense.

5. A copy of First Amended Accusation No. 800-2014-007164 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 First Amended Accusation No. 800-2014-007164. 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 First Amended 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.

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

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in the First
3 Amended Accusation No. 800-2014-007164, if proven at a hearing, constitute cause for imposing
4 discipline upon his Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the First Amended Accusation without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the First Amended Accusation, and that Respondent
8 hereby gives up his right to contest those charges.

9 11. Respondent further agrees that if he ever petitions for early termination or
10 modification of probation, or if an accusation and/or petition for revocation of probation is filed
11 against him before the Medical Board of California, all of the charges and allegations contained
12 in the Accusation No. 800-2014-007164, shall be deemed true, correct and fully admitted by
13 Respondent for purposes of any such proceeding, or other licensing proceeding involving
14 Respondent in the State of California.

15 12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
16 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
17 Disciplinary Order below.

18 CONTINGENCY

19 13. This stipulation shall be subject to approval by the Medical Board of California.
20 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
21 Board of California may communicate directly with the Board regarding this stipulation and
22 settlement, without notice to or participation by Respondent or his counsel. By signing the
23 stipulation, Respondent understands and agrees that she may not withdraw his agreement or seek
24 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
25 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
26 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
27 action between the parties, and the Board shall not be disqualified from further action by having
28 considered this matter.

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

15. 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

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 83722 issued to Respondent Jay A. Hendrickson, 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.

1. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices 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

1 complete any other component of the course within one (1) year of enrollment. The prescribing
2 practices course shall be at Respondent's expense and shall be in addition to the Continuing
3 Medical Education (CME) requirements for renewal of licensure.

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

9 Respondent shall submit a certification of successful completion to the Board or its
10 designee not later than 15 calendar days after successfully completing the course, or not later than
11 15 calendar days after the effective date of the Decision, whichever is later.

12 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
13 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
14 advance by the Board or its designee. Respondent shall provide the approved course provider
15 with any information and documents that the approved course provider may deem pertinent.
16 Respondent shall participate in and successfully complete the classroom component of the course
17 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
18 complete any other component of the course within one (1) year of enrollment. The medical
19 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
20 Medical Education (CME) requirements for renewal of licensure.

21 A medical record keeping course taken after the acts that gave rise to the charges in the
22 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
23 or its designee, be accepted towards the fulfillment of this condition if the course would have
24 been approved by the Board or its designee had the course been taken after the effective date of
25 this Decision.

26 Respondent shall submit a certification of successful completion to the Board or its
27 designee not later than 15 calendar days after successfully completing the course, or not later than
28 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

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

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

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

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

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

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

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

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

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

1 10. GENERAL PROBATION REQUIREMENTS.

2 Compliance with Probation Unit

3 Respondent shall comply with the Board's probation unit.

4 Address Changes

5 Respondent shall, at all times, keep the Board informed of Respondent's business and
6 residence addresses, email address (if available), and telephone number. Changes of such
7 addresses shall be immediately communicated in writing to the Board or its designee. Under no
8 circumstances shall a post office box serve as an address of record, except as allowed by Business
9 and Professions Code section 2021(b).

10 Place of Practice

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

14 License Renewal

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

17 Travel or Residence Outside California

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

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

24 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be

25 available in person upon request for interviews either at Respondent's place of business or at the
26 probation unit office, with or without prior notice throughout the term of probation.

27 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or

28 its designee in writing within 15 calendar days of any periods of non-practice lasting more than

1 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
2 defined as any period of time Respondent is not practicing medicine as defined in Business and
3 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
4 patient care, clinical activity or teaching, or other activity as approved by the Board. If
5 Respondent resides in California and is considered to be in non-practice, Respondent shall
6 comply with all terms and conditions of probation. All time spent in an intensive training
7 program which has been approved by the Board or its designee shall not be considered non-
8 practice and does not relieve Respondent from complying with all the terms and conditions of
9 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
10 on probation with the medical licensing authority of that state or jurisdiction shall not be
11 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
12 period of non-practice.

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

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

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

20 Periods of non-practice for a Respondent residing outside of California will relieve
21 Respondent of the responsibility to comply with the probationary terms and conditions with the
22 exception of this condition and the following terms and conditions of probation: Obey All Laws;
23 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
24 Controlled Substances; and Biological Fluid Testing.

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

14. 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.

15. 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.

16. 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, Robert B. Zaro, 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.

1
2 DATED:

6/5/2018


JAY A. HENDRICKSON, M.D.
Respondent

3
4 I have read and fully discussed with Respondent Jay A. Hendrickson, M.D. the terms and
5 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
6 I approve its form and content.

7 DATED:

6/5/18


ROBERT B. ZARO, ESQ.
Attorney for Respondent8
9
10 ENDORSEMENT

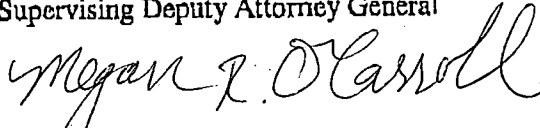
11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
12 submitted for consideration by the Medical Board of California.

13 Dated:

14 6-7-18

Respectfully submitted,

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


17 MEGAN R. O'CARROLL
18 Deputy Attorney General
19 Attorneys for Complainant
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Exhibit A

First Amended Accusation No. 800-2014-007164

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
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7

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 28, 2017
BY: R. Voong ANALYST

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

12 In the Matter of the First Amended Accusation
13 Against:

14 Jay A. Hendrickson, M.D.
2350 East Bidwell St.
15 Folsom, CA 95630

16 Physician's and Surgeon's Certificate
17 No. G 83722,

18 Respondent.

Case No. 800-2014-007164

OAH No. 2017061081

FIRST AMENDED ACCUSATION

19
20 Complainant alleges:

21 PARTIES

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

25 2. On or about May 2, 1997, the Medical Board issued Physician's and Surgeon's
26 Certificate No. G 83722 to Jay A. Hendrickson, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on September 30, 2018, unless renewed.

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1 apply to this subdivision. This subdivision shall become operative upon the implementation of the
2 proposed registration program described in Section 2052.5.

3 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
4 participate in an interview by the board. This subdivision shall only apply to a certificate holder
5 who is the subject of an investigation by the board.”

6 5. Section 2220 of the Code states:

7 “Except as otherwise provided by law, the board may take action against all persons guilty
8 of violating this chapter. The board shall enforce and administer this article as to physician and
9 surgeon certificate holders, including those who hold certificates that do not permit them to
10 practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate
11 holders, and the board shall have all the powers granted in this chapter for these purposes
12 including, but not limited to:

13 “(a) Investigating complaints from the public, from other licensees, from health care
14 facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct.
15 The board shall investigate the circumstances underlying a report received pursuant to Section
16 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining
17 order should be issued. The board shall otherwise provide timely disposition of the reports
18 received pursuant to Section 805 and Section 805.01.

19 “(b) Investigating the circumstances of practice of any physician and surgeon where there
20 have been any judgments, settlements, or arbitration awards requiring the physician and surgeon
21 or his or her professional liability insurer to pay an amount in damages in excess of a cumulative
22 total of thirty thousand dollars (\$30,000) with respect to any claim that injury or damage was
23 proximately caused by the physician's and surgeon's error, negligence, or omission.

24 “(c) Investigating the nature and causes of injuries from cases which shall be reported of a
25 high number of judgments, settlements, or arbitration awards against a physician and surgeon.”

26 6. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
27 adequate and accurate records relating to the provision of services to their patients constitutes
28 unprofessional conduct.”

1 7. At all times alleged herein, Section 3502¹ of the Code stated:

2 “(a) Notwithstanding any other provision of law, a physician assistant may perform those
3 medical services as set forth by the regulations adopted under this chapter when the services are
4 rendered under the supervision of a licensed physician and surgeon who is not subject to a
5 disciplinary condition imposed by the Medical Board of California prohibiting that supervision or
6 prohibiting the employment of a physician assistant.

7 “(b) (1) Notwithstanding any other provision of law, a physician assistant performing
8 medical services under the supervision of a physician and surgeon may assist a doctor of podiatric
9 medicine who is a partner, shareholder, or employee in the same medical group as the supervising
10 physician and surgeon. A physician assistant who assists a doctor of podiatric medicine pursuant
11 to this subdivision shall do so only according to patient specific orders from the supervising
12 physician and surgeon.

13 “(2) The supervising physician and surgeon shall be physically available to the
14 physician assistant for consultation when such assistance is rendered. A physician assistant
15 assisting a doctor of podiatric medicine shall be limited to performing those duties included
16 within the scope of practice of a doctor of podiatric medicine.

17 “(c) (1) A physician assistant and his or her supervising physician and surgeon shall
18 establish written guidelines for the adequate supervision of the physician assistant. This
19 requirement may be satisfied by the supervising physician and surgeon adopting protocols for
20 some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to
21 this subdivision shall comply with the following requirements:

22 “(A) A protocol governing diagnosis and management shall, at a minimum, include
23 the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or
24 assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and
25 education to be provided to the patient.

26 ///

27 ¹ Business and Professions Code section 3502 was amended by Stats. 2015, Ch. 536, Sec.
28 2. Effective January 1, 2016.

1 “(B) A protocol governing procedures shall set forth the information to be provided
2 to the patient, the nature of the consent to be obtained from the patient, the preparation and
3 technique of the procedure, and the follow up care.

4 “(C) Protocols shall be developed by the supervising physician and surgeon or
5 adopted from, or referenced to, texts or other sources.

6 “(D) Protocols shall be signed and dated by the supervising physician and surgeon
7 and the physician assistant.

8 “(2) The supervising physician and surgeon shall review, countersign, and date a sample
9 consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician
10 assistant functioning under the protocols within 30 days of the date of treatment by the physician
11 assistant. The physician and surgeon shall select for review those cases that by diagnosis,
12 problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the
13 patient.

14 “(3) Notwithstanding any other provision of law, the Medical Board of California or
15 board may establish other alternative mechanisms for the adequate supervision of the physician
16 assistant.

17 “(d) No medical services may be performed under this chapter in any of the following
18 areas:

19 “(1) The determination of the refractive states of the human eye, or the fitting or
20 adaptation of lenses or frames for the aid thereof.

21 “(2) The prescribing or directing the use of, or using, any optical device in connection
22 with ocular exercises, visual training, or orthoptics.

23 “(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses
24 to, the human eye.

25 “(4) The practice of dentistry or dental hygiene or the work of a dental auxiliary as
26 defined in Chapter 4 (commencing with Section 1600).

27 “(e) This section shall not be construed in a manner that shall preclude the performance of
28 routine visual screening as defined in Section 3501.”

1 8. At all times alleged herein, Section 3502.1 of the Code stated²:

2 “(a) In addition to the services authorized in the regulations adopted by the Medical Board
3 of California, and except as prohibited by Section 3502, while under the supervision of a licensed
4 physician and surgeon or physicians and surgeons authorized by law to supervise a physician
5 assistant, a physician assistant may administer or provide medication to a patient, or transmit
6 orally, or in writing on a patient's record or in a drug order, an order to a person who may
7 lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

8 “(1) A supervising physician and surgeon who delegates authority to issue a drug order
9 to a physician assistant may limit this authority by specifying the manner in which the physician
10 assistant may issue delegated prescriptions.

11 “(2) Each supervising physician and surgeon who delegates the authority to issue a
12 drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice
13 specific, formulary and protocols that specify all criteria for the use of a particular drug or device,
14 and any contraindications for the selection. Protocols for Schedule II controlled substances shall
15 address the diagnosis of illness, injury, or condition for which the Schedule II controlled
16 substance is being administered, provided, or issued. The drugs listed in the protocols shall
17 constitute the formulary and shall include only drugs that are appropriate for use in the type of
18 practice engaged in by the supervising physician and surgeon. When issuing a drug order, the
19 physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

20 “(b) ‘Drug order,’ for purposes of this section, means an order for medication that is
21 dispensed to or for a patient, issued and signed by a physician assistant acting as an individual
22 practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal
23 Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this
24 section shall be treated in the same manner as a prescription or order of the supervising physician,
25 (2) all references to ‘prescription’ in this code and the Health and Safety Code shall include drug
26 orders issued by physician assistants pursuant to authority granted by their supervising physicians

27 ² Business and Professions Code section 3502.1 was amended by Stats. 2015, Ch. 536,
28 Sec. 3. Effective January 1, 2016.

1 and surgeons, and (3) the signature of a physician assistant on a drug order shall be deemed to be
2 the signature of a prescriber for purposes of this code and the Health and Safety Code.

3 “(c) A drug order for any patient cared for by the physician assistant that is issued by the
4 physician assistant shall either be based on the protocols described in subdivision (a) or shall be
5 approved by the supervising physician and surgeon before it is filled or carried out.

6 “(1) A physician assistant shall not administer or provide a drug or issue a drug order
7 for a drug other than for a drug listed in the formulary without advance approval from a
8 supervising physician and surgeon for the particular patient. At the direction and under the
9 supervision of a physician and surgeon, a physician assistant may hand to a patient of the
10 supervising physician and surgeon a properly labeled prescription drug prepackaged by a
11 physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

12 “(2) A physician assistant may not administer, provide, or issue a drug order to a patient
13 for Schedule II through Schedule V controlled substances without advance approval by a
14 supervising physician and surgeon for that particular patient unless the physician assistant has
15 completed an education course that covers controlled substances and that meets standards,
16 including pharmacological content, approved by the board. The education course shall be
17 provided either by an accredited continuing education provider or by an approved physician
18 assistant training program. If the physician assistant will administer, provide, or issue a drug order
19 for Schedule II controlled substances, the course shall contain a minimum of three hours
20 exclusively on Schedule II controlled substances. Completion of the requirements set forth in this
21 paragraph shall be verified and documented in the manner established by the board prior to the
22 physician assistant's use of a registration number issued by the United States Drug Enforcement
23 Administration to the physician assistant to administer, provide, or issue a drug order to a patient
24 for a controlled substance without advance approval by a supervising physician and surgeon for
25 that particular patient.

26 “(3) Any drug order issued by a physician assistant shall be subject to a reasonable
27 quantitative limitation consistent with customary medical practice in the supervising physician
28 and surgeon's practice.

“(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and telephone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant and shall otherwise comply with the provisions of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, the requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances registration number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

“(e) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

“(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).”

“(g) The board shall consult with the Medical Board of California and report during its sunset review required by Division 1.2 (commencing with Section 473) the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.”

FACTS

9. Respondent Jay A. Hendrickson, M.D. (Respondent) is subject to disciplinary action under section 2234, subdivision (b), in that he engaged in acts of gross negligence in his care and treatment of patients B.B and B.H. The circumstances are as follows:

1 10. Respondent operates a pain management practice with multiple locations in Northern
2 California called Hendrickson & Hunt Pain Management Physicians, ("H&H"). The practice has
3 multiple physicians and mid-level practitioners. Both physicians of the practice, Respondent and
4 B. Kelly Hunt, M.D., supervise the mid-level practitioners.

5 **Patient B.B.**

6 11. Patient B.B. first established care with H&H in 2001.³ The medical record contains a
7 history and physical by Respondent, dated August 24, 2001, indicating that B.B. is a 59-year old
8 woman referred to him for pain management with a chief complaint of low back pain. She rated
9 her pain as 6/10. It indicated she had previously undergone a series of steroid injections and a
10 laminectomy for back pain. It lists a medical history of hypertension, ulcers and cataracts. B.B.
11 reported that she smokes a half a pack of cigarettes per day and has smoked for 25 years.
12 Radiological tests showed bulging discs at multiple points of the spine and some degenerative
13 changes and stenosis. She was diagnosed with degenerative disc disease. The treatment
14 recommendation was to increase use of Oxycontin to 80 mg three times per day, to discontinue
15 Vioxx, and to continue with aqua therapy and epidural steroid injections. She was scheduled to
16 be seen again in 8 weeks.

17 12. At the next appointment in October the Oxycontin was increased to 120 mg four
18 times per day, Neurontin was added to the regimen, and Respondent recommended trying medical
19 branch blocks. B.B. reported her pain at 9/10. At the next appointment on December 14, 2001,
20 B.B. continued to report 9/10 pain, but also said the Oxycontin was effective, and reported
21 breakthrough pain. Norco was added, 10 mg 6 times per day and B.B. was directed to continue
22 Physical Therapy and Tens unit.

23 13. At the next appointment on January 22, 2002, B.B. still reported a lot of pain, and
24 Respondent increased the Oxycontin to 160 mg four times per day, with the Norco for
25 breakthrough pain and Baclofen was added to the regimen. The plan was to try a medical branch
26 block as a last resort to surgery. From this point on, B.B. was usually instructed to returned for
27

28 ³ Facts alleged outside of the statute of limitations are for informational purposes.

1 follow up appointments each month. On February 12, 2002, it is noted that B.B. will have
2 surgery later that month. The pain medications remained the same. On March 28, 2002, B.B.
3 reported having had a lumbar fusion of multiple vertebrae at U.C. Davis, and having a reduction
4 in pain of approximately 60%. The Oxycontin was continued at the same rate, with the intention
5 to wean down in the future once she has more time post operatively to recover.

6 14. At the May 9, 2002 appointment, B.B. reported even greater pain relief, with her pain
7 noted to be 3/10, and increased activity. She reported titrating down her Oxycontin usage to 80
8 mg four times per day and Respondent recommended she reduce it to 40 mg to continue the
9 titration. The diagnosis was still noted to be degenerative disc disease.

10 15. On or about or about June 7, 2002, B.B. began being seen primarily by Physician
11 Assistants at H&H, supervised by Dr. Hendrickson. She reported increased pain in her leg and
12 post operative pain. Pain was rated 4-5/10. The PA noted that B.B.'s medications were refilled at
13 the same dose, but also that B.B. continues to take Oxycodone IR from her surgeon for
14 breakthrough pain.

15 16. On or about July 8, 2002, B.B.'s Oxycontin, Baclofen and Norco were refilled, and it
16 was noted that she is being prescribed Neurontin from her U.C. Davis surgeon. On August 9,
17 2002, B.B. noted that she discontinued her Neurontin herself because she did not think it was
18 helping. She continued to have increasing post-operative pain. She requested another trial of
19 injection therapy. Her medications were refilled.

20 17. By the Fall of 2002, B.B. continued to be seen at H&H, primarily by mid-level
21 practitioners under the supervision of Respondent. Most of the chart notes during this time are
22 co-signed by Respondent. During this time there was little change in B.B.'s condition and
23 monthly chart notes show continued refills of Oxycontin, Baclofen and Norco. The November
24 2002, chart notes state that B.B. was considering another surgery. In December of 2002, B.B. had
25 a nerve root block with fluoroscopy with H&H and another was tried in January of 2003. Over
26 the course of her treatment with H&H, B.B. underwent numerous physical medicine procedures,
27 with most providing little or no lasting pain relief.

28 ///

1 18. On or about February 11, 2003, B.B. had continuing low back pain, increasing,
2 and noted no relief from the nerve block. She was on 80 mg of Oxycontin, four times per day,
3 Norco 10 mg six times per day, and Baclofen 10 mg three times per day. On or about March 14,
4 2003, B.B. remained on the same medications and indicated she was considering having a Spinal
5 Cord Stimulator implanted. There was no major change in April, and on May 29, 2003, the
6 Oxycontin increased to 120 mg three times per day. The July 16, 2003, chart note indicated B.B.
7 reported that the increase in Oxycontin helped her. B.B. was reported to still be considering
8 possible spinal cord stimulator implantation or other procedures. Throughout the fall of 2003,
9 B.B. remained similar in status and the chart notes are similar to previous appointments. The
10 November 5, 2003, chart note indicated that B.B. was still considering surgical options and she
11 reported 9/10 pain. The Physician Assistant increased the Oxycontin back up to 160 mg four
12 times per day. Respondent co-signed the note on November 6, 2003.

13 19. On or about December 3, 2003, B.B. reported 6/10 pain. The medications were
14 refilled at the previous rate of 160 mg of Oxycontin four times per day and it was noted that B.B.
15 may have a surgical procedure in March of 2004. The January 5, 2004 refill appointment
16 contained no significant changes, but a diagnosis of myofascial pain syndrome is added to the
17 degenerative disc disease without accompanying documentation. On or about January 26, 2004,
18 Dr. Hunt did a trigger point injection. On or about February 6, 2003, B.B. reported that the
19 trigger point injections helped and she had increased function with the current medication
20 regimen.

21 20. In or around March of 2004 and April of 2004, B.B. reported an increase of pain to
22 9/10. On or about April 6, 2004, the Physician Assistant seeing B.B. determined that she should
23 stop Oxycontin as it was ineffective for her. B.B. was instead prescribed Duragesic patches, and
24 the Physician Assistant noted that she could start methadone on the following week if needed.
25 B.B. continued the Norco and Baclofen. Respondent co-signed the note on April 6, 2004. On or
26 about April 16, 2004, the Duragesic and Baclofen was increased. B.B. reported her pain at 9/10
27 on this visit. On or about April 28, 2004, B.B. reported the Duragesic was working much better
28 than the Oxycontin. The Duragesic was increased and the Norco was changed to Percocet.

1 21. On or about May 26, 2004, B.B. reported that her pain was 9/10, and that she
2 believed the Norco was more effective than Percocet, so she was changed back to Norco. The
3 Duragesic patches were refilled. B.B. indicated she does not intend to try a Spinal Cord
4 Stimulator any longer, although subsequent chart notes indicate that one was eventually placed.
5 She indicated she was considering back surgery instead with a group of surgeons in Florida. The
6 Physician Assistant signed the note and Respondent co-signed it on or about May 27, 2004.

7 22. Between June and August, B.B. was seen for refill appointment for Duragesic
8 patches, Norco and Baclofen. She was given a trial of Klonopin for muscle spasms. During this
9 summer she occasionally reported lower than usual pain scores. But on or about September 3,
10 2004, B.B. reported her pain at 10/10. The chart note indicated that although B.B. was a poor
11 historian, she seemed to have had an appointment with a surgeon at U.C. Davis who suggested
12 she obtain a second opinion. This caused her to see another doctor who did radiologic
13 examinations which showed severe spinal problem and recommended she follow up with H&H
14 for procedures. The provider noted that H&H had not received any reports from other providers
15 as to this radiological finding, but that the provider will look into it. There do not appear to be
16 any records from outside providers in the medical record to correlate with the September 3, 2004
17 chart note. On or about September 8, 2004, H&H performed a nerve block on B.B. under
18 fluoroscopy. She reported some decrease in pain from procedure.

19 23. On or about September 15, 2004, B.B. reported her pain at 8/10. She reported her
20 pain was not well controlled with the current medication regimen. In the past, she found
21 Oxycontin very helpful, but stated she stopped it due to "negative press" about the drug and the
22 concern she would become addicted to it. The provider reported having had a long conversation
23 with B.B., after which she agreed to re-try Oxycontin at low dose and to discontinue the
24 Duragesic patches. She was restarted on Oxycontin, and continued Klonopin and Baclofen. The
25 provider did not sign this note, but it is co-signed by Respondent on or about September 16, 2004.

26 24. On or about September 21, 2004, the Oxycontin was increased to 80 mg 3 times day.
27 B.B. reported increased pain and stated that the U.C. Davis physician believed it was due to
28 hardware in her back from previous surgeries and has recommended removing it. On or about

1 October 5, 2004, B.B. had her medications refilled with the Oxycontin increased to 160 mg three
2 times per day, and the Klonopin, Baclofen and Norco were continued. B.B. indicated she was
3 scheduled for surgery to remove hardware. On or about November 2, 2004, B.B. saw Respondent
4 and reported the hardware was removed, which has only increased her pain. B.B. stated she was
5 now considering having surgery with a group of surgeons in Florida. The Norco was
6 discontinued and Dilaudid was tried, 2 mg 6 times per day. Her Klonopin, Oxycontin and
7 Baclofen were refilled.

8 25. On or about November 23, 2004, B.B. saw a Physician Assistant with increased
9 complaints of pain at 9/10. The Physician Assistant noted "consulted with Dr. Hendrickson,
10 patient on max doses of Dilaudid and Oxycontin, trial Medrol pack." On or about December 22,
11 2004, B.B. had another nerve block under fluoroscopy. On or about December 30, 2004, B.B.
12 saw Respondent again and stated that she was going out of town to Florida for minimally invasive
13 spine surgery. She indicated that she would be gone for about six weeks. Respondent wrote "will
14 give her 240 tablets of Oxycontin to cover her for the six weeks. Will change Dilaudid to Norco
15 as the patient states that the Norco is just as effective."

16 26. On or about February 17, 2005, B.B. saw Respondent again, reporting that her pain
17 was 3/10. B.B. reported having had procedures on January 14, 2005 and January 23, 2005, which
18 gave her great pain relief. There were no corresponding surgical reports in the record. B.B.
19 stated she wanted to titrate down or off medication. Respondent wrote that he would change B.B.
20 to Methadone 40 mg three times per day. On or about February 24, 2005, a telephone message
21 indicated that B.B. reported urinary incontinence. Respondent instructed her it may be due to
22 Methadone and to use Oxycontin instead, which they would then titrate down over time.

23 27. On or about February 28, 2005, B.B. was seen by a Physician Assistant who
24 continued the plan to remain on Oxycontin until weaned down. The Baclofen and Norco were
25 refilled. On or about March 14, 2005, B.B. reported pain at 3/10. She went from Norco to
26 Percocet because she reported the Norco was not effective. She remained on Oxycontin with the
27 plan still stating that she would be titrated down. On or about March 29, 2005, B.B. had a steroid
28 injection under fluoroscopy with H&H. On or about April 11, 2005, B.B. stated she was now

1 down to 80 mg of Oxycontin 4 times per day. Her Percocet was refilled, and she was
2 recommended to try aqua therapy.

3 28. On or about May 9, 2005, B.B. received refills and a June 5, 2005 appointment note
4 shows she had another nerve block, but she reported increased pain. The Oxycontin was
5 increased by one pill per day. An x-ray was ordered which showed post surgical changes and
6 progressive disc degeneration. On or about July 5, 2005, B.B. reported increased pain and was
7 noted to be tearful and frustrated at her last several appointments. The Physician Assistant
8 encouraged B.B. to seek psychological counseling. Her Oxycontin was increased to 6 per day.
9 The Baclofen and Percocet were refilled. On August 1, 2005, she had another refill appointment.
10 During 2005, the diagnosis of myofascial pain syndrome was removed from B.B.'s record, and a
11 new diagnosis of post laminectomy syndrome replaced it. There are no corresponding notes to
12 explain the change.

13 29. On or about August 29, 2005, B.B. remained on the same medication regimen and
14 continued to report high pain scores of 8/10 pain. She told the provider that her primary care
15 physician is doing a work up on her for hypertension. On or about September 26, 2005, she was
16 noted not to have obtained outside psychological counseling as recommended, but was still
17 depressed. The H&H provider prescribed Cymbalta. B.B.'s other pain medications remained the
18 same, and she reported that she was being treated by cardiology for hypertension.

19 30. In or around October of 2005, B.B. continued to report pain and depression. She
20 indicated that she did not want to see a psychological counselor. The Cymbalta was increased.
21 B.B. also reported that she had renal problems that were being treated by U.C. Davis. The
22 Percocet prescription was increased and the Oxycontin and Baclofen were refilled. B.B. stated
23 she was seeking another surgical evaluation for her back pain.

24 31. On or about November 21, 2005, B.B. was referred for a surgical evaluation of
25 hardware problems from her previous back surgeries. She reported that she stopped the Cymbalta
26 on her own because she felt it caused her to become itchy. The Percocet, Oxycontin and Baclofen
27 were refilled. On or about December 19, 2005, B.B. reported 9/10 back pain. She stated that she
28

1 was having dental surgery done that month. Her medications were refilled. On or about January
2 6, 2006, the chart notes state that B.B. had a consultation with another surgeon and the report
3 would be sent to H&H. B.B. reported 9/10 pain. Her pain medications were refilled and
4 Cymbalta was also prescribed without accompanying documentation.

5 32. On or about January 23, 2006, B.B.'s lumbar MRI showed post-surgical changes,
6 possible disc fragments interfering with spinal function. She was seen again at H&H on February
7 13, 2006, reporting 8/10 pain and had medications refilled. On or about March 13, 2006, B.B.
8 reported that she was awaiting a surgery date. She reported 10/10 pain, and medications were
9 refilled. The chart noted indicated that B.B. reported that she would have a gallstone procedure
10 that month.

11 33. The chart notes indicated that B.B. had another back surgery on or about April 5,
12 2006, and that her next appointment at H&H was on May 9, 2006. She reported 7/10 pain. The
13 Oxycontin, Percocet and Baclofen were refilled, although there is no surgical record of the April
14 procedure present in the record. Chart notes indicate follow up appointment in June and July of
15 2006, with refills. The July 3, 2006 appointment note is not signed, but it is co-signed by
16 Respondent on July 10, 2006. B.B. reported 9/10 pain, and the notes under the heading treatment
17 plan state that B.B. and her husband agree that after five years of opiate medications she has
18 developed tolerance and the medications are no longer working. They decide to try an opiate
19 rotation of 10 mg Methadone taking one to two tablets three times per day. The notes indicate
20 that the purpose of methadone was explained to B.B. and it was explained that she may
21 experience withdrawal symptoms. The Baclofen and Percocet were refilled. B.B. was instructed
22 to return in one week.

23 34. On or about July 10, 2006, B.B. was reportedly very angry at her appointment.
24 B.B. stated she had 9/10 pain and was unable to contact H&H quickly enough to obtain relief
25 from withdrawals she experienced. The notes indicate that B.B. had increased the methadone to
26 30 mg three times per day. And that she was instructed to increase it to 40 mg three times per
27 day. She was also instructed to take Percocet for breakthrough pain. At the July 17, 2006,
28 appointment B.B. reported having 10/10 pain. The note stated that she continued to be stable on

1 Methadone and that it provided the same relief as Oxycontin. She continued on Methadone with
2 Percocet for breakthrough pain.

3 35. On or about July 24, 2006, B.B. reported 10/10 pain and said the Methadone was
4 not helping. She returned to Oxycontin, and it was noted they would consider a trial of Kadian in
5 the future. She was also started on Lyrica.

6 36. On or about August 7, 2006, B.B. continued to report high pain levels and stated
7 that she stopped taking Lyrica. The chart notes show that an unnamed H&H provider
8 recommended trying a pain pump. B.B. was prescribed Oxycontin at 160 mg three times per day.
9 On or about September 11, 2006, B.B. again reported 10/10 pain and received refills.

10 37. On or about October 11, 2006, B.B. saw Respondent, who refilled the medications.
11 Respondent recorded that B.B. reported that she would be seen at U.C. Davis for a trial of an
12 intrathecal pain pump. At the November 9, 2006, appointment B.B. was seen by Dr. Hunt. He
13 noted she reported a 10/10 pain level, which was minimally controlled with current medication
14 and that she would see a neurologist at U.C. Davis for possible implantation of a pain pump.

15 38. On or about November 22, 2006, B.B. saw Respondent, still reporting a pain level
16 of 10/10. Respondent continued B.B. on Percocet and prescribed her 160 mg Oxycontin four
17 times per day. On or about January 2, 2007, B.B. again reported 10/10 pain. At this visit, B.B.'s
18 blood pressure was very high. The medical record shows that B.B. had high blood pressure at
19 several visits over the years. The Oxycontin, Baclofen and Percocet were refilled at this
20 appointment and monthly through February. There was an Opioid Consent Agreement present in
21 the medical record, signed by B.B. on January 2, 2007.

22 39. On or about March 26, 2007, B.B. reported 9/10 pain, and the record stated that B.B.
23 would be tried on Opana and Lyrica. On or about April 2, 2007, B.B. reported that she did not
24 tolerate the Opana, and would try Kadian instead. The note is co-signed by Dr. Hunt. On or
25 about April 5, 2007, Dr. Hunt saw B.B. who reported pain at 10/10, and the Kadian was
26 increased, with the Percocet continued. On or about April 9, 2007, the Kadian was increased to
27 150 mg twice a day, and on or about April 17, 2007, it was again increased to 200 mg twice per
28 day.

1 40. On or about April 18, 2007, there was a note in B.B.'s record stating that a previous
2 toxicology report showed the absence of any illicit drugs, but also that none of the controlled
3 drugs B.B. was prescribed were detected either. The note stated that B.B. would have to repeat
4 the toxicology test.

5 41. The next time B.B. was seen in H&H, she was seen by a Physician Assistant, on
6 April 26, 2007, and reported her pain as 10/10. She stated that even with the 200 mg of Kadian
7 the pain was unbearable. She was switched off Kadian and returned to Oxycontin 160 mg four
8 times per day. The Physician Assistant noted having spoken with Respondent who stated that the
9 practice had exhausted all the options for B.B. B.B. was continued on current medications.
10 There was no reference to the inconsistent toxicology screening, and there was no indication that
11 a repeat screen was performed. Respondent co-signed the note on or about May 10, 2007.

12 42. B.B. was seen by Respondent on or about May 21, 2007. The chart notes contain no
13 reference of the inconsistent toxicology report. The chart notes contain template language, which
14 is repeated throughout the records that the patient is stable on current medications with increased
15 function. The current medical regimen allowed the patient to increase her overall daily function,
16 and without the current medical regimen the patient would not be able to continue with her
17 current activity level. There was also a template paragraph stating that the benefits and risks of
18 opioid/prescribed medication, including death, had been explained to the patient who had a full
19 understanding of the medications prescribed and agreed to proceed with medical management,
20 with all questions answered.

21 43. Throughout the rest of 2007, B.B. returned to the practice approximately each
22 month, reporting high pain levels. The diagnoses continued to be post laminectomy syndrome
23 and lumbar degenerative disc disease. There are references to outside attempts at interventions
24 from other providers such as trials of pain pumps, and possible surgical interventions. On or
25 about July 30, 2007, the Percocet was stopped and replaced with Oxy IR, 5 mg four times per
26 day. This was increased to six times per day as of December of 2007. H&H provided various
27 physical medicine interventions during 2007 and the beginning of 2008, such as nerve blocks,
28 lumbar ablations which B.B. reported did not improve her pain. On or about January 31, 2008,

1 the Oxy IR was increased by an additional two tablets per day. On or about February 28, 2008,
2 Norco was added to the Oxy IR for breakthrough pain, and the Oxycontin dose remained the
3 same. The same paragraphs concerning the medications allowing increased activity and the risks
4 having been explained continue to be present in each chart note.

5 44. B.B. continued into 2008 to return for monthly refill appointment, frequently
6 reporting 10/10 pain levels. On June 18, 2008, B.B. saw a nurse practitioner and reported having
7 a trial of a Spinal Cord Stimulator with a provider in San Francisco. She reported her pain level
8 was 10/10 and received refills. On or about June 20, 2008, B.B.'s toxicology test was positive for
9 morphine and hydromorphone, although no provider at H&H had prescribed morphine. On or
10 about July 15, 2008, B.B. called into H&H to ask for an earlier appointment as she would be
11 going out of state to visit a sick brother. Respondent provided a 30 day prescription for
12 Oxycontin. The Medical Assistant who answered the call asked B.B. about the positive morphine
13 result. B.B. stated that her physician in San Francisco gave her a morphine injection when
14 placing leads on the spinal cord stimulator. The Medical Assistant noted that she would inform
15 Respondent.

16 45. On or about August 12, 2008, B.B. was seen again and provided with refills of
17 Oxycontin and Norco. She told the provider that her brother was doing better. The provider
18 noted that her June 2008 toxicology report was positive for morphine, and this was during the
19 time she was trialing the spinal cord stimulator. B.B. reported 10/10 pain and stated that the
20 spinal cord stimulator did not help. At this appointment, the Oxy IR is listed as "stopped"
21 although no reference is made to it in the notes. B.B. was seen again on or about September 16,
22 2008, and her Oxycontin and Norco were refilled. She reported her pain level at 10/10.

23 46. B.B. saw Respondent on or about October 14, 2008, reporting pain at 8/10 to 9/10.
24 Respondent continued the refills of Oxycontin and Norco. In or around November of 2008 she
25 saw Dr. Hunt who provided the refills of Norco and Oxycontin. In or around December of 2008,
26 B.B. had high blood pressure, which was not addressed and received refills. She had another
27 refill appointment on January 6, 2009. A January 9, 2009 toxicology result showed B.B. was
28 positive for oxycodone and oxycodone, but negative for hydrocodone, despite being prescribed

1 Norco. On or about February 3, 2009 B.B. saw a Physician Assistant, reporting 10/10 pain level
2 and received refills on Norco and Oxycontin. There was no reference to the toxicology report in
3 this chart note, which Respondent co-signed on February 2, 2009. Chart notes were similar and
4 co-signed by Respondent in March and April.

5 47. On or about May 28, 2009, the provider refilled Norco, Oxycontin and Motrin. The
6 provider noted that the Baclofen was not helping B.B.'s muscle spasms. The provider ordered a
7 random toxicology screening. A June 12, 2009, toxicology report showed that B.B. was positive
8 for hydrocodone, hydromorphone, oxycodone and oxymorphone. The record indicated a need to
9 follow up with B.B. at her next appointment. But at B.B.'s next appointment on June 25, 2009,
10 there was no reference to the toxicology report. B.B. reported pain at 9/10 and medications were
11 refilled. The July 23, 2009, appointment record was similar. At the July appointment, B.B.
12 reported starting physical therapy. Although there was no reference to it in the treatment plan,
13 Soma started to appear on her list of medications at 250 mg four times per day beginning on this
14 date.

15 48. On or about August 20, 2009, B.B. reported her pain at 8/10 and Norco, Soma and
16 Oxycontin were refilled. It is noted that B.B. was also seeing a chiropractor. On or about
17 September 18, 2009, B.B. reported 8/10 pain. She stated that she was improving and doing
18 physical therapy exercises. The Physician Assistant noted that she stopped the Soma and was
19 trying to decrease the Oxycontin to 6 tablets per day. On or about October 16, 2009, B.B.
20 reported 8/10 pain and stated she thought physical therapy was helpful. B.B. reported that the
21 Oxycontin was controlling her pain. The provider ordered a toxicology screening. The
22 Toxicology report was negative for Soma metabolites, but positive for oxycodone. On or about
23 November 13, 2009, the Physician Assistant noted that the toxicology screening was within
24 normal limits. He refilled Norco, Oxycontin and Soma. Neurontin was added. On or about
25 December 11, 2009, the medications were refilled except that Neurontin was stopped. Exercise
26 was encouraged. On or about January 8, 2010, B.B. reported pain at 9/10, and indicated that she
27 was hospitalized for a week for treatment of kidney stones. The Oxycontin was refilled. On or
28 about February 3, 2010, Norco, Oxycontin, Soma, Neurontin and Motrin were refilled. On or

1 about March 2, 2010, a toxicology screening was ordered. The March 16, 2010, toxicology results
2 were positive for morphine. On or about April 6, 2010, there was no documentation of positive
3 morphine result.

4 49. B.B. was seen by Respondent on or about May 11, 2010. He refilled Oxycontin,
5 Norco and Soma. He did not document any reference to the toxicology report. In June and July
6 B.B. returned and received refills. She was seen on or about August 11, 2010, at which she
7 received refills of Norco, Soma and Oxycontin. An August 20, 2010 toxicology report showed
8 that B.B. was positive for metabolites of Soma and Oxycontin, but negative for hydrocodone,
9 despite being prescribed Norco and was again positive for morphine. The chart noted only that
10 B.B. took Norco as needed.

11 50. On or about September 9, 2010, Respondent saw B.B., who reported 9/10 pain, and
12 he refilled the Oxycontin. He did not document any reference to the positive morphine result.
13 The paragraphs referencing increasing function and informing patient of risks of medications are
14 included. During the fall of 2010, B.B. was seen monthly for refill appointments, receiving
15 Norco, Soma, and Oxycontin. She had been reporting, and continued to report in October, that
16 the medications are causing her constipation. In or around December 2010, the provider ordered
17 a toxicology screening be done.

18 51. On or about December 23, 2010, B.B.'s toxicology result was again positive for
19 morphine, but B.B. denied taking morphine. The note states "A PAR has been ordered for this
20 patient. Patient's PAR report was uneventful and through research with the lab this appears to be
21 a false negative." On or about January 12, 2011, B.B. was seen by a Physician Assistant who
22 refilled the Oxycontin and ordered another toxicology screening.

23 52. On or about January 27, 2011 the toxicology report again showed positive for
24 morphine. On or about February 14, 2011, Dr. Hunt saw B.B., who reported 8/10 pain. The note
25 states "Patient has positive MS on tox screen. Dr. Hendrickson knows this patient well, and has
26 reviewed the results. She will follow up with him next month." He refilled the Oxycontin.

27 53. On or about March 15, 2011, Respondent saw B.B. She reported 7/10 pain. Under
28 treatment plan, the note states "The patient stated that she eats poppy seeds on a daily basis and

1 this is a possible reason for possible positive MS on tox screen." Respondent refilled the Soma,
2 Oxycontin, and Norco.

3 54. In the Spring of 2011, B.B. continued to be seen by Physician Assistants who refilled
4 the Oxycontin and instructed her to continue with the Norco and Soma. On or about May 20,
5 2011, B.B.'s toxicology results showed negative for metabolites of Soma, and Norco, and
6 negative for hydromorphone, but positive for oxycodone and oxymorphone.

7 55. On or about June 8, 2011, B.B. was seen by a Physician Assistant, reporting an 8/10
8 pain level. The note stated B.B. is taking Soma and Norco very infrequently which explained the
9 last toxicology results. The Oxycontin, Norco and Soma were refilled. Respondent co-signed the
10 note on June 13, 2011. B.B. was seen again at H&H in July of 2011, with Oxycontin, Norco, and
11 Soma refilled. On or about July 15, 2011, B.B. called to schedule an earlier appointment because
12 she intended to travel out of state. The Medical Assistant explained that medications could not be
13 refilled earlier than scheduled and that prescriptions would state that they were not to be filled
14 until the next scheduled date. B.B. stated she was not attempting to obtain an early refill. On or
15 about July 25, 2011, B.B. was seen and reported 9/10 pain. The provider noted that she took her
16 medications as prescribed without side effects and stated "she was given one advanced
17 prescription." The provider did not sign the note, but it is co-signed by Respondent. B.B.'s blood
18 pressure was 159/93, and her pulse was 71.

19 56. On or about August 31, 2011, B.B. returned and saw the Physician Assistant. She
20 reported she had a myocardial infarction on August 8, 2011 and was hospitalized for a week for
21 an angioplasty. She reported 6/10 pain. In addition to the template paragraphs regarding
22 informed consent and activity goal, the treatment notes indicate that "the medications were
23 reviewed and renewed as before, no changes were made. The patient feels they help to maintain a
24 more active lifestyle, including activities of daily living, with less pain. There is no adverse
25 effects reported today." Exercise and stretching were recommended.

26 57. On or about September 28, 2011, B.B.'s medications were refilled. On or about
27 October 26, 2011, B.B. reported that she was admitted to U.C. Davis for congestive heart failure
28

1 approximately 2 weeks prior, and that she was being managed with medications and would call
2 with an updated medication list. The Oxycontin was refilled.

3 58. B.B. appeared for another refill of Oxycontin and Norco on or about November 22,
4 2011 and December 20, 2011. At the end of 2011, the diagnosis of degenerative disc disease was
5 replaced with idiopathic scoliosis, although there was no corresponding supporting
6 documentation or history and physical. The post laminectomy syndrome diagnosis remained.
7 On or about January 18, 2012, the medication list stated that Soma was discontinued, although it
8 is not referenced in the notes of any of the previous several appointments. Also at the January
9 2012 appointment, B.B. reported 10/10 pain and was tearful regarding her constant pain. She
10 stated she has enough Norco for the month, but the Oxycontin was refilled. She reported new hip
11 pain, and was recommended to raise that with her primary care physician.

12 59. On or about February 21, 2012, B.B. continued to report increased pain. Her
13 medications were refilled. There is an updated opioid consent form signed by B.B. in the record,
14 dated February 21, 2012. On or about March 20, 2012, B.B. reported a 9/10 pain level and was
15 again started on Neurontin. She was scheduled for a random toxicology screen. The toxicology
16 screening was positive for oxycodone but negative for opiates. It was sent for confirmation
17 which was positive for Oxycodone and Oxymorphone only.

18 60. On or about April 17, 2012, B.B. reported 8/10 pain and stated that she was unable to
19 tolerate Neurontin and stopped it after four or five days. The Oxycontin was refilled, and
20 alternative pain management strategies such as mindfulness and relaxation techniques were
21 reportedly discussed. On or about May 18, 2012 B.B. reported a pain level of 9/10, and the note
22 stated that she was oriented with no obvious signs of CNS depression. The provider indicated
23 that she had not had nerve blocks attempted for a long time and did not recall how successful they
24 were in the past, so it would be appropriate to try them again. Her Oxycontin was refilled. At
25 this point B.B. had been on the same Oxycontin dose of 160 mg, four times per day, for years.
26 She reported that she was scheduled for a rectal prolapse repair in two weeks. On or about June
27 19, 2010, Respondent performed a nerve block with steroid injection under fluoroscopy and
28 conscious sedation.

1 61. On or about July 23, 2012, B.B. saw Physician Assistant T.W. for the first time at
2 H&H. On or about July 23, 2012, B.B. reported having a prolapse repair with partial colectomy
3 on July 12, 2012. Ms. T.W. refilled the Oxycontin. There was no direct contact between
4 Respondent and B.B. after July 23, 2012 when Ms. T.W. assumed her care. However,
5 Respondent stated that he supervised and approved all the actions Ms. T.W. took with regard to
6 patient B.B., from July 23, 2012, up through and including her discharge from the practice on
7 May 7, 2014. Respondent had a Delegation of Services Agreement (DSA) with Ms. T.W., listing
8 him as a physician supervisor for her. The DSA does not contain specific controlled substances
9 or a formulary for controlled substances to be relayed as drug orders under his supervision.
10 During his interview with the Medical Board, Respondent acknowledged that H&H had no
11 written formulary of controlled substances that Physician Assistants can relay orders for in the
12 practice.

13 62. On or about August 20, 2012, Ms. T.W. refilled the Oxycontin, and Norco. B.B.
14 reported a pain level of 9/10. B.B. reported that she could not tolerate Neurontin, so Ms. T.W.
15 prescribed Lyrica for neuropathic pain.

16 63. A Medical Assistant entered a note indicating that a toxicology screen ordered at
17 the August appointment was positive for Opiates and Oxycontin and that B.B. was prescribed
18 Norco, but further stated that there was no need for a confirmatory analysis. On or about
19 September 19, 2012, B.B. again saw Ms. T.W., reporting 8/10 pain. B.B. stated she had difficulty
20 with the Lyrica but would continue taking it. Lyrica and Oxycontin were refilled.

21 64. On or about October 17, 2012, Ms. T.W. refilled Oxycontin and prescribed a
22 Lidoderm patch. B.B.'s weight dropped to 101 pounds, and she reported 9/10 pain. She further
23 stated that she discontinued the Lyrica on her own. Her blood pressure was recorded as high.
24 Ms. T.W. continued to refill the Oxycontin which remained at 160 mg four times per day as it has
25 remained for several years.

26 65. On or about November 13, 2012, the medical software changed, but the notes
27 continue to contain the two template paragraphs stating that the patient is stable on current
28 medications, with increased function and that all benefits and risks of medication have been

1 discussed and understood. These chart notes were not co-signed by Respondent. B.B.'s
2 Oxycontin prescriptions continued to be refilled at the same level each month, as well as Norco
3 prescriptions, with pain levels usually reported at 8/10 or 9/10. Actual prescriptions to B.B. from
4 H&H, however, were often issued in much higher numbers of pills than she was instructed to
5 take. On or about December 19, 2012, B.B. reported pelvic pain, and Ms. T.W. recommended
6 that she follow up with her primary care physician. These similar template chart notes with
7 similar prescription orders continued during January and February of 2013. At the February
8 appointment, B.B. told Ms. T.W. that she had stopped the Lidoderm patches. B.B. also reported
9 having frequent and urgent bowel movements affecting her activity level and depression.

10 66. On or about March 27, 2013, B.B. again reported her pain level at 9/10, and stated
11 that the frequent and urgent bowel movements continued. She stated she had a spinal cord
12 stimulator that did not help with the pelvic pain, which she thinks stopped working following
13 straining after a bowel movement several years ago.

14 67. On or about April 25, 2013, the formatting of the medical records changed again.
15 From this point on, Ms. T.W. reported that B.B. had never smoked, in contradiction to her initial
16 history and physical at H&H, which reported a 25-year smoking history. On or about April 25,
17 2013, B.B. reported a pain level of 9/10, and stated that she fell and hit her head on a glass table a
18 week earlier which had reduced hearing and vision. Ms. T.W. told B.B. to report to the
19 Emergency Room or urgent care immediately as she may have suffered a subdural hematoma.
20 The note still contains the template paragraphs that the medication prescribed allowed greater
21 function than without it, and that all risks of medications are explained and understood. Ms. T.W.
22 refilled the Oxycontin and Norco. The instructions in the chart notes to B.B. are that she should
23 take Oxycontin both around the clock as needed.

24 68. On or about May 30, 2013, B.B. reported a pain level of 9/10. Ms. T.W. listed
25 diagnoses of post laminectomy syndrome, and periostitis without osteomyelitis, and pain in joint
26 involving pelvic region and thigh. There was no specific history and physical documentation
27 supporting the changed diagnosis. B.B.'s blood pressure was recorded as 167/87, and was not
28 addressed further in the note. Ms. T.W. refilled the Norco and Oxycontin. B.B. reported that she

1 had an MRI to rule out a hematoma following her fall and it was negative. Ms. T.W. ordered an
2 x-ray of her hip.

3 69. On or about June 27, 2013, B.B. reported 8/10 pain and the Oxycontin and Norco
4 were refilled. Ms. T.W. recommended a referral to an orthopedist for the hip, but B.B. declined it
5 at that time. On or about July 24, 2013, the Oxycontin was refilled. B.B. reported that her
6 primary care physician was following up with her for a possible diagnosis of rheumatoid arthritis.
7 On or about August 28, 2013, B.B. reported 10/10 pain and her Oxycontin and Norco were
8 refilled. A toxicology screen was ordered.

9 70. On or about September 28, 2013, B.B.'s pain is recorded at 10/10, and another
10 toxicology is ordered. Ms. T.W. charted that B.B. experienced occasional somnolence from the
11 medications, and that she did not drive with CNS depression. The Oxycontin was refilled. There
12 are no toxicology reports in the file that relate to any toxicology screens Ms. T.W. ordered, and
13 no references to the screening or reports in any of the medical records she signed.

14 71. On or about November 27, 2013, B.B. presented with 9/10 pain and reported that
15 she would be seen at U.C. Davis for treatment of gallbladder stones and had an endoscopy
16 scheduled. The Oxycontin and Norco were refilled. On or about January 17, 2014, the
17 Oxycontin was refilled, and the notes continued to remain similar.

18 72. On or about February 14, 2014, B.B. reported memory loss issues and stated that
19 she would follow up with her primary care physician. She further stated that she would have an
20 endoscopic gallbladder procedure performed later that month. B.B. again reported drowsiness
21 and constipation from the medications. The medications were refilled with no change in the
22 regimen.

23 73. B.B. had gallbladder surgery at U.C. Davis, and was discharged on or about
24 February 26, 2014. She presented to the Emergency Department on or about February 27, 2014
25 for an apparent overdose of Oxycontin causing low blood pressure. She was admitted due to
26 "altered mental status," and to rule out complications from her surgery. She was diagnosed with
27 C-Difficile and it was treated with antibiotics for sepsis. She had a repeat gallbladder procedure
28 at U.C. Davis at the beginning of March 2014. She was admitted to the hospital U.C. Davis and

1 had another gallbladder surgery on or about March 7, 2014. During this hospitalization at U.C.
2 Davis, there was a consultation note from the Pharmacy pain management specialist, dated March
3 3, 2014, stating that B.B. is a complex patient with acute pain secondary to cholangitis. It stated
4 that although her at home, by mouth, opioid prescriptions per 24 hours is equivalent to 960 mg
5 morphine per day, "currently, patient's 24 hour opioid requirement equivalent to approximately
6 350 mg po morphine per day. Questionable adherence to home regimen due to negative urine
7 drug screen and current sensitivity to hydromorphone IV. Patient may benefit from adjustment of
8 analgesic regimen." B.B. was released from U.C. Davis on or about March 14, 2014.

9 74. On or about March 17, 2014, B.B. presented at the Emergency Room at Mercy
10 Folsom. She was diagnosed with hypotension most likely secondary to excessive narcotic
11 pain/medication. The discharge summary noted that B.B. had been discharged from U.C. Davis
12 earlier that week following gallbladder surgery and a post-surgical infection. At that point, she
13 had reported taking 160 mg of Oxycontin four times per day and U.C. Davis reduced her to 80
14 mg twice per day. In an assessment and plan, it was noted that B.B. was dehydrated. The
15 discharging physician concluded that the use of opioids probably contributed to the hypotension
16 B.B. experienced and ordered physical therapy. He decreased the prescribed opioid dose and
17 referred B.B. to follow up with her pain management specialist.

18 75. On or about March 19, 2014, B.B. had an appointment at H&H with Ms. T.W..
19 Ms. T.W. noted that B.B. reported 10/10 pain and, "was in Mercy Folsom recently. We have
20 received a discharge summary." B.B. stated the pain had been intolerable since her gallbladder
21 surgery. There was a conflicting, lengthy note by Ms. T.W. She stated that B.B. had been stable
22 on high dose Oxycontin for the previous 10 years. She further indicated that B.B.'s acute or
23 surgical pain would be difficult to manage, and addressed issues of opioid-induced hyperalgesia.
24 Ms. T.W. noted that Mercy Folsom had reduced the Oxycontin dose to 80 mg three times per day,
25 but B.B.'s pain increased, so she would raise it, and make a slower titration schedule for the
26 Oxycontin. Ms. T.W. further referred B.B. for psychological counseling. The prescribed amount
27 of medication did not correspond to her instructions to B.B.

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1 76. On or about March 26, 2014, B.B.'s husband left a telephone message stating that
2 B.B. has been experiencing cognitive impairment and mental confusion for months. He indicated
3 that she stopped actions in mid-motion. He was concerned that the Oxycontin withdrawal may be
4 causing the symptoms. Ms. T.W. documented having informed him that cognitive impairment
5 was not a withdrawal symptom and that B.B. should follow up with her primary care physician
6 for an evaluation of possible mental status changes if necessary. She further directed him to
7 continue with the titration schedule for reducing the Oxycontin, and to return in one week.

8 77. On or about April 2, 2014, B.B. had an office visit with Ms. T.W. at H&H, Ms.
9 T.W. noted that she would maintain B.B. on the same dose and not continue further titration
10 because B.B. complained of pain. On or about April 16, 2014, Ms. T.W. noted that B.B. said she
11 managed to decrease her dose of Oxycontin to 80 mg Q8H for the last week and she wanted to
12 continue that because it was helping her to have improved attention. It further indicated that
13 B.B. had some 40 mg pills left over, so Ms. T.W. directed her to continue her current regimen and
14 that she may take the extra 40 mg if the pain became too severe and to follow up in two weeks.
15 Again the medication directions were not clear and did not correspond to the prescribed amounts.
16 Ms. T.W. noted that B.B. would be having ultrasounds on her lower extremities to rule out
17 venous thrombosis and that she had begun counseling with the psychologist.

18 78. On or about April 30, 2014, Ms. T.W. saw B.B. who reported 10/10 pain and
19 denied weakness or fatigue, and was "alert and awake" and had "good mental clarity." The same
20 note also indicates, that B.B. fell asleep twice while talking to the medical assistant, and had to
21 catch herself before falling out of the wheelchair while speaking to Ms. T.W. Further, Ms. T.W.
22 reported that B.B. lost attention several times while speaking to her. B.B.'s family reported that
23 she had been having excessive sleepiness and had been falling out of her wheelchair recently,
24 hitting her head several times. As the lengthy note continues, Ms. T.W. wrote that the family was
25 concerned B.B. may not be taking the medications as prescribed and taking more than what she
26 was instructed. B.B. stated that she was taking the medications as prescribed. Ms. T.W. noted
27 that she told the family that if they believed she was not taking the medications appropriately they
28 would have to discontinue prescribing medications because that could be very dangerous. B.B.'s

1 husband then reported that he found a bottle of 100 tablets of 80 mg Oxycontin, unused. Ms.
2 T.W. noted that B.B. was due for a urine screen, but did not have to urinate, and so she would do
3 blood work instead. The notes also stated that Ms. T.W. recommended B.B. continue with further
4 titration of the Oxycontin to 60 mg three times per day. But, there was no indication that blood
5 work or medication change was done. Instead, there was another statement that Ms. T.W. would
6 "hold off on prescribing medication." Ms. T.W. stated that she was concerned about the
7 drowsiness and referred B.B. to go to the Emergency Room immediately. The note also contains
8 the template paragraphs that the benefits and risks of opioid medication have been explained and
9 the patient agrees to proceed with medication management, and that the patient understands and
10 all questions have been answered, as well as the paragraph that the goal of medication is to
11 improve function.

12 79. On or about April 30, 2014, after her appointment with Ms. T.W., B.B. presented to
13 the Mercy Folsom Emergency Room. There is a complete history and physical performed stating
14 as follows: "History of MI, Chronic back pain on high dose Oxycontin, recent dx of bilateral
15 lower extremity DVT, referred to ER by pain specialist for frequent falls and altered mental
16 status. Fell yesterday and hit her head. 20-years of pack per day smoking, quit 10 years ago.
17 Limited social alcohol consumption HR 50, respiratory rate 17, BP 126/76 slightly bradycardiac.
18 Assessment and plan: altered mental status secondary to narcotic overdose with dehydration."
19 Among other orders, there was a request for pain management consult. She was maintained in
20 hospital and checked to rule out CVA. She was reported to be unsure of medications she was
21 taking, very drowsy, groggy and deconditioned, requiring a walker for ambulation.

22 80. B.B. was admitted to Mercy Hospital from April 30, 2014 through May 1, 2014. She
23 was diagnosed with altered mental status and frequent falls most likely secondary to medication
24 over use. A CT of the head was negative. The Emergency Room reduced B.B.'s Oxycontin from
25 80 to 40 mg three times per day, and she was seen by physical therapy.

26 81. On or about May 2, 2014, B.B.'s husband left a telephone message for Ms. T.W. at
27 H&H. He stated that B.B. was discharged from Mercy Folsom and he would like to speak to Ms.
28 T.W. because Mercy Hospital recommended a medication consultation. He stated it was an

1 emergency and wanted to speak to her today. A medical assistant explained that Ms. T.W. was
2 busy and may not respond that morning. B.B.'s husband left another message that afternoon, and
3 the medical assistant instructed the husband that based on determination made by the physician
4 with Mercy Folsom, H&H's Medical Director would have to review B.B.'s medication regimen.
5 The husband explained that B.B. was currently in extreme pain and asked for a prescription to
6 make her more comfortable while waiting for an appointment.

7 82. There is a final chart note on May 7, 2014, reflecting an office visit with Ms. T.W.
8 at H&H. The note states that B.B. reported having lost her Norco bottle and was currently not
9 taking the medication. Ms. T.W. stated that she had informed B.B. that she could not continue to
10 prescribe opioid medications "as was Dr. Hendrickson's decision because [she] experienced an
11 adverse event while taking Oxycontin and it is unclear if she was taking the medication as
12 prescribed." She further stated that she discussed a trial of Duragesic patches for pain. The note
13 then indicated that when Ms. T.W. asked B.B. if she had any further questions, "the patient-
14 provider relationship was breeched as the husband expressed his displeasure about the care [she]
15 had received with our clinic for the past 10 years. Due to the breech in the provider-patient
16 relationship I cannot prescribe further medications and provided the patient with a titration
17 schedule for her Oxycontin using the remaining tablets." She stated that she provided her with a
18 list of other pain management providers in the area.

19 83. During her interview with the Medical Board, Ms. T.W. explained that the
20 "breech" referred to in the record was that B.B.'s husband lunged at her violently, causing her to
21 fear for her safety. She stated that she conferred with the Office Manager, who is a medical
22 assistant, and they developed the following titration schedule, which they provided to B.B. with a
23 list of other providers in the area:

24 "Day 1-5 take 1 tablet by mouth once each day

25 Day 6-8 take 1 tablet every other day

26 Day 9 off medication"

27 84. Ms. T.W. further stated that a Durable Power of Attorney for Health Care
28 Decisions was put in place in 2002, naming B.B.'s husband as the Power of Attorney. She stated

1 that in May of 2014, B.B. lacked capacity and since her husband was the Power of Attorney for
2 B.B., and had been violent at the clinic, she could no longer see him, and consequently could not
3 see B.B. either. The Office Manager referred B.B. to the H&H Detoxification Unit, which was
4 located on the same premises as the pain management clinic although there was no evidence of
5 lack of capacity at that time and she attended most appointments without him and made her own
6 medical decisions. Ms. T.W. states that upon B.B.'s husband becoming violent toward her, she
7 could no longer continue to see or contact B.B. because her husband was the power of attorney
8 and she was concerned for her personal safety.

9 85. B.B.'s primary care physician and psychologist attempted to assist her following
10 her discharge from H&H by finding alternate pain management care. Calls from B.B. and her
11 psychologist to H&H requesting additional care were not returned.

12 **FIRST CAUSE FOR DISCIPLINE**
13 **(Gross Negligence)**
[Bus. & Prof. Code, § 2234]

14 86. Respondent Jay A. Hendrickson, M.D. is subject to disciplinary action under section
15 2234, subsection (b), in that he was grossly negligent in his care and treatment of B.B. The
16 circumstances are as follows:

17 87. Paragraphs 9 through 85 above are repeated here as if fully set forth.

18 88. Respondent was grossly negligent in his care and treatment of Patient B.B. for his
19 acts including, but not limited to, the following:

20 a. Failing to conduct a detailed history and examination or to document this after the initial
21 history and physical and at appropriate points in the course of B.B.'s treatment as her condition
22 and response to interventions changed;

23 b. Failing to appropriately address, document and alter treatment plan and medications
24 over the course of treatment and in response to reports of adverse effects from medications;

25 c. Failing to conduct periodic reassessment and documentation of the medical indications
26 for continuing or altering medications;

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1 d. Failing to conduct appropriate medical management of comorbidities, or to refer for
2 medical treatment of physical symptoms of underlying medical conditions and to coordinate care
3 with other medical providers;

4 e. Providing excessive medications to B.B.;

5 f. Providing inconsistent and confusing directions to B.B. regarding her use of the
6 medications being prescribed to her and providing prescriptions that contradicted the instructions
7 to the patient on how to take the medications;

8 g. Allowing physician assistants to treat a complex, chronic pain patient without adequate
9 supervision.

10 h. Failing to obtain meaningful informed consent for the types and changes in the
11 medication provided to B.B.;

12 i. Failing to obtain consultations when appropriate and for addiction and dependence in
13 response to signs of possible medication misuse;

14 j. Failing to comply with DEA and drug manufacturer guidelines for prescribing, or to
15 document a reasonable basis to depart from these guidelines; and

16 k. Inappropriately terminating B.B. from care with insufficient alternative access to care
17 and follow up.

18 **SECOND CAUSE FOR DISCIPLINE**
19 **(Repeated Negligent Acts)**
20 **[Bus. & Prof. Code, § 2234]**

21 89. Respondent Jay A. Hendrickson, M.D. is subject to disciplinary action under section
22 2234, subsection (c), in that he committed repeated negligent acts in his care and treatment of
23 B.B. The circumstances are as follows:

24 90. Paragraphs 9 through 85 above are repeated here as if fully set forth.

25 91. Respondent was repeatedly negligent in his care and treatment of Patient B.B. for his
26 acts including, but not limited to, the following:

27 a. Failing to conduct a detailed history and examination or to document this after the initial
28 history and physical and at appropriate points in the course of B.B.'s treatment as her condition
and response to interventions changed;

- 1 b. Failing to appropriately address, document and alter treatment plan and medications
2 over the course of treatment and in response to reports of adverse effects from medications;
- 3 c. Failing to conduct periodic reassessment and documentation of the medical indications
4 for continuing or altering medications;
- 5 d. Failing to conduct appropriate medical management of comorbidities, or to refer for
6 medical treatment of physical symptoms of underlying medical conditions and to coordinate care
7 with other medical providers;
- 8 e. Providing excessive medications to B.B.;
- 9 f. Providing inconsistent and confusing directions to B.B. regarding her use of the
10 medications being prescribed to her and providing prescriptions that contradicted the instructions
11 to the patient on how to take the medications;
- 12 g. Allowing physician assistants to treat a complex, chronic pain patient without adequate
13 supervision.
- 14 h. Failing to obtain meaningful informed consent for the types and changes in the
15 medication provided to B.B.;
- 16 i. Failing to obtain consultations when appropriate and for addiction and dependence in
17 response to signs of possible medication misuse;
- 18 j. Failing to comply with DEA and drug manufacturer guidelines for prescribing, or to
19 document a reasonable basis to depart from these guidelines; and
- 20 k. Inappropriately terminating B.B. from care with insufficient alternative access to care
21 and follow up.

22 **THIRD CAUSE FOR DISCIPLINE**
23 **[Bus. & Prof. Code, §§ 2234, 2266]**
24 **(Failing to Adequately and Accurately Maintain Medical Records)**

25 92. Respondent Jay A. Hendrickson, M.D. has subjected his license to disciplinary action
26 under sections 2234 and 2266 by failing to maintain adequate and accurate records relating to the
27 provision of services to patient B.B.

28 93. Paragraphs 9 through 85, above are repeated here as if fully set forth.

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1 94. As set forth in paragraphs 9 through 85, Respondent and mid-level providers under
2 his supervision failed to adequately and accurately document the provision of care to patient B.B.,
3 which failures include, but are not limited to, providing inconsistent and confusing instructions on
4 taking medications, including template and inaccurate information in B.B.'s medical record such
5 as that she never smoked, failing to address relevant diagnostic information and findings related
6 to care and failing to adequately record histories, physicals, accurate assessments and
7 reassessments of B.B.'s pain, medications prescribed, and outside treatment notes.

8 **FOURTH CAUSE FOR DISCIPLINE**
9 **[Bus. & Prof. Code, §§ 2234, subd. (a), 3502]**
 (Failing to Properly Supervise Physician Assistant)

10 95. Respondent Jay A. Hendrickson, M.D. has subjected his license to disciplinary action
11 under sections 2234, subdivision (a), and 3502, for unprofessional conduct in that he failed to
12 properly supervise a physician assistant.

13 96. Paragraphs 9-85, above are restated and incorporated herein as if fully set forth.

14 97. Respondent allowed physician assistants to treat B.B. with minimal supervision,
15 despite the fact that she was a complex, chronic pain patient with multiple co-morbidities and
16 concerning medication use histories.

17 98. Respondent's conduct as described above constitutes unprofessional conduct in
18 violation of section 2234, and thereby provides cause for discipline to Respondent's physician's
19 and surgeon's certificate.

20 **FIFTH CAUSE FOR DISCIPLINE**
21 **[Bus. & Prof. Code, §§ 2234, subd. (a), 3502.1]**
 (Failing to Establish Written Formulary for
22 **Drug Orders of Physician Assistant)**

23 99. Respondent Jay A. Hendrickson, M.D. has subjected his license to disciplinary
24 action under sections 2234, subdivision (a), and 3502.1, for unprofessional conduct in that he
25 failed to establish written formulary for relaying drug orders and to include them in the
26 Delegation of Services Agreement for the supervision of a physician assistant in his pain
27 management practice.

28 100. Paragraphs 9 through 85, above, are incorporated here as if fully set forth herein.

1 101. Respondent did not have a written formulary and corresponding lists contained in
2 the Delegation of Services Agreement for Physician Assistants in his practice, including
3 Physician Assistant T.W. Without these written guidelines and formulary, he was required to
4 provide prior authorization for the before Ms. T.W. and the other Physician Assistants could relay
5 drug orders for controlled substances for patient B.B. Respondent did not provide prior
6 authorization and did not even co-sign the chart notes in which these drug orders were charted.

7 102. Respondent's conduct as described above constitutes unprofessional conduct in
8 violation of section 2234, and thereby provides cause for discipline to Respondent's physician's
9 and surgeon's certificate.

10 **Patient B.H.**

11 103. Patient B.H. was seen in H&H from 2000 through 2017.⁴ Patient B.H. has a history
12 of a motorcycle accident in 1995 with a right arm injury and a brachial plexus injury, which led to
13 gangrene. B.H. underwent an above the elbow amputation of the right arm during 1999, which
14 left him with chronic phantom limb pain of the right arm. B.H. had his first appointment with
15 Respondent on or about March 31, 2000. He completed a pain contract, which contained a
16 prohibition on B.H. using marijuana while receiving controlled substances. As of 2011, B.H. was
17 frequently seen by mid-level practitioners including physician assistants and nurse practitioners.
18 As of February 22, 2011, B.H. was prescribed 984 mg of Morphine Equivalent Doses daily
19 (MED) of opioid medications from H&H. This included a 100 mcgm patch every two days, MS
20 Contin 60 mg, two tablets three times per day, and Dilaudid 8 mg 1-2 every four hours. B.H. also
21 received Neurontin 400 mg three times per day, and Klonopin 2 mg three at night. B.H. was seen
22 approximately monthly.

23 104. Physician Assistant T.W. began seeing B.H. at H&H in approximately June of 2012,
24 under the supervision of Respondent. Respondent failed to cosign the medical records T.W.
25 prepared until approximately June of 2015. Respondent's Delegation of Services Agreement with
26 T.W. does not contain written formularies or protocols for supervision. T.W.'s chart notes

27
28 ⁴ Facts alleged outside the statute of limitations are for informational purposes.

1 consisted of similar to identical language from visit to visit for history, reviews of systems, pain
2 scores, and other facts. This language appears to be repopulating template language. The first
3 mention in T.W.'s chart notes of B.H.'s above the elbow amputation of the right arm was not
4 until approximately March 30, 2015. B.H. continued to receive MED of opioid medications at
5 984 per day during 2011, 2012, and 2013.

6 105. In 2014, B.H.'s chart notes indicated that practice guidelines had changed so doses
7 were being reduced. The Dilaudid prescriptions were reduced, and B.H.'s MED went down to
8 792. In 2015 the Dilaudid and MS Contin was reduced leading to a MED of 612 daily.

9 106. During January and May of 2017, B.H. had a number of inconsistent toxicology
10 screenings showing the presence of marijuana and the absence of certain medications prescribed.
11 At the date of his last visit, on or about April 17, 2017, B.H. was receiving 90 MED daily, and
12 was directed to taper the MS Contin. He was given a written schedule to do so. The chart notes
13 did not explicitly state that the reason for the taper was due to the toxicology results.

14 **SIXTH CAUSE FOR DISCIPLINE**
15 **(Gross Negligence)**
16 **[Bus. & Prof. Code, § 2234]**

17 107. Respondent Jay A. Hendrickson, M.D. is subject to disciplinary action under section
18 2234, subsection (b), in that he was grossly negligent in his care and treatment of B.H.

19 108. Paragraphs 9 through 10, 61, and 103 through 106 above are repeated here as if fully
20 set forth.

21 109. Respondent was grossly negligent in his care and treatment of Patient B.H. in
22 allowing a physician assistant to treat a complex, chronic pain patient receiving high doses of
23 opioids in excess of recommended doses without adequate supervision, providing cause for
24 discipline to Respondent's physician's and surgeon's certificate.

25 **SEVENTH CAUSE FOR DISCIPLINE**
26 **[Bus. & Prof. Code, §§ 2234, subd. (a), 3502]**
27 **(Failing to Properly Supervise Physician Assistant)**

28 110. Respondent Jay A. Hendrickson, M.D. has subjected his license to disciplinary action
under sections 2234, subdivision (a), and 3502, for unprofessional conduct in that he failed to
properly supervise a physician assistant.

1 111. Paragraphs 9 through 10, 61, and 103 through 106 above are restated and
2 incorporated herein as if fully set forth.

3 112. Respondent allowed physician assistants to treat B.H. with minimal supervision,
4 despite the fact that he was a complex, chronic pain patient with multiple co-morbidities and
5 concerning medication use histories.

6 113. Respondent's conduct as described above constitutes unprofessional conduct in
7 violation of section 2234, and thereby provides cause for discipline to Respondent's physician's
8 and surgeon's certificate.

9 **EIGHTH CAUSE FOR DISCIPLINE**
10 **[Bus. & Prof. Code, §§ 2234, subd. (a), 3502]**
11 **(Failing to Establish Written Protocols**
of Physician Assistant)

12 114. Respondent Jay A. Hendrickson, M.D. has subjected his license to disciplinary
13 action under sections 2234, subdivision (a), and 3502, for unprofessional conduct in that he failed
14 to establish written protocols for the supervision of a physician assistant in his pain management
15 practice.

16 115. Paragraphs 9 through 10, 61, and 103 through 106 above, are incorporated here as
17 if fully set forth herein.

18 116. Respondent did not have written protocols for Physician Assistants in his practice,
19 including Physician Assistant T.W. Without these written protocols, Physician Assistant T.W.
20 treated, diagnosed, prescribed and altered medications of a high dose patient, B.H. thus presenting
21 significant risk to the patient. T.W.'s chart notes reflected inadequate examination and
22 management of chronic conditions, with appropriate referrals for significant changes in his status.

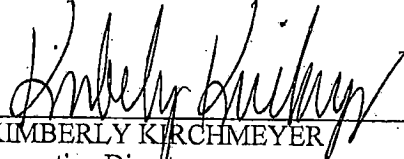
23 117. Respondent's conduct as described above constitutes unprofessional conduct in
24 violation of section 2234, and thereby provides cause for discipline to Respondent's physician's
25 and surgeon's certificate.

26 **PRAYER**

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 83722, issued to Jay A. Hendrickson, M.D.;
2. Revoking, suspending or denying approval of Jay A. Hendrickson, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Jay A. Hendrickson, 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: August 28, 2017


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

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