

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

In the Matter of the Accusation)	
Against:)	
)	
)	
WILLIAM KENNETH EBERT, M.D.)	Case No. 03-2013-230884
)	
Physician's and Surgeon's)	OAH No. 2016090876
Certificate No. G77739)	
)	
Respondent)	
_____)	

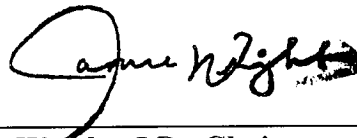
DECISION

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

This Decision shall become effective at 5:00 p.m. on March 3, 2017.

IT IS SO ORDERED: February 2, 2017.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, J.D., Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 DAVID CARR
Deputy Attorney General
4 State Bar No. 131672
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5538
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 03-2013-230884

11 **WILLIAM KENNETH EBERT, M.D.**

OAH No. 2016090876

12 2025 Soquel Avenue
13 Santa Cruz, CA 95062

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Physician's and Surgeon's Certificate
15 No. G77739

16 Respondent.

17
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public
19 interest and the responsibility of the Medical Board of California of the Department of Consumer
20 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
21 which will be submitted to the Board for approval and adoption as the final disposition of the
22 Accusation.

23 **PARTIES**

24 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
25 Board of California ("Board"). She brought this action solely in her official capacity and is
26 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
27 David Carr, Deputy Attorney General.
28

2. William Kenneth Ebert, M.D. is represented in this proceeding by Morgan A. Muir and Robert Sullivan, of Nossaman LLP, 50 California Street, 34th Floor, San Francisco, CA 94111.

3. On or about October 14, 1993, the Board issued Physician's and Surgeon's Certificate No. G77739 to William Kenneth Ebert, M.D. ("Respondent"). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 03-2013-230884, and will expire on March 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 03-2013-230884 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 16, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 03-2013-230884 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 Accusation No. 03-2013-230884. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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 Accusation
3 No. 03-2013-230884, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

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

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
11 Disciplinary Order below. Respondent agrees that if he ever petitions for early termination or
12 modification of probation, or if the Board ever petitions for revocation of probation, all of the
13 charges and allegations contained in the Accusation shall be deemed true and fully admitted by
14 Respondent for purposes of that proceeding or any other licensing proceeding involving
15 Respondent in the State of California.

16 RESERVATION

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

21 CONTINGENCY

22 13. This stipulation shall be subject to approval by the Medical Board of California.
23 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
24 Board of California may communicate directly with the Board regarding this stipulation and
25 settlement, without notice to or participation by Respondent or his counsel. By signing the
26 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
27 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
28 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary

Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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. G77739 issued to Respondent William Kenneth Ebert, 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 the following: 1) the name and address of 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. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours

per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

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

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

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

4. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to

1 the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education
2 Program, University of California, San Diego School of Medicine (Program), approved in
3 advance by the Board or its designee. Respondent shall provide the program with any information
4 and documents that the Program may deem pertinent. Respondent shall participate in and
5 successfully complete the classroom component of the course not later than six (6) months after
6 Respondent's initial enrollment. Respondent shall successfully complete any other component of
7 the course within one (1) year of enrollment. The medical record keeping course shall be at
8 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
9 requirements for renewal of licensure.

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

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

18 5. PROFESSIONALISM PROGRAM. Within 60 calendar days of the effective date of
19 this Decision, Respondent shall enroll in a professionalism program, that meets the requirements
20 of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in
21 and successfully complete that program. Respondent shall provide any information and
22 documents that the program may deem pertinent. Respondent shall successfully complete the
23 classroom component of the program not later than six (6) months after Respondent's initial
24 enrollment, and the longitudinal component of the program not later than the time specified by
25 the program, but no later than one (1) year after attending the classroom component. The
26 professionalism program shall be at Respondent's expense and shall be in addition to the
27 Continuing Medical Education (CME) requirements for renewal of licensure.

28 A professionalism program taken after the acts that gave rise to the charges in the

1 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
2 or its designee, be accepted towards the fulfillment of this condition if the program would have
3 been approved by the Board or its designee had the program been taken after the effective date of
4 this Decision.

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

8 6. PRACTICE MONITOR. Within 30 calendar days of the effective date of this
9 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
10 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
11 licenses are valid and in good standing, and who are preferably American Board of Medical
12 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
13 relationship with Respondent, or other relationship that could reasonably be expected to
14 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
15 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
16 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

28 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective

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

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

11 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
12 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
13 name and qualifications of a replacement monitor who will be assuming that responsibility within
14 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
15 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
16 notification from the Board or its designee to cease the practice of medicine within three (3)
17 calendar days after being so notified Respondent shall cease the practice of medicine until a
18 replacement monitor is approved and assumes monitoring responsibility.

19 In lieu of a monitor, Respondent may participate in a professional enhancement program
20 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
21 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
22 chart review, semi-annual practice assessment, and semi-annual review of professional growth
23 and education. Respondent shall participate in the professional enhancement program at
24 Respondent's expense during the term of probation.

25 STANDARD CONDITIONS OF PROBATION

26 7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
27 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
28 Chief Executive Officer at every hospital where privileges or membership are extended to

Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

8. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

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

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

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

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

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

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place

1 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
2 facility.

3 ///

4 License Renewal

5 Respondent shall maintain a current and renewed California Physician's and Surgeon's
6 license.

7 Travel or Residence Outside California

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

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

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

17 13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
18 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
19 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
20 defined as any period of time Respondent is not practicing medicine in California as defined in
21 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
22 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
23 time spent in an intensive training program which has been approved by the Board or its designee
24 shall not be considered non-practice. Practicing medicine in another state of the United States or
25 Federal jurisdiction while on probation with the medical licensing authority of that state or
26 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
27 not be considered as a period of non-practice.

28 In the event Respondent's period of non-practice while on probation exceeds 18 calendar

1 months, Respondent shall successfully complete a clinical training program that meets the criteria
2 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
3 Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

6 Periods of non-practice will relieve Respondent of the responsibility to comply with the
7 probationary terms and conditions with the exception of this condition and the following terms
8 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

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

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

1 application shall be treated as a petition for reinstatement of a revoked certificate.

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

7
8 ACCEPTANCE

9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
10 discussed it with my attorney, Morgan A. Muir. I understand the stipulation and the effect it will
11 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
12 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
13 Decision and Order of the Medical Board of California.

14
15 DATED: 12-30-16 William K Ebert MD
16 WILLIAM KENNETH EBERT, M.D.
17 Respondent
18

19 I have read and fully discussed with Respondent William Kenneth Ebert, M.D. the terms
20 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
21 Order. I approve its form and content.

22 DATED: 12/30/2016 Morgan A. Muir
23 MORGAN A. MUIR CALLAHAN
24 Attorney for Respondent
25
26
27
28

1 ENDORSEMENT

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

4
5 Dated: *December 30, 2016*
6

Respectfully submitted,

7 KAMALA D. HARRIS
8 Attorney General of California
9 JANE ZACK SIMON
10 Supervising Deputy Attorney General

11 *David Carr*
12 DAVID CARR
13 Deputy Attorney General
14 *Attorneys for Complainant*

15 SF2015403422
16 Ebert Stip (3).docx
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Accusation No. 03-2013-230884

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 DAVID CARR
Deputy Attorney General
4 State Bar No. 131672
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5538
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Mar. 16 20 16*
BY *[Signature]* ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 03-2013-230884

13 **WILLIAM KENNETH EBERT, M.D.**

A C C U S A T I O N

14 2025 Soquel Avenue
15 Santa Cruz, CA 95062

16 Physician's and Surgeon's Certificate
No. G77739,

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On October 14, 1993, the Medical Board issued Physician's and Surgeon's Certificate
24 Number G77739 to William Kenneth Ebert, M.D. ("Respondent"). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on March 31, 2017, unless renewed.

27 ///

JURISDICTION

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

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

5. Section 2234 of the Code, states:

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

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

“(b) Gross negligence.

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

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

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

“(d) Incompetence.

“(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct which would have warranted the denial of a certificate.

1 “(g) The practice of medicine from this state into another state or country without meeting
2 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
3 apply to this subdivision. This subdivision shall become operative upon the implementation of the
4 proposed registration program described in Section 2052.5.

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

8 6. Section 2242 of the Code states:

9 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
10 without an appropriate prior examination and a medical indication, constitutes unprofessional
11 conduct.

12 “(b) No licensee shall be found to have committed unprofessional conduct within the
13 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
14 the following applies:

15 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
16 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs
17 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
18 of his or her practitioner, but in any case no longer than 72 hours.

19 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
20 vocational nurse in an inpatient facility, and if both of the following conditions exist:

21 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
22 who had reviewed the patient's records.

23 “(B) The practitioner was designated as the practitioner to serve in the absence of the
24 patient's physician and surgeon or podiatrist, as the case may be.

25 “(3) The licensee was a designated practitioner serving in the absence of the patient's
26 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
27 the patient's records and ordered the renewal of a medically indicated prescription for an amount
28 not exceeding the original prescription in strength or amount or for more than one refill.

1 “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
2 Code.”

3 7. Section 2241 of the Code states:

4 “(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs,
5 including prescription controlled substances, to an addict under his or her treatment for a purpose
6 other than maintenance on, or detoxification from, prescription drugs or controlled substances.

7 “(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or
8 prescription controlled substances to an addict for purposes of maintenance on, or detoxification
9 from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections
10 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this
11 subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer
12 dangerous drugs or controlled substances to a person he or she knows or reasonably believes is
13 using or will use the drugs or substances for a nonmedical purpose.

14 “(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also
15 be administered or applied by a physician and surgeon, or by a registered nurse acting under his or
16 her instruction and supervision, under the following circumstances:

17 “(1) Emergency treatment of a patient whose addiction is complicated by the presence of
18 incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

19 “(2) Treatment of addicts in state-licensed institutions where the patient is kept under
20 restraint and control, or in city or county jails or state prisons.

21 “(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

22 “(d)(1) For purposes of this section and Section 2241.5, “addict” means a person whose
23 actions are characterized by craving in combination with one or more of the following:

24 “(A) Impaired control over drug use.

25 “(B) Compulsive use.

26 “(C) Continued use despite harm.

1 “(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due
2 to the inadequate control of pain is not an addict within the meaning of this section or Section
3 2241.5.”

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

7 9. Section 725 of the Code states:

8 “(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering
9 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
10 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
11 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
12 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist,
13 or audiologist.

14 “(b) Any person who engages in repeated acts of clearly excessive prescribing or
15 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
16 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
17 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
18 imprisonment.

19 “(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or
20 administering dangerous drugs or prescription controlled substances shall not be subject to
21 disciplinary action or prosecution under this section.

22 “(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section
23 for treating intractable pain in compliance with Section 2241.5.”

24 10. All of the events described herein occurred at the Palo Alto Medical Foundation
25 Clinic in Soquel, California.

26 ///

27 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 Patient RL

3 (Unprofessional Conduct/Gross Negligence and or Repeated Negligent Acts)

4 11. Based on prescription records and the medical records from the Palo Alto Medical
5 Foundation Clinic where Respondent was then employed, Respondent assumed primary care
6 responsibility for patient RL on June 8, 2012. Respondent prescribed 200 tablets of 30 mg
7 Oxycodone IR¹ to patient RL on that date. Nothing in Respondent's records indicate that
8 Respondent saw RL on that date. Prescription records indicate Respondent had already
9 prescribed 200 tablets of Oxycodone IR to patient RL on May 31, 2012. The prescription record
10 reveals Respondent also prescribed 200 more tablets to patient RL July 12, 2012; and again on
11 August 14, 2012. There is no indication in the medical record that Respondent saw RL prior to
12 issuing any of these prescriptions.

13 12. Respondent's first chart notes for patient RL are dated September 18, 2012.
14 Respondent noted RL's complaint of low back pain and a reported history of spondylolisthesis
15 with radiating leg pain. Respondent's notes state that Oxycodone is effective for RL's pain, with
16 no adverse effects. Vital signs and physical exam are reported normal. There is no neurological
17 examination documented. At this visit Respondent again prescribes 200 tablets of Oxycodone IR,
18 1-2 tablets four times per day.

19 13. From the first prescription Respondent wrote for RL on May 31, 2012, until his last
20 documented prescribing to RL on May 10, 2013, Respondent prescribed and re-filled his orders
21 for 200 tablets of Oxycodone IR to patient RL 28 times, a total of 5600 tablets, an average of
22 almost 16 tablets per day, twice Respondent's recommended dose for patient RL. Respondent's
23 medical record reflects only ten prescriptions for Oxycodone IR to patient RL during this period.

24 _____
25 ¹. Oxycodone is a semisynthetic narcotic analgesic, an opiate with multiple actions
26 qualitatively similar to those of morphine. It is a dangerous drug as defined in section 4022 and a
27 Schedule II controlled substance and narcotic as defined by section 11055, subdivision (c) of the
28 Health and Safety Code. Oxycodone is habit forming and produce drug dependence of the
morphine type and has a high potential for being abused. Oxycodone IR is the immediate release,
short-acting form of the drug. Like all opiates oxycodone can cause life-threatening respiratory
suppression, particularly at high doses.

1 14. Respondent's care and treatment of patient RL included the following departures from
2 the standard of care: Respondent prescribed very high doses of Oxycodone IR to RL before ever
3 documenting an adequate history or physical examination of this patient. Respondent began RL
4 on high dose opioid therapy without verifying prior treatment or consulting with prior treating
5 physicians. At no point in the year's course of treatment did Respondent document RL's prior
6 medical history. Respondent never documented a neurological examination, despite RL's
7 reported back pain and spondylolisthesis, with back pain radiating down his legs. Respondent
8 failed to document any consideration of nerve compression or spinal stenosis or clinical exclusion
9 of other possible pathology before or during his course of prescribing very high dose opioid
10 therapy. The record is devoid of any documentation that Respondent obtained informed consent
11 to use opioid medications to treat RL's pain. There is nothing in the medical record suggesting
12 Respondent made any effort to detect or deter aberrant drug behavior by patient RL.

13 15. Respondent has subjected his license to discipline for unprofessional conduct in that
14 his care and treatment of patient RL included multiple departures from the standard of care,
15 extreme departures constituting gross negligence in violation of section 2234(b) and/or repeated
16 negligent acts in violation of section 2234 (c).

17 **SECOND CAUSE FOR DISCIPLINE**

18 Patient RL

19 (Prescribing Without Prior Examination)

20 16. The allegations of paragraphs 11 through 14 above are incorporated by reference.
21 Respondent has subjected his license to discipline for unprofessional conduct by prescribing
22 controlled substances to RL without an appropriate prior examination and medical indication, in
23 violation of section 2242(a).

24 **THIRD CAUSE FOR DISCIPLINE**

25 Patient RL

26 (Failure to Maintain Adequate and Accurate Records)

27 17. The allegations of paragraphs 11 through 14 above are incorporated by reference.
28 Respondent has subjected his license to discipline for unprofessional conduct in that he failed to

1 maintain adequate and accurate records pertaining to his care and treatment of patient RL, in
2 violation of section 2266.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 Patient RL

5 (Excessive Prescribing)

6 18. The allegations of paragraphs 11 through 14 above are incorporated by reference.
7 Respondent has subjected his license to discipline for unprofessional conduct in that his
8 prescribing of Oxycodone IR to patient RL was clearly excessive as determined by the standards
9 of the community of physicians and surgeons, in violation of section 725.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 Patient ED

12 (Unprofessional Conduct/Gross Negligence and or Repeated Negligent Acts)

13 19. Respondent's medical records indicate he first saw patient ED on April 18, 2012. The
14 record of that visit presents only patient information obtained by the Palo Alto Medical
15 Foundation Clinic prior to that date. There is no physical examination recorded. Respondent
16 prescribed 200 tablets of 30 mg Oxycodone IR to patient ED on that date, but that prescription is
17 not reflected in Respondent's medical record. Respondent's first chart entries for ED are dated
18 April 27, 2012. Respondent's documentation of ED's medical history on April 27 is notable only
19 for prior unspecified back surgery. It is also noted that ED takes Oxycodone for pain, but the dose
20 and frequency are not specified. No prior treatment records were sought and no informed consent
21 for treatment with opioid medications is recorded.

22 20. Respondent's record for ED contains a message, dated May 2, 2012, stating that a
23 local CVS pharmacy requested clarification of an early refill request by ED. Respondent's
24 initials appear after the notation "reviewed with pharmacist." 200 tablets of Oxycodone IR were
25 dispensed to ED on May 2, 2012. A telephone inquiry from Lucky Pharmacy is noted on May 10,
26 2012, indicating that a prescription for 200 tablets of Oxycodone IR is pending.

27 21. On July 12, 2012, low back pain is entered on the problem list of ED's medical
28 records, though it appears no visit occurred that day. The chart entries for that date also note

1 another message from Lucky Pharmacy requesting clarification of a refill of Oxycodone IR.
2 Instructions for the Oxycodone IR prescription are recorded in the chart: "Take 30 mg by mouth
3 every 4 hours as needed." A prescription for 300 tablets of Oxycodone IR is documented for that
4 date. Taken as directed, that quantity of Oxycodone IR would have been sufficient to last until
5 August 31, 2012.

6 22. On August 14, 2012, Respondent prescribed 300 more tablets of Oxycodone IR to
7 ED, again without an office visit. The next office visit is documented as occurring September 18,
8 2012. Respondent notes that ED's condition is unchanged. A history and physical examination
9 are entered in the record; pain with movement is also noted. Musculoskeletal examination shows
10 "rigid lumbar with tender spasm". The recorded plan of treatment is "Continue current treatment.
11 Follow up 3-6 months if no change." There is still no informed consent present in the chart.

12 23. According to prescription records, between Respondent's first prescription of
13 Oxycodone IR to patient ED on April 18, 2012 and Respondent's first adequate chart entries at
14 the September 18, 2012 visit patient ED received 24 packets of 200 tablets of Oxycodone IR and
15 5 packets of 300 tablets of Oxycodone IR, a total of 6,300 tablets of the opiate. At the dose
16 directed by Respondent for ED—12 tablets per day—6,300 tablets should have lasted 525 days,
17 more than a year after the September 18, 2012 visit, instead of the 5 month period in which they
18 were given to ED. When interviewed about his care of patient ED by Board investigators,
19 Respondent was unable to discern from his chart entries why this overage had occurred or what
20 had transpired in his clarification of prescriptions inquired about by local pharmacists.

21 24. Respondent's care and treatment of patient ED included numerous departures from
22 the standard of care: Respondent failed to obtain a medical history and failed to make any effort to
23 confirm ED's prior treatment prior to prescribing high doses of opiates; Respondent failed to
24 perform an adequate physical examination prior to prescribing opioid medication; there was no
25 informed consent obtained for treatment with opiates; Respondent failed to recognize or act on
26 the multiple indications of aberrant drug use by ED; and it was a departure from the standard of
27 care for Respondent to fail to formulate a detailed plan of treatment with measurable benchmarks.

25. Respondent has subjected his license to discipline for unprofessional conduct in that his care and treatment of patient ED included multiple departures from the standard of care, comprising extreme departures constituting gross negligence in violation of section 2234(b) and/or repeated negligent acts in violation of section 2234 (c).

SIXTH CAUSE FOR DISCIPLINE

Patient ED

(Excessive Prescribing)

26. The allegations of paragraphs 19 through 23 above are incorporated by reference. Respondent has subjected his license to discipline for unprofessional conduct in that his prescribing of Oxycodone IR to patient ED was clearly excessive as determined by the standards of the community of physicians and surgeons, in violation of section 725.

SEVENTH CAUSE FOR DISCIPLINE

Patient ED

(Prescribing Without Prior Examination)

27. The allegations of paragraphs 19 through 23 above are incorporated by reference. Respondent has subjected his license to discipline for unprofessional conduct by prescribing controlled substances to ED without an appropriate prior examination and medical indication, in violation of section 2242(a).

EIGHTH CAUSE FOR DISCIPLINE

Patient ED

(Failure to Maintain Adequate and Accurate Records)

28. The allegations of paragraphs 19 through 23 above are incorporated by reference. Respondent has subjected his license to discipline for unprofessional conduct in that he failed to maintain adequate and accurate records pertaining to his care and treatment of patient ED, in violation of section 2266.

///

///

1 **NINTH CAUSE FOR DISCIPLINE**

2 Patient ND

3 (Unprofessional Conduct/Gross Negligence and or Repeated Negligent Acts)

4 29. Respondent had been treating patient ND at the Soquel clinic since 2009 for, among
5 other conditions, low back pain and spondylosis. Respondent's care of ND considered here spans
6 the period of July 29, 2010 until April 19, 2013. The first chart notes in this period reflect
7 Respondent's receipt of an inquiry from a local pharmacist regarding ND's request for an early
8 refill of Norco, which Respondent was prescribing for ND's back pain. Respondent's chart
9 entries for this three year period reflect varying recommendations as to the appropriate dose of
10 Norco² which Respondent was prescribing for ND, between six and twelve tablets of Norco
11 10/325 daily. Respondent prescribed sufficient Norco 10/325 tablets for ND to take more than 14
12 tablets per day every day for this time period.

13 30. Respondent's chart notes indicate that the patient insisted only the Norco was
14 effective for her back pain. Although Respondent repeatedly noted his concern about the high
15 dosage of Norco ND was receiving and recorded his intent to refuse to refill the Norco,
16 Respondent either routinely refilled the Norco prescription or resumed prescribing it after brief
17 periods of prescribing alternative opiates. Respondent was regularly prescribing other controlled
18 substances as well, including Soma³ and various benzodiazepines.⁴ Respondent was informed by
19 ND's sister that ND had been admitted to the emergency room for overdosing on Soma in January

20 ² Norco is the trade name of the combination of the short-acting opiate hydrocodone and
21 acetaminophen. It is a dangerous drug as defined in section 4022 and a Schedule III controlled
22 substance as defined by section 11056 of the Health and Safety Code. Like other opiates, it
23 carries a risk of tolerance, dependence, abuse, or diversion. Norco has a rigid dose ceiling because
24 of the acetaminophen component: it is unsafe to take more than 4 grams of acetaminophen per
25 day (12 tablets per 24 hours).

26 ³ Soma (carisoprodol) is a potent muscle relaxant with sedative properties. It is a
27 dangerous drug as defined in section 4022. Soma is indicated for the short term treatment of
28 muscle spasms. In combination with opiates, it carries the risk of additive central nervous system
depressions. Soma is frequently used as a drug of abuse as potentiating the euphoric effect of
opiates.

⁴ Benzodiazepines are sedative-hypnotic agents often used to treat insomnia.
Benzodiazepines are dangerous drugs as defined in section 4022 and are Schedule IV controlled
substances per section 11057 of the Health and Safety Code. At high doses benzodiazepines
produce a euphoric effect and are highly habit forming. When combined with opiates,
benzodiazepines can result in profound hypotension and respiratory suppression.

1 of 2011, while Respondent was prescribing Soma and opiates to ND. Respondent's chart notes
2 state that, at the office visit on January 24, 2011, Respondent discussed the overdose incident with
3 ND and the fact she was receiving more than 16 tablets of Norco per day. Respondent
4 nonetheless prescribed more Soma and more Norco for ND at that visit, and for the first time
5 prescribed methadone⁵ to her as well. When queried by Board investigators about the apparent
6 inconsistency between his chart entries expressing intent to taper the amount of Norco he was
7 prescribing to ND and his continued, even increased, prescribing, Respondent stated that he
8 couldn't discern from his records what had determined his course of treatment.

9 31. Respondent was aware that ND was admitted to the emergency room for overdoses on
10 at least two subsequent, additional occasions while he was treating her. In his reply to Medical
11 Board investigators asking the significance of his September 26, 2011 chart entry stating "This
12 concerns me..." Respondent stated that he then knew "she was probably abusing medication."
13 Respondent continued to prescribe Norco and other controlled substances to ND for another 18
14 months. On December 10, 2012, Respondent stopped all prescription to ND and cancelled all
15 refills of her Norco, in favor of methadone as a substitute. He resumed prescribing Norco to ND
16 9 days later.

17 32. Respondent's medical record reflects ND's complaint of symptomatic tachycardia in
18 early 2011, soon after she began taking the prescribed methadone. Respondent apparently told
19 patient ND her rapid heart rate was probably an adverse reaction to the methadone, but there is no
20 indication of any clinical evaluation of ND's tachycardia. On 8 of the 17 documented office
21 visits with ND over the period of treatment, ND's heart rate was measured above 100 beats per
22 minute, yet this vital sign was recorded as "normal."

23 33. Respondent's care and treatment of patient ND included the following departures
24 from the standard of care: Respondent prescribed extremely high doses of opiate medications

25
26 ⁵ Methadone is a potent long-acting synthetic opioid with a high potential for adverse
27 respiratory effects. It is a dangerous drug as defined in section 4022 and a schedule II controlled
28 substance and narcotic as defined by section 11055 of the Health and Safety Code. Methadone
increases the risk of lethal cardiac arrhythmia and ventricular tachycardia. Methadone should
only be prescribed in adherence with a fixed dosing schedule under supervision.

1 even after he was made aware of her having overdosed on prescription medications while under
2 his care; Respondent provided ND with long term high dose Norco containing dangerous amounts
3 of acetaminophen; Respondent failed to adequately document the clinical bases for his prescribing
4 to ND; Respondent failed to adequately respond to clear indications that ND was abusing her
5 prescription medication; and Respondent failed to evaluate ND's documented tachycardia.

6 34. Respondent has subjected his license to discipline for unprofessional conduct in that
7 his care and treatment of patient ND included multiple departures from the standard of care,
8 extreme departures constituting gross negligence in violation of section 2234(b) and/or repeated
9 negligent acts in violation of section 2234 (c).

10 **TENTH CAUSE FOR DISCIPLINE**

11 Patient ND

12 (Excessive Prescribing)

13 35. The allegations of paragraphs 29 through 32 above are incorporated by reference.
14 Respondent has subjected his license to discipline for unprofessional conduct in that his
15 prescribing of Norco to patient ND was clearly excessive as determined by the standards of the
16 community of physicians and surgeons, in violation of section 725.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

18 Patient ND

19 (Failure to Maintain Adequate and Accurate Records)

20 36. The allegations of paragraphs 29 through 32 above are incorporated by reference.
21 Respondent has subjected his license to discipline for unprofessional conduct in that he failed to
22 maintain adequate and accurate records pertaining to his care and treatment of patient ND, in
23 violation of section 2266.

24 **TWELFTH CAUSE FOR DISCIPLINE**

25 Patient ND

26 (Prescribing to an Addict)

27 37. The allegations of paragraphs 29 through 32 above are incorporated by reference.
28 Respondent has subjected his license to discipline for unprofessional conduct for prescribing

1 controlled substances to a person he or she knows or reasonably believes is using or will use the
2 drugs or substances for a nonmedical purpose, in violation of section 2241.

3 **PRAYER**

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

6 1. Revoking or suspending Physician's and Surgeon's Certificate Number G77739,
7 issued to William Kenneth Ebert, M.D.;

8 2. Revoking, suspending or denying approval of William Kenneth Ebert, M.D.'s
9 authority to supervise physician assistants, pursuant to section 3527 of the Code;

10 3. Ordering William Kenneth Ebert, M.D., if placed on probation, to pay the Board the
11 costs of probation monitoring; and

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

13
14 DATED: March 16, 2016


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

15
16
17
18
19 SF2015403422
Ebert.Acc.1.docx