

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

| | | |
|--|---|---------------------------------|
| In the Matter of the Accusation |) | |
| Against: |) | |
| |) | |
| |) | |
| Robert Howard Nelson, M.D. |) | Case No. 800-2015-013941 |
| |) | |
| Physician's and Surgeon's |) | |
| Certificate No. A 89950 |) | |
| |) | |
| 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 20, 2020.

IT IS SO ORDERED: February 19, 2020.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 VERONICA VO
Deputy Attorney General
4 State Bar No. 230698
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7508
7 Facsimile: (916) 327-2247

8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **ROBERT HOWARD NELSON, M.D.**
15 **1309 Philomene Ct.**
Carmichael, CA 95608

16 **Physician's and Surgeon's Certificate**
17 **No. A 89950**

18 Respondent.

Case No. 800-2015-013941

OAH No. 2019090705

19 **STIPULATED SETTLEMENT AND**
20 **DISCIPLINARY ORDER**

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

23 **PARTIES**

24 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
25 Board of California (Board). This action was brought by then Complainant Kimberly
26 Kirchmeyer solely in her official capacity.¹ Complainant is represented in this matter by Xavier
27 Becerra, Attorney General of the State of California, by Veronica Vo, Deputy Attorney General.

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¹ Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

1 2. Respondent Robert Howard Nelson, M.D. (Respondent) is represented in this
2 proceeding by attorneys Ian A. Scharg, Esq. and Robert H. Zimmerman, Esq., whose address is:
3 400 University Avenue, Sacramento, CA 95825-6502

4 3. On or about January 26, 2005, the Board issued Physician's and Surgeon's Certificate
5 No. A 89950 to Robert Howard Nelson, M.D. (Respondent). The Physician's and Surgeon's
6 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
7 No. 800-2015-013941, and will expire on June 30, 2020, unless renewed.

8 **JURISDICTION**

9 4. On January 31, 2018, Accusation No. 800-2015-013941 was filed before the Board,
10 and is currently pending against Respondent. The Accusation and all other statutorily required
11 documents were properly served on Respondent on January 31, 2018. Respondent timely filed
12 his Notice of Defense contesting the Accusation.

13 5. A copy of Accusation No. 800-2015-013941 is attached as exhibit A and incorporated
14 herein by reference.

15 **ADVISEMENT AND WAIVERS**

16 6. Respondent has carefully read, fully discussed with counsel, and understands the
17 charges and allegations in Accusation No. 800-2015-013941. Respondent has also carefully read,
18 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
19 Disciplinary Order.

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

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

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1 CULPABILITY

2 9. Respondent understands and agrees that, at an administrative hearing, complainant
3 could establish a *prima facie case* with respect to the charges and allegations contained in
4 Accusation No. 800-2015-013941, a true and correct copy of which is attached as Exhibit A, and
5 that he has thereby subjected his Physician's and Surgeon's Certificate No. A 89950 to
6 disciplinary action.

7 10. Respondent agrees that if he ever petitions for early termination or modification of
8 probation, or if an accusation and/or petition to revoke is ever filed against him before the
9 Medical Board of California, all of the charges and allegations contained in Accusation No. 800-
10 2015-013941 shall be deemed true, correct and fully admitted by Respondent for purposes of that
11 proceeding or any other licensing proceeding involving Respondent in the State of California.

12 11. Respondent agrees that his Physician's and Surgeon's Certificate No. A 89950 is
13 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
14 in the Disciplinary Order below.

15 CONTINGENCY

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

23 13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
24 and void and not binding upon the parties unless approved and adopted by the Board, except for
25 this paragraph, which shall remain in full force and effect. Respondent fully understands and
26 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
27 Disciplinary Order, the Board may receive oral and written communication from its staff and/or
28 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify

1 the Board, and any member thereof, and/or any other person from future participation in this or
2 any other matter affecting or involving Respondent. In the event that the Board does not, in its
3 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
4 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
5 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
6 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
7 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
8 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
9 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

10 **ADDITIONAL PROVISIONS**

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

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

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

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 89950 issued
3 to Respondent Robert Howard Nelson, M.D. is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for three (3) years from the effective date of the Decision on
5 the following terms and conditions.

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

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

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

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1 3. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective
2 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
3 advance by the Board or its designee. Respondent shall provide the approved course provider
4 with any information and documents that the approved course provider may deem pertinent.
5 Respondent shall participate in and successfully complete the classroom component of the course
6 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
7 complete any other component of the course within one (1) year of enrollment. The prescribing
8 practices course shall be at Respondent's expense and shall be in addition to the Continuing
9 Medical Education (CME) requirements for renewal of licensure.

10 A prescribing practices 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 4. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
19 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
20 advance by the Board or its designee. Respondent shall provide the approved course provider
21 with any information and documents that the approved course provider may deem pertinent.
22 Respondent shall participate in and successfully complete the classroom component of the course
23 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
24 complete any other component of the course within one (1) year of enrollment. The medical
25 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
26 Medical Education (CME) requirements for renewal of licensure.

27 A medical record keeping course taken after the acts that gave rise to the charges in the
28 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

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

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

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

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

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

25 6. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
26 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
27 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
28 licenses are valid and in good standing, and who are preferably American Board of Medical

1 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
2 relationship with Respondent, or other relationship that could reasonably be expected to
3 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
4 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
5 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

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

28 At the conclusion of the second year of monitoring, the practice monitor shall submit a

1 written report to the Board which shall indicate whether the Respondent is practicing medicine
2 safely and whether areas of practice deficiency have been corrected. If the practice monitor
3 determines that Respondent no longer needs further practice monitoring, and so states in the
4 written report, and the Board, in its sole discretion, determines that the further practice monitoring
5 is no longer needed, this condition shall be deemed satisfied and completed and will no longer be
6 enforced as part of Respondent's probation. If the practice monitor identifies areas of continued
7 deficiency that require additional monitoring and/or the Board determines that additional practice
8 monitoring is needed, this condition shall extend for the remainder of the probation.

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

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

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

1 calendar days.

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

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

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

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

12 Respondent shall submit quarterly declarations no later than 10 calendar days after the end
13 of the preceding quarter.

14 12. GENERAL PROBATION REQUIREMENTS.

15 Compliance with Probation Unit

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

17 Address Changes

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

23 Place of Practice

24 Respondent shall not engage in the practice of medicine in Respondent's place of residence.

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1 License Renewal

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

4 Travel or Residence Outside California

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

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

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

14 14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board
15 or its designee in writing within 15 calendar days of any periods of non-practice lasting more than
16 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
17 defined as any period of time Respondent is not practicing medicine as defined in Business and
18 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
19 patient care, clinical activity or teaching, or other activity as approved by the Board. If
20 Respondent resides in California and is considered to be in non-practice, Respondent shall
21 comply with all terms and conditions of probation. All time spent in an intensive training
22 program which has been approved by the Board or its designee shall not be considered non-
23 practice and does not relieve Respondent from complying with all the terms and conditions of
24 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
25 on probation with the medical licensing authority of that state or jurisdiction shall not be
26 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
27 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 the Federation of State Medical Boards's Special
2 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
3 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
4 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

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

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

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

23 17. LICENSE SURRENDER. Following the effective date of this Decision, if
24 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
25 the terms and conditions of probation, Respondent may request to surrender his or her license.
26 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
27 determining whether or not to grant the request, or to take any other action deemed appropriate
28 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent


1 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
2 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
3 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
4 application shall be treated as a petition for reinstatement of a revoked certificate.

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

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorneys, Ian. A Scharg, Esq. and Robert H. Zimmerman, Esq. I understand
13 the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. I enter
14 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
15 and agree to be bound by the Decision and Order of the Medical Board of California.

16
17 DATED: 1/10/2020


18 ROBERT HOWARD NELSON, M.D.
19 Respondent

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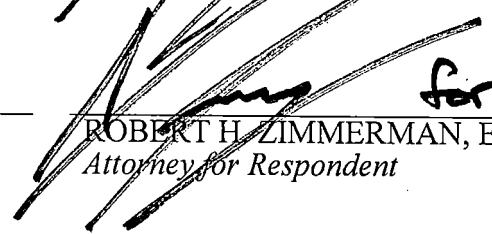
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1 I have read and fully discussed with Respondent Robert Howard Nelson, M.D. the terms
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4 DATED: 1/10/2020


5 IAN A. SCHARG, ESQ.
Attorney for Respondent

6
7 DATED: 1/10/2020


8 ROBERT H. ZIMMERMAN, ESQ.
Attorney for Respondent

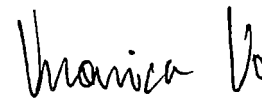
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10 **ENDORSEMENT**

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

13 DATED: 1/10/2020

14 Respectfully submitted,

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


19 VERONICA VO
20 Deputy Attorney General
21 *Attorneys for Complainant*

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1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 DEMOND L. PHILSON
Deputy Attorney General
4 State Bar No. 220220
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7548
Facsimile: (916) 327-2247
7 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

Case No. 800-2015-013941

14 **Robert Howard Nelson, M.D.**
15 **1309 Philomene Ct.**
Carmichael, CA 95608

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate No.**
17 **No. A 89950,**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about January 26, 2005, the Medical Board issued Physician's and Surgeon's
26 Certificate No. A 89950 to Robert Howard Nelson, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate No. A 89950 was in full force and effect at all times relevant to the charges
28 brought herein and will expire on June 30, 2018, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 2234 of the Code, states:

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

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

10 “(b) Gross negligence.

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

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

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

21 “(d) Incompetence.

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

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

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

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

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Gross Negligence)**

6 5. Respondent Robert Howard Nelson, M.D. is subject to disciplinary action under
7 section 2234(b) and 2242(a) of the Code in that he was grossly negligent in the care and treatment
8 of patient K.B.L. The circumstances are as follows:

9 6. From February 2012 until August 2015, Respondent treated patient K.B.L., for
10 chronic pain, fibromyalgia, skin outbreaks, and anxiety. During the course of the treatments,
11 Respondent treated patient K.B.L. at her home. Respondent’s medical records for patient K.B.L.
12 are comprised of transcribed verbally recorded notes and telephone calls.

13 7. Respondent visited patient K.B.L. every few days and up to every few weeks for
14 chronic and acute pain, as well as a recurrent shingles rash. Most of the visits did not include a
15 SOAP note¹ or a physical exam. There was no evidence of an initial history and physical. Patient
16 K.B.L.’s medications were routinely increased and changed throughout the course of treatment

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27 ¹ The SOAP note (an acronym for subjective, objective, assessment, and plan) is a method
28 of documentation employed by health care providers to write out notes in a patient's chart, along
with other common formats, such as the admission note.

1 including: Hydrocodone², Fentanyl patches³, Oxycontin, Oxycodone⁴, Morphine⁵, Adderall⁶,
2 Lorazepam⁷, and Xanax⁸.

3 8. Respondent routinely administered parental/intramuscular Demerol⁹ during the home
4 visits to patient K.B.L.

5 9. On August 12, 2012, Respondent's medical note indicated that patient K.B.L. was
6 applying two or three Fentanyl 12 mcg patches (prescribed as one every 72 hours) because patient
7 K.B.L. claimed that the patches were falling off. Patient K.B.L. ran out of the patches, and the
8 Respondent prescribed Fentanyl 25 mcg patches nine days after the previous Fentanyl 12 mcg
9 prescription.

10 10. On September 4, 2012, Respondent's medical note indicated that patient K.B.L. was
11 overusing Fentanyl 25 mcg by using two patches instead of following directions to use one patch
12 every 72 hours. Respondent's medical note also indicated that Demerol was given to patient
13 K.B.L.

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16 ² Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety Code
17 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
18 section 4022.

19 ³ Fentanyl, brand name Duragesic, is a Schedule II controlled substance pursuant to
20 Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to
21 Business and Professions Code section 4022.

22 ⁴ Oxycodone (generic name for OxyContin) is an opiate agonist used to treat moderate to
23 severe pain. Oxycodone, brand name OxyContin, is a Schedule II controlled substance pursuant
24 to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to
25 Business and Professions Code section 4022.

26 ⁵ Morphine is a Schedule II controlled substance pursuant to Health and Safety Code
27 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
28 section 4022.

⁶ Adderall (amphetamine) is a Schedule II controlled substance pursuant to Health and
Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and
Professions Code section 4022.

⁷ Lorazepam (generic name for Ativan) is a benzodiazepine used in the treatment of
anxiety, insomnia, and status epilepticus. It is a dangerous drug as defined in section 4022, a
schedule IV controlled substance as defined by Health and Safety Code section 11057(d).

⁸ Xanax (alprazolam) is a Schedule IV controlled substance pursuant to Health and Safety
Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions
Code section 4022.

⁹ Demerol (meperidine) is a Schedule II controlled substance pursuant to Health and
Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Business and
Professions Code section 4022.

1 11. On April 10, 2013, Respondent's medical note indicated that he discussed a text from
2 patient K.B.L. because he was concerned about her simultaneous use of Oxycontin and Xanax.
3 Despite the Respondent's concern, prescriptions for Oxycontin and Xanax were refilled and
4 Demerol was again given to patient K.B.L.

5 12. On July 15, 2013, Respondent's medical note indicated that patient K.B.L. admitted
6 to leaving her medications somewhere. Respondent called the pharmacy with a Norco¹⁰ refill
7 anyway.

8 13. On September 9, 2013, Respondent's medical note states, "I can't refill Fentanyl
9 early", but the Respondent sent a prescription to the pharmacy for Fentanyl 50 mcg anyway.

10 14. On April 18, 2014, Respondent's medical note indicated that he was concerned about
11 multiple narcotic refill problems and he recommended that patient K.B.L. take a break from high
12 doses of opioids. On April 28, 2014, a medication contract was created for patient K.B.L. No
13 prior informed consent was obtained and/or documented despite multiple visits with patient
14 K.B.L. beginning in February 2012.

15 15. On May 12, 2014, patient K.B.L. was admitted to U.C. Davis Medical Center for
16 rheumatologic consultations. On May 23, 2014, patient K.B.L. was prescribed MS Contin¹¹ 15
17 mg #60 by Respondent. On May 26, 2014, she said that she was out of her Oxycodone 5 mg that
18 was prescribed days earlier. Nevertheless, Respondent refilled the prescription by providing
19 patient K.B.L. with Oxycodone 5 mg #180.

20 16. On June 12, 2014, patient K.B.L. went to a pain management specialist and Subutex¹²
21 was initiated after withdrawal from narcotics.

22 ¹⁰ Hydrocodone with acetaminophen – Generic name for Norco. Hydrocodone with
23 acetaminophen is classified as an opioid analgesic combination product used to treat moderate to
24 moderately severe pain. Prior to October 6, 2014, Hydrocodone with acetaminophen was a
25 Schedule III controlled substance pursuant to Code of Federal Regulations Title 21 section
26 1308.13(e). Hydrocodone with acetaminophen is a dangerous drug pursuant to California
27 Business and Professions Code section 4022 and is a Schedule II controlled substance pursuant to
28 California Health and Safety Code section 11055, subdivision (b).

26 ¹¹ MS Contin is an analgesic opiate agonist used for relief of moderate to severe acute and
27 chronic pain. MS Contin is a dangerous drug as defined in section 4022, a schedule II controlled
28 substance and narcotic as defined by Health and Safety Code section 11055(b).

27 ¹² Subutex (buprenorphine) is an opioid used to treat opioid addiction, moderate acute
28 pain, and moderate chronic pain. Buprenorphine is a Schedule III controlled substance pursuant

1 17. On August 28, 2014, Respondent's medical note indicated that the disease he
2 previously thought was shingles, is probably Behcet's disease as per patient K.B.L.'s
3 Rheumatologist.

4 18. From September 11th to October 28, 2014, patient K.B.L. was admitted to a drug
5 rehabilitation hospital following a drug overdose. Patient K.B.L.'s discharge notes from the
6 rehabilitation hospital summarized her stay at the rehabilitation hospital. It described
7 benzodiazepine withdrawal, cocaine use, depression and anxiety disorder, substance induced
8 sleep disorder, Behcet's disease, fibromyalgia, recurrent herpes genitalis, and restless legs.
9 Patient K.B.L. was discharged on specific medications, not including any narcotics or
10 benzodiazepine medications.

11 19. On November 19, 2014, patient K.B.L.'s progress note included the first SOAP note
12 in the chart.

13 20. On December 9, 2014, patient K.B.L.'s chart showed there was a urine drug screen.

14 21. On April 30, 2015, Respondent's medical note indicated that patient K.B.L. requested
15 Norco and the Respondent consulted with her pharmacist to find out if the patient had received
16 any recent narcotics. Respondent's medical note indicated that the pharmacist said that another
17 physician had prescribed Percocet #180. Respondent's medical note indicated that he told patient
18 K.B.L. that this was a contract violation, but Respondent still prescribed her Norco.

19 22. On July 18, 2015, Respondent's medical note suggested that Respondent told patient
20 K.B.L. that he could lose his license for his prescribing practices.

21 23. On August 7, 2015, Respondent's medical note indicated that patient K.B.L. was over
22 using Adderall.

23 24. On August 12, 2015, Respondent's medical note indicated that another physician
24 would prescribe medications for patient K.B.L. in the future.

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to Code of Federal Regulations Title 21 Section 1308.13(e). Buprenorphine is a dangerous drug
pursuant to Business and Professions Code section 4022.

1 25. During the above time period, the CURES¹³ report regarding patient K.B.L. shows
2 other physicians were prescribing controlled medications to her. The CURES report shows
3 multiple early refills of narcotics, benzodiazepines, and Adderall.

4 26. Respondent committed gross negligence in his care and treatment of patient K.B.L.,
5 which included, but was not limited to, the following:

6 (a) Respondent failed to appropriately manage patient K.B.L.'s chronic pain
7 condition;

8 (b) Respondent failed to perform an adequate and appropriate history and physical
9 exam, a substance abuse history, or an assessment of prior pain treatments prior to prescribing
10 and/or refilling prescriptions for controlled substances;

11 (c) Respondent failed to develop an adequate treatment plan and objectives, discuss
12 treatment goals, or conduct diagnostic evaluations or treatments while prescribing opioids and
13 controlled substances;

14 (d) Respondent failed to have informed consent prior to prescribing opioids and
15 controlled substances;

16 (e) Respondent failed to periodically review the course of pain treatment of patient
17 K.B.L. and any new information about the etiology of the pain, or assess the appropriateness of
18 continued use of controlled medications, and

19 (f) Respondent failed to maintain accurate and complete records, demonstrating a
20 history and exam, along with evaluations and consultations, treatment plans and objectives,
21 informed consent, medications prescribed and periodic review documentation.

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27 ¹³ CURES is the Controlled Substances Utilization Review and Evaluation System
28 (CURES), a database of Schedule II, III and IV controlled substance prescriptions dispensed in
California serving the public health, regulatory oversight agencies, and law enforcement.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Acts of Negligence)**

3 27. Respondent Robert Howard Nelson, M.D. is subject to disciplinary action under
4 section 2234 subdivision (c) of the Code in that he committed repeated negligent acts in the care
5 and treatment of patient K.B.L. The circumstances are as follows:

6 28. Complainant realleges paragraphs 5 through 26 above, and incorporates them by
7 reference as if fully set forth herein.

8 29. Respondent committed acts of repeated negligence in his care and treatment of patient
9 K.B.L., which included, but was not limited to, the following:

10 (a) Respondent failed to monitor, specifically counsel, and give informed consent
11 about the potential dangerous drug interactions of the medications prescribed to patient K.B.L.;
12 and

13 (b) Respondent routinely gave patient K.B.L. Demerol injections for chronic pain
14 while at the same time prescribing her other narcotic medications.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Inadequate Patient Record Keeping)**

17 30. Respondent Robert Howard Nelson, M.D. is subject to disciplinary action under
18 section 2266 of the Code in that he kept incomplete and/or inadequate medical records. The
19 circumstances are as follows:

20 31. Complainant realleges paragraphs 5 through 29 above, and incorporates them by
21 reference as if fully set forth herein.

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23 32. Respondent's actions constitute incomplete and inadequate record keeping and
24 subject him to discipline within the meaning of section 2266.

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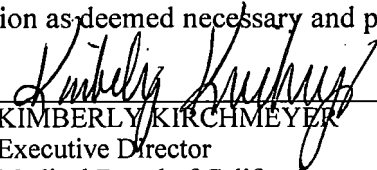
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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 89950, issued to Robert Howard Nelson, M.D.;
2. Revoking, suspending or denying approval of Robert Howard Nelson, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Robert Howard Nelson, 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: January 31, 2018


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

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