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

In the Matter of the Accusation Against:	)	
Robert Stephen Cluff, M.D.	)	**Case No. 800-2016-021497**
Physician's and Surgeon's Certificate No. G 80592	)	
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 May 8, 2020.

IT IS SO ORDERED: April 8, 2020.

MEDICAL BOARD OF CALIFORNIA

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

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

In the Matter of the Accusation Against: **ROBERT STEPHEN CLUFF, M.D.** 3737 Lone Tree Way Antioch, CA 94509-6065 **Physician's and Surgeon's Certificate No. G 80592** Respondent.	Case No. 800-2016-021497 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Emily L. Brinkman, Deputy Attorney General.

2. Respondent Robert Stephen Cluff, M.D. (Respondent) is represented in this proceeding by attorney John H. Dodd, whose address is: Craddick, Candland & Conti, 2420 Camino Ramon, Ste. 202, San Ramon, CA 94583.

3. On or about February 1, 1995, the Board issued Physician's and Surgeon's Certificate No. G 80592 to Robert Stephen Cluff, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-021497, and will expire on February 28, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-021497 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 April 4, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-021497 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. 800-2016-021497. 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.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-021497, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent gives up his right to contest that, at a hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in the Accusation.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2016-021497 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

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

CONTINGENCY

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

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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 80592 issued to Respondent ROBERT STEPHEN CLUFF, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully 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.

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent.

Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

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

4. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical

competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.]

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

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

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

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

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

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

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

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine,

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

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

8. 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.

9. 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.

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

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

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

Respondent's period of non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply to the reduction of the probationary term.

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

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

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

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

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

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

ACCEPTANCE

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

DATED: 2/7/20

ROBERT STEPHEN CLUFF, M.D.
Respondent

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

DATED: 2/7/20

JOHN DODD
Attorney for Respondent

ENDORSEMENT

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

DATED: 2/7/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

KEITH C. SHAW
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-021497

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

In the Matter of the Accusation Against: **ROBERT STEPHEN CLUFF, M.D.** 3737 Lone Tree Way Antioch, CA 94509 Physician's and Surgeon's Certificate No. G80592, Respondent.	Case No. 800-2016-021497 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On February 1, 1995, the Medical Board issued Physician's and Surgeon's Certificate Number G80592 to Robert Stephen Cluff, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2021, unless renewed. Respondent's certificate was the subject of previous Board discipline by way of a Decision effective June 11, 2014 under which Respondent was Publicly Reprimanded.

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, in pertinent part:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence."

6. Section 2266 of the Code states: AThe failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

PRIOR BOARD DISCIPLINE

7. On April 24, 2013, an Accusation was filed in Case No. 12-2011-214411 alleging that Respondent engaged in unprofessional conduct in his treatment of a patient to whom he

prescribed opioid pain medication. In a Decision adopting a Stipulated Settlement, effective June 11, 2014, Respondent was Publicly Reprimanded as follows:

> In and before 2011, Patient F.S. was under your care for chronic pain management. Between 2008 and 2011, Patient F.S. demonstrated some evidence that he might not be taking and/or might be diverting and/or selling his opioid medications. In 2011, Patient F.S. tested negative on urinalysis for his opioid medications on three occasions between March and October. Despite this evidence of opioid diversion you delayed until December 2011 in enforcement of the patient's opioid contract with you by discontinuing his opioid therapy.
>
> Respondent was required to and did complete a Prescribing Practices course.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Incompetence, Inadequate Records)

Patient #1

8. Patient #1[1], an 18 year old male who was about to graduate from high school, started treatment with Respondent on June 5, 2014. Patient #1 suffered from hidradenitis suppurativa, a chronic and painful skin condition, and saw Respondent for pain management. Patient #1 was scheduled to attend college in the coming fall. When first seen by Respondent, Patient #1 was taking Percocet[2] prescribed by his previous pain management physician. Respondent understood that Patient #1 had a primary care physician and had been evaluated by a dermatologist. Respondent's medical record contains a referral document and records from Patient #1's previous pain treatment physician which document obesity, elevated blood pressure, elevated liver enzymes and polysubstance abuse as health concerns.

9. Respondent conducted a history and physical examination of Patient #1 at the initial June 5, 2014 visit. No vital signs were taken or documented, although the patient self-reported his weight to be 320 pounds, and Respondent noted "try lose wt." The record noted plans for multidisciplinary care interventions, behavioral medicine and functional restoration in addition to analgesic medication. However, no treatment objectives such as pain relief, improvement of psychological and physical function were discussed or documented. [3] Respondent noted in his

[1] Names are abbreviated to protect privacy rights.

[2] Percocet is a combination of acetaminophen and oxycodone, and is an opioid pain medication and a controlled substance.

[3] When asked during his Board interview to explain his end plan or objective for the

Board interview that Respondent did not obtain records from the patient's dermatologist and stated that he was unaware if Patient #1 was receiving any treatment for his skin condition. An Opioid Contract was signed by the patient on June 4, 2014. The Opioid Contract provided for compliance with treatment recommendations, and set forth consequences for misuse or abuse of prescribed medications or positive urine drug screens.

10. Respondent stated during his Board interview that he treated few patients as young as Patient #1, and had never treated a patient for pain associated with hidradenitis suppurativa. He did not consult with Patient #1's dermatologist or his primary care physician.

11. Respondent next saw Patient #1 on July 18, 2014. The patient reported increased pain. Respondent cautioned the patient regarding opioid use, and prescribed Oxycodone [4] and Oxymorphone[5]. On August 15, 2014, Respondent saw the patient before he left for college and provided refills of the Oxycodone and Oxymorphone. Respondent's chart indicates Patient #1 requested a referral to a pain specialist near his college, but the record contains no further mention of a referral, and no indication a referral was made.

12. Between August 2014 and December 2017, Respondent continued to treat Patient #1. Visits were infrequent, as Patient #1 attended a college several hours from Respondent's practice. In September 2014, Respondent replaced the Oxymorphone with Methadone[6], which was prescribed along with the oxycodone. Over the next several years, Respondent made various changes to Patient #1's narcotic prescriptions. He prescribed M.S. Contin[7] and a Fentanyl[8] patch

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patient, Respondent responded only that he sought to provide adequate pain control until another remedy was identified. He stated that he did not have the expertise to determine what that remedy might be.

[4] Oxycodone is a controlled substance and potent narcotic analgesic with multiple actions similar to those of morphine. It can produce drug dependence and has the potential for abuse.

[5] Oxymorphone is a controlled substance and an opioid agonist used for around-the-clock, long-term opioid management. It is a potent narcotic analgesic that can produce drug dependence and has the potential for abuse.

[6] Methadone hydrochloride is a controlled substance and an opioid indicated for the treatment of pain severe enough to require around-the-clock long term opioid management for which alternative treatments have failed.

[7] M.S. Contin is morphine sulfate. It is a controlled substance and a potent opioid intended for the management of pain severe enough to require daily, around-the-clock, long-term opioid management and for which alternative treatment options are inadequate.

[8] Fentanyl is a potent synthetic opioid analgesic. It is a controlled substance with a high potential for habituation and abuse.

in place of Methadone at times, and switched the patient back to Methadone. Respondent at no time ordered an electrocardiogram while he maintained the patient on Methadone. At no time did he take steps to carry out his initial plan for multidisciplinary pain management, nor did he follow up on the health concerns identified by Patient #1's previous pain doctor.

13. Respondent's medical record for Patient #1 is sparse and uninformative. Much of the documented information was input by a medical assistant and was not signed or acknowledged by Respondent. Respondent's own notes of treatment consist for the most part of a few cryptic words, such as "doing well!" "girlfriend", "refills" "good", "stable". The record for medication decisions, prescriptions and changes is devoid of any reasoning or rationale. No vital signs were recorded at any time during Respondent's treatment of Patient #1.

14. A June 2015 urine drug screen noted the presence of marijuana and a benzodiazepine not prescribed by Respondent. A January 2016 urine drug screen again reported marijuana and a benzodiazepine not prescribed by Respondent. These findings were not mentioned in Respondent's record. In 2016, Patient #1 complained of increased pain and flare ups. He reported several times that he lost his medication, and refills were provided. In April 2016, he telephoned Respondent's office and reported he lost his methadone and was "in withdrawal". Another telephone message described him as "incoherent, slurring his words, crying and angry, wanting his oxycodone." Respondent was contacted by and spoke with at least one representative of Patient #1's college, including a counselor or psychologist.[9] In March 2016, the patient's father reported to Respondent that his son had slurred speech and was not rational. Several falls were also reported.

15. In early May 2016, after a urine drug screen was positive for benzodiazepines, Respondent met with Patient #1 and his parents. Respondent recommended the patient see an addiction specialist and a pain management psychologist. He indicated prescriptions would be issued in 7 day increments, then increased to 14 days, Patient #1 was advised not to consume

[9] Records from the student health center show that between 2015-2017, Patient #1 was in serious trouble. He was sleeping in class, mumbling to himself, behaving in an aggressive and intimidating manner. Counselors described him as clearly intoxicated, stumbling, and abusing drugs. He sought treatment for opiate withdrawal. He was suspended from school and not allowed on campus without a police escort.

alcohol or marijuana, and not to use any "valium like medications". Respondent discontinued the oxycodone, and increased the dose of Methadone. Another appointment was scheduled for July 1, 2016.

16. Respondent's chart notes following the May 1, 2016 patient conference are extremely sparse. His note for the scheduled July 1, 2016 appointment states merely, "psych. thru school- Julie. Stable!" Respondent's chart notes for the remainder of the time he treated Patient #1 were similarly scant, and consist mainly of a few words such as "stable" or "unstable." A January 6, 2017 note documents another instance of lost medications. Beyond the simple mention of "psych thru school- Julie" there is no indication Respondent followed up on his plan for Patient #1 to see an addiction specialist or a pain management psychologist. While the chart notes that a urine drug screen was done on July 1, 2016, the lab report for that test indicates that it was canceled because "specimen rejected due to requested information not received." Respondent did not mention or follow up on the canceled test. A January 6, 2017 urine drug screen was positive for marijuana and, although Respondent had informed Patient #1 he was not to use THC, no follow up is noted.[10]

17. Respondent is guilty of unprofessional conduct in his care and treatment of Patient #1, and is subject to disciplinary action under sections 2234, and/or 2234(b) and/or 2234(c), and or 2242(d) of the Code in that Respondent committed gross negligence, and/or repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

A. Respondent treated and prescribed large amounts of controlled substances to Patient #1 for more than three years without ever taking or recording vital signs.

B. Respondent made multiple medication changes and prescribed opioid controlled substances in large amounts, without a stated rationale.

C. Respondent failed to evaluate, consider and clearly identify treatment objectives, failed to formulate a plan for reducing Patient #1's reliance on controlled substances, failed to

[10] Respondent's medical record contains a "medical marijuana" recommendation issued by another physician on May 25, 2016.

give consideration toward progress or response to treatment, and failed to execute the multidisciplinary pain management plan he noted in the initial patient encounter;

D. Respondent failed to follow up on recommendations and decisions made at the May 1, 2016 conference, including ensuring the patient was referred to an addiction specialist or a pain psychologist.

E. Respondent failed to respond to several positive urine drug screen tests which showed that Patient #1 was consuming medications not prescribed to him, and failed to even attempt to impose the consequences for misuse of drugs set forth in the Opioid Contract.

F. Respondent failed to respond to information obtained from Patient #1's college counselor and others at the college indicating that the patient's functioning had deteriorated and that he was abusing drugs. He failed to respond to or evaluate information suggesting that Patient #1 was abusing his medication, such as multiple requests for early refills, reports of lost medications, reports of slurred speech and irrational behavior, and reports of falls.

G. Respondent prescribed methadone in large amounts over a long period of time without ordering an electrocardiogram or laboratory tests to ensure the patient's cardiac and renal functions were not impacted.

H. Respondent treated a young patient for a condition he was unfamiliar with, without consulting with Patient #1's primary care physician, dermatologist or any other physician who specialized in the condition.

18. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 and/or 2266 of the Code, in that his medical record for Patient #1 was devoid of meaningful information relating to his prescribing decisions and rationale for changes in medication and contained no coherent treatment plan related to the patient's symptoms and functioning or response to treatment.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Inadequate Records)

Patient #2, Patient #3, Patient #4

19. Respondent began to provide pain management treatment to Patient #2 on April 23, 2015. Patient #2 was a 68 year old woman with multiple medical problems, including a neuromuscular disease, headache, and a number of issues relating to her cervical spine and hips. Respondent described Patient #2 as having a complex pain disorder, with her primary pain generator being her cervical spine. Patient #2 came to Respondent on a number of medications, including opioids, benzodiazepines, and antidepressants. Respondent conducted a history and physical examination, but did not take or record vital signs. Respondent's chart note for the initial visit noted a plan for multidisciplinary pain management to include various modalities for pain control, behavioral medicine, and functional restoration. Over the next several years, Respondent continued to treat Patient #2, and to prescribe Fentanyl patches and hydromorphone[11]. Respondent's medical record for his treatment of Patient #2 is sparse and uninformative, and contains little in the way of periodic review of the patients' progress or response to treatment. Most progress notes for this complex patient are limited to a few words or a single line. Respondent at no time documented that he considered or discussed with the patient alternative forms of pain control, such as interventional procedures. No further mention was made in his record of the initial plan to employ a multidisciplinary pain management approach.

20. Respondent treated Patient #3 for many years for chronic foot and knee pain, as well as low back pain. She had a history of multiple surgeries and significant pain and instability. For the period from 2004-2018, Respondent treated Patient #3 with high doses of the opioid oxycodone. Respondent failed to take or record vital signs at any point in his treatment of Patient #3, and sets forth no clear treatment objectives. His medical records for Patient #3 consist of scant notations, mostly just a few words, and never setting forth an assessment of the patient's

[11] Hydromorphone is a controlled substance and is a potent narcotic analgesic that can produce drug dependence and has the potential for abuse.

response to treatment or progress toward objectives. At no time do Respondent's records indicate that he considered alternatives to opioid treatment, such as interventions.

21. Respondent first saw Patient #4 on September 4, 2014. Patient #4 was a 69 year old woman with multiple medical problems, and reported that she had diagnoses including fibromyalgia, Lyme disease, and peripheral neuropathy. She had an extensive surgical history, and was taking a number of medications, including opioids when she first saw Respondent. Respondent indicated during his Board interview that he did not obtain prior treatment records, and did not know how the Lyme disease was diagnosed. Respondent continued to prescribe narcotics, including MS Contin and Norco. Respondent did not take or record vital signs, and did not document a full physical examination or a comprehensive rationale for prescribing controlled substances. He did not document a reasonable treatment plan for Patient #4. His progress notes were scant and for the most part, consisted of a few words. Respondent never documented a meaningful assessment of the patient's response to treatment or progress toward objectives. At no time do Respondent's records indicate that he considered alternatives to opioid treatment such as interventions.

22. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 and/or 2266 of the Code, in that his medical record for Patient #2, Patient #3 and Patient #4 were devoid of meaningful information relating to his prescribing decisions and rationale for changes in medication and contained no coherent treatment plan related to these complex patients' symptoms and functioning or response to treatment.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G80592, issued to Robert Stephen Cluff, M.D.;

2. Revoking, suspending or denying approval of Robert Stephen Cluff, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Robert Stephen Cluff, 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: April 4, 2019

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