

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

In the Matter of the Accusation Against:

Tolbert Jones Small, M.D.

**Physician's and Surgeons
Certificate No. A 23282**

Case No. 800-2017-029905

Respondent.

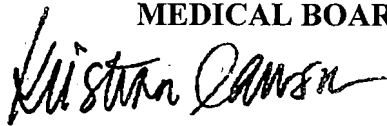
DECISION

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 July 15, 2020.

IT IS SO ORDERED: June 15, 2020.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
Deputy Attorney General
4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3382
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 800-2017-029905

13 **TOLBERT JONES SMALL, M.D.**
14 **3300 Webster Street, Suite 1000**
Oakland, CA 94609-3117

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Physician's and Surgeon's Certificate No. A**
16 **23282**

17 Respondent.

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

24 **PARTIES**

25 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
26 Board of California (Board). She brought this action solely in her official capacity and is
27 represented in this matter by Xavier Becerra, Attorney General of the State of California, by Greg
28 W. Chambers, Deputy Attorney General.

1 **CULPABILITY**

2 8. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2017-029905, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges. It is not alleged that Respondent's conduct resulted in any harm.

9 10. Respondent agrees that if he ever petitions for early termination or modification of
10 probation, or if the Board ever petitions for revocation of probation, all of the charges and
11 allegations contained in Accusation No. 800-2017-029905 shall be deemed true, correct, and fully
12 admitted by Respondent for purposes of that proceeding or any other licensing proceeding
13 involving Respondent in the State of California.

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

17 **CONTINGENCY**

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

13. 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.

14. 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. A 23282 issued to Respondent Tolbert Jones Small, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months on the following terms and conditions.

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

2. PREScribing PRACTICES COURSE. Within sixty (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

1 prescribing practices course shall be at Respondent's expense and shall be in addition to the
2 Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

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

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

28 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar

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

10 A professionalism program 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 program would have
13 been approved by the Board or its designee had the program 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 fifteen (15) calendar days after successfully completing the program or not
17 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

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

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

28 If, during the course of the probation, the Respondent's practice setting changes and the

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

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

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

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

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

25 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
26 the end of the preceding quarter.

27 10. GENERAL PROBATION REQUIREMENTS.

28 Compliance with Probation Unit

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

2 Address Changes

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

8 Place of Practice

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

12 License Renewal

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

15 Travel or Residence Outside California

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

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

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

25 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
26 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
27 more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return
28 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 forty (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 eighteen (18) calendar months, Respondent shall successfully complete the Federation of State Medical Boards' 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 one hundred twenty (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

1 of probation is a violation of probation. If Respondent violates probation in any respect, the
2 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
3 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
4 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
5 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
6 the matter is final.

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

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

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2 ACCEPTANCE

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

8
9 DATED: 5-8-20

TOLBERT JONES SMALL, M.D.
Respondent

11
12 I have read and fully discussed with Respondent Tolbert Jones Small, M.D. the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15
16 DATED: May 8, 2020

JOSEPH S. PICCHI, Esq.,
Attorney for Respondent

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ENDORSEMENT

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

DATED: 5/8/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

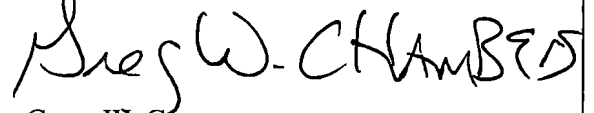

GREG W. CHAMBERS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-029905

1 XAVIER BECERRA
2 Attorney General of California
3 MARY CAIN-SIMON
4 Supervising Deputy Attorney General
5 GREG W. CHAMBERS
6 Deputy Attorney General
7 State Bar No. 237509
8 455 Golden Gate Avenue, Suite 11000
9 San Francisco, CA 94102-7004
10 Telephone: (415) 510-3382
11 Facsimile: (415) 703-5480
12 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug. 16 20 19
BY SAUL PASSE ANALYST

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

12 In the Matter of the Accusation Against:

Case No. 800-2017-029905

13 Tolbert Jones Small, M.D.
14 2950 International Blvd.,
Oakland, CA 94601-2228

ACCUSATION

15 Physician's and Surgeon's Certificate
16 No. A 23282,

17 Respondent.

18 Complainant alleges:

19 PARTIES

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

23 2. On or about June 23, 1969, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 23282 to Tolbert Jones Small, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on April 30, 2020, unless renewed.

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JURISDICTION

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

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

5. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

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

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

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

(d) Incompetence.

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

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

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

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

14 6. Section 725 of the Code provides, in part, that repeated acts of clearly excessive
15 prescribing or administering of drugs or treatment as determined by the standard of the
16 community of licensee is unprofessional conduct.

17 7. Section 2242(a) of the Code provides that prescribing, dispensing or furnishing
18 dangerous drugs without an appropriate prior examination and a medical indication constitutes
19 unprofessional conduct.

20 8. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
21 adequate and accurate records relating to the provision of services to their patients constitutes
22 unprofessional conduct.

23 9. Section 3501 of the Code states, in pertinent part:

24 "...

25 "(4) "Physician assistant" means a person who meets the requirements of this chapter
26 and is licensed by the board.

“(5) “Supervising physician” or “supervising physician and surgeon” means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

“(6) “Supervision” means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

“ . . .

“(b) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations adopted under this chapter.”

10. Section 3502 of the Code provides, in part, that a physician assistant may perform certain medical services when those services are rendered under the supervision of a licensed physician and surgeon who his not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant.

11. California Code of Regulations, title 16, section 1399.545, states, in pertinent part:

“ . . .

“(f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision.”

12. California Health and Safety Code section 11170 states: No person shall prescribe, administer, or furnish a controlled substance for himself.

PERTINENT DRUGS

13. **Ambien**, a trade name for zolpidem tartrate, is a non-benzodiazepine hypnotic of the imidazopyridine class. It is a dangerous drug as defined in section 4022 and a schedule IV

1 controlled substance as defined by section 11057 of the Health and Safety Code. It is indicated
2 for the short-term treatment of insomnia. It is a central nervous system depressant and should be
3 used cautiously in combination with other central nervous system depressants. Any central
4 nervous system depressant could potentially enhance the CNS depressive effects of Ambien. It
5 should be administered cautiously to patients exhibiting signs or symptoms of depression because
6 of the risk of suicide.

7 14. **Ativan**, a trade name for lorazepam, is a psychotropic drug for the management of
8 anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as
9 defined in section 4022 and a schedule IV controlled substance as defined by section 11057,
10 subdivision (d) of the Health and Safety Code. It has a central nervous system depressant effect.
11 Lorazepam can produce psychological and physical dependence and it should be prescribed with
12 caution particularly to addiction-prone individuals (such as drug addicts and alcoholics) because
13 of the predisposition of such patients to habituation and dependence.

14 15. **Cocaine** is a schedule II controlled substance pursuant to Health and Safety Code
15 Section 11055(b)(2)(6) and dangerous drug pursuant to Business and Professions Code section
16 4022.

17 16. **Fentanyl** is a potent narcotic analgesic. It is a dangerous drug as defined in section
18 4022 and a schedule II controlled substance and narcotic as defined by section 11055, subdivision
19 (c)(8), of the Health and Safety Code. Fentanyl's analgesic effect generally lasts from two to four
20 hours. Other CNS depressant drugs will have additive or potentiating effects with fentanyl.
21 Fentanyl can produce drug dependence of the morphine type and therefore has the potential for
22 being abused.

23 17. **Methadone** is a synthetic narcotic analgesic with multiple actions quantitatively
24 similar to those of morphine. It is a dangerous drug as defined in section 4022 and a schedule II
25 controlled substance and narcotic as defined by section 11055, subdivision (c) of the Health and
26 Safety Code. Methadone can produce drug dependence of the morphine type and, therefore, has
27 the potential for being abused. Psychic dependence, physical dependence, and tolerance may
28

1 develop upon repeated administration of methadone. Methadone should be used with caution and
2 in reduced dosage in patients who are concurrently receiving other narcotic analgesics.

3 18. **Morphine sulfate**, also known as MS Contin, is for use in patients who require a
4 potent opioid analgesic for relief of moderate to severe pain. Morphine is a dangerous drug as
5 defined in section 4022 of the Business and Professions Code, a schedule II controlled substance
6 and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code.
7 Morphine can produce drug dependence and has a potential for being abused. Tolerance and
8 psychological and physical dependence may develop upon repeated administration. Abrupt
9 cessation or a sudden reduction in dose after prolonged use may result in withdrawal symptoms.
10 After prolonged exposure to morphine, if withdrawal is necessary, it must be undertaken
11 gradually.

12 19. **Norco** is a trade name for hydrocodone bitartrate with acetaminophen. Norco tablets
13 contain 10 mg. of hydrocodone bitartrate and 350 mg. of acetaminophen. Acetaminophen is a
14 non-opiate, non-salicylate analgesic and antipyretic. Hydrocodone bitartrate is semisynthetic
15 narcotic analgesic and a dangerous drug as defined in section 4022 of the Business and
16 Professions Code. Norco is a Schedule II controlled substance and narcotic as defined by section
17 11055 of the Health and Safety Code. Repeated administration of hydrocodone over a course of
18 several weeks may result in psychic and physical dependence.

19 20. **Oxycodone** is a semisynthetic narcotic analgesic with multiple actions qualitatively
20 similar to those of morphine. It is a dangerous drug as defined in section 4022 of the Business
21 and Professions Code, and a schedule II controlled substance and narcotic as defined by section
22 11055, subdivision (b)(1) of the Health and Safety Code. Oxycodone can produce drug
23 dependence of the morphine type and, therefore, has the potential for being abused.

24 21. **Oxycontin** is a trade name for oxycodone hydrochloride controlled-release tablets.
25 Oxycodone is a dangerous drug as defined in section 4022 of the Business and Professions Code,
26 and a schedule II controlled substance and narcotic as defined by section 11055, subdivision
27 (b)(1) of the Health and Safety Code. Respiratory depression is the chief hazard from all opioid
28 agonist preparations. Interactive effects resulting in a respiratory depression, hypotension,

1 profound sedation or coma may result if these drugs are taken in combination with the usual
2 doses of Oxycontin. Oxycontin is a mu-antagonist opioid with an abuse liability similar to
3 morphine.

4 22. **Restoril**, a benzodiazepine, is the trade name for Temazepam, a hypnotic agent. It is
5 a dangerous drug as defined in section 4022 and a schedule IV controlled substance and narcotic
6 as defined by section 11057, subdivision (d) of the Health and Safety Code. Restoril is indicated
7 for the short-term treatment of insomnia (generally 7-10 days). Patients using temazepam should
8 be warned about the possible combined effects with alcohol and other central nervous system
9 depressants. As with any hypnotic, caution must be exercised in administering temazepam to
10 individuals known to be addiction prone.

11 23. **Risperidal**, a trade name for risperidone, is an antipsychotic agent of the
12 benzisoxazole class and is indicated for the management of the manifestations of psychotic
13 disorders. It is a CNS active drug and a dangerous drug as defined in section 4022 of the Code.

14 24. **SOMA**, the trade name for Carisoprodol, is a muscle-relaxant and sedative. It is a
15 dangerous drug as defined in section 4022 of the Business and Professions Code, and a schedule
16 IV controlled substance as defined by section 11057 of the Health and Safety Code. Since the
17 effects of SOMA and alcohol or SOMA and other central nervous system depressants or
18 psychotropic drugs may be additive, appropriate caution should be exercised with patients who
19 take more than one of these agents simultaneously.

20 25. **Valium**, a trade name for diazepam, is a psychotropic drug for the management of
21 anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as
22 defined in section 4022 and a schedule IV controlled substance as defined by section 11057 of the
23 Health and Safety Code. Diazepam can produce psychological and physical dependence and it
24 should be prescribed with caution particularly to addiction-prone individuals (such as drug
25 addicts and alcoholics) because of the predisposition of such patients to habituation and
26 dependence.

27 26. **Xanax**, the trade name for alprazolam, is a psychotropic triazolo analogue of the 1,4
28 benzodiazepine class of central nervous system-active compounds. Xanax is used for the

1 management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a
2 dangerous drug as defined in section 4022 and a schedule IV controlled substance and narcotic as
3 defined by section 11057, subdivision (d) of the Health and Safety Code. Xanax has a central
4 nervous system depressant effect and patients should be cautioned about the simultaneous
5 ingestion of alcohol and other CNS depressant drugs during treatment with Xanax. Addiction-
6 prone individuals (such as drug addicts or alcoholics) should be under careful surveillance when
7 receiving alprazolam because of the predisposition of such patients to habituation and
8 dependence. The usual starting dose of Xanax is 0.25 to 0.5 mg. three times per day.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts; and/or Excessive
11 Prescribing Without an Appropriate Medical Examination/Medical Indication; and/or Inadequate
12 Medical Record Keeping, and/or Failed to Properly Supervise the Physician Assistant Under his
13 Charge in the Care Provided to Patient MK)¹

14 27. Respondent Tolbert Jones Small, M.D. is subject to disciplinary action under sections
15 2234, and/or 2234(b), and/or 2234(c), and/or 2234(d), and/or 2242(a), and/or 725 of the Code,
16 and/or 2266 of the Code, and/or California Code of Regulations, title 16, section 1399.545(f) in
17 that Respondent committed unprofessional conduct amounting to gross negligence, and/or
18 repeated negligent acts, and/or incompetence in the care and treatment of Patient MK, and/or
19 excessively dispensed dangerous drugs without medical indication, and/or failed to maintain
20 adequate and accurate records for Patient MK. The circumstances are as follows:

21 28. From on or about April 10, 2014, through March 23, 2018, Respondent or the
22 physician assistant he supervised treated Patient MK for back pain, hip pain, and scoliosis.
23 During the course of treatment, Respondent prescribed oxycodone, oxycontin, valium, and
24 methadone.

25 29. Respondent did not obtain a thorough physical examination or review medical
26 records from other sources, even though he knew that Patient MK had received and was receiving

27
28 ¹ Patient initials are used to protect their privacy. Respondent may learn the names of the
patients through the discovery process.

1 care elsewhere. In fact, minimal evaluation was conducted before controlled substances were
2 provided by the physician assistant working under Respondent's supervision.

3 30. According to the records for an August 19, 2014 visit, Respondent knew that Patient
4 MK had been a long-term user of controlled substances, but failed to obtain the necessary
5 consultation with an addiction medicine specialist during the course of treatment.

6 31. Patient MK had multiple urine toxicology tests in which the results were inconsistent
7 with the prescribed medications. For example, on July 14, 2017, Patient MK was prescribed 30
8 mg. oxycodone, 6 times daily for thirty days; 10 mg. Diazepam, 3 times daily for thirty days; and
9 60 mg. morphine sulfate, 3 times daily for thirty days. Yet, the urine drug screen collected August
10 14, 2017, was negative for benzodiazepine and morphine. Still, Respondent continued to
11 prescribe controlled substances to the patient in spite of these "red flags."

12 32. Respondent was aware that another physician was prescribing methadone to Patient
13 MK, yet Respondent continued to prescribe controlled substances in an amount that was
14 excessive.

15 33. Respondent prescribed controlled substances for pain relief, yet medical records do
16 not document areas of the body in pain.

17 34. At different points during the treatment, Patient MK had mental confusion,
18 depression and anxiety, all of which could have been related to narcotics use. However,
19 Respondent did not taper the medication that Respondent was prescribing in order to monitor the
20 side effects.

21 35. According to the CURES report, in 2017 Respondent prescribed Patient MK the
22 following: 60 mg. morphine sulfate, 3 times daily; 30 mg. oxycodone, 6 times daily; and 10 mg.
23 valium, 3 times daily. The morphine milligram equivalent (MME) of these controlled substances
24 would be 450.

25 36. According to the CURES report, in the first three months of 2018 Respondent
26 prescribed Patient MK the following: 80 mg. oxycontin, 2 times daily; 30 mg. oxycodone, 3 times
27 daily; and 2 mg. Xanax, 3 times daily. The MME of these controlled substances would be 450.

37. Respondent's overall care and treatment of Patient MK constitutes unprofessional conduct through gross negligence and/or repeated negligent acts, and/or dispensing dangerous drugs without medical indication, and/or inadequate medical record keeping, including but not limited to the following:

- a. Respondent failed to classify the patient's risk stratification when prescribing controlled substances such as opioids and benzodiazepines.
- b. Respondent failed to get a consultation with an addiction medicine specialist for Patient MK.
- c. Respondent failed to appropriately monitor Patient MK's controlled substance regime throughout the course of treatment.
- d. Respondent failed to keep accurate and adequate medical records.
- e. Respondent excessively prescribed without indication.
- f. Respondent failed to monitor for side effects related to opiate use.
- g. Respondent failed to properly supervise the physician assistant under his charge in the care provided to Patient MK.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts; and/or Excessive Prescribing Without an Appropriate Medical Examination/Medical Indication; and/or Inadequate Medical Record Keeping; and/or Failed to Properly Supervise the Physician Assistant Under his Charge in the Care Provided to Patient WG)

38. Respondent is subject to disciplinary action under sections 2234, and/or 2234(b), and/or 2234(c), and/or 2234(d), and/or 2242(a), and/or 725 of the Code, and/or 2266 of the Code, and/or California Code of Regulations, title 16, section 1399.545(f) in that Respondent committed unprofessional conduct amounting to gross negligence, and/or repeated negligent acts, and/or incompetence in the care and treatment of Patient WG, and/or excessively dispensed dangerous drugs without medical indication, and/or failed to maintain adequate and accurate records for Patient WG, and/or failed to properly supervise the physician assistant treating Patient WG. The circumstances are as follows:

1 39. Respondent treated Patient WG in 2011 and noted that the patient was on chronic
2 morphine for previous head injuries and pain in the tailbone and hip. Patient WG was also
3 reported to be bipolar and diabetic, and had previously been treated for hepatitis C. Treatment
4 did not pick up again until 2016.

5 40. On or about January 29, 2016, Respondent or the physician assistant he supervised
6 treated Patient WG. The record noted a diagnosis of low back pain, schizophrenia, diabetes II,
7 and hepatitis C, and noted that the patient was there for a refill.

8 41. CURES records show that from March 2015 through February 2016, Patient WG had
9 been receiving morphine and diazepam from the physician assistant Respondent supervised.

10 42. Patient WG was treated with morphine, Norco, Zoloft, Ativan, diazepam, and
11 Restoril.

12 43. From July 2016 through February 2017, no back examination was done, even though
13 Patient WG was receiving controlled substances for back pain.

14 44. On July 6, 2017, a urine drug screen was collected and cocaine was found in Patient
15 WG's system, along with morphine and opiates.

16 45. On or about May 4, 2017, Patient WG was examined for a subdural bleed after
17 falling. On or about May 17, 2019, Patient WG wore a hard hat during the examination for skull
18 protection. Patient WG was documented to nod off frequently during that visit. Respondent
19 tapered Patient WG's opiate use after the fall.

20 46. There was no pain management agreement in the records, nor was there any record
21 that Respondent discussed the risks regarding the controlled substances prescribed, or possible
22 alternative treatments.

23 47. Even with the schizophrenia diagnosis, Respondent never referred Patient WG to a
24 psychiatrist, nor did Respondent refer the patient to an addiction specialist.

25 48. Respondent's overall care and treatment of Patient WG constitutes unprofessional
26 conduct through gross negligence and/or repeated negligent acts, and/or dispensing dangerous
27 drugs without medical indication, and/or inadequate medical record keeping, including but not
28 limited to the following:

- 1 a. Respondent failed to get appropriate consultations for Patient WG.
2 b. Respondent had no appropriate treatment plan and objectives for opiate use.
3 c. Respondent failed to obtain/and or document that Patient WG was provided with an
4 adequate informed consent for treatment with controlled substances.
5 d. Respondent failed to appropriately monitor Patient WG's controlled substance regime
6 throughout the course of treatment.
7 e. Respondent failed to keep accurate and adequate medical records.
8 f. Respondent excessively prescribed without indication.
9 g. Respondent failed to properly supervise the physician assistant under his charge in
10 the care provided to Patient MK.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts; and/or Excessive
13 Prescribing Without an Appropriate Medical Examination/Medical Indication; and/or Inadequate
14 Medical Record Keeping in the care provided to Patient AR)

14 49. Respondent is subject to disciplinary action under sections 2234, and/or 2234(b),
15 and/or 2234(c), and/or 2234(d), and/or 2242(a), and/or 725 of the Code, and/or 2266 of the Code
16 in that Respondent committed unprofessional conduct amounting to gross negligence, and/or
17 repeated negligent acts, and/or incompetence in the care and treatment of Patient AR, and/or
18 excessively dispensed dangerous drugs without medical indication, and/or failed to maintain
19 adequate and accurate records for Patient AR. The circumstances are as follows:

20 50. From on or about February 5, 2016, through March 31, 2017, Respondent treated
21 Patient AR for back pain. During the course of treatment, Respondent prescribed oxycodone,
22 SOMA, and valium.

23 51. From February 5, 2016 through November 14, 2016, Patient AR presented eight
24 times complaining of back pain. No back examination was done on any of those visits, yet
25 medications were refilled on six of those appointments.

26 52. From November 29, 2016 through December 1, 2016, Patient AR was in the hospital
27 with leg weakness. The hospital physician noted that Patient AR was receiving pain medications
28 from multiple providers in the area.

1 53. There is no record that Respondent ever checked CURES for Patient AR.

2 54. According to the CURES report, in 2017 Respondent prescribed Patient AR the
3 following: 30 mg. oxycodone, 9 times daily; 10 mg. valium, 3 times daily; and 350 mg. of
4 SOMA, 3 times daily. The MME of these controlled substances would be 405.

5 55. According to the CURES report, on June 3, 2016, Respondent increased the
6 oxycodone from 30 mg., 6 times daily, to 30 mg. 9 times daily.

7 56. There was no signed pain management agreement in the records, nor was there any
8 record that Respondent discussed the risks regarding the controlled substances prescribed, or
9 possible alternative treatments.

10 57. Respondent never required Patient AR to take a urine drug screen. A subsequent
11 provider referred Patient AR to a pain clinic where a urine drug screen was collected on
12 November 14, 2017. The results showed morphine, but no oxycodone in Patient AR's system,
13 even though Patient AR was only being prescribed oxycodone.

14 58. Respondent never referred Patient AR to an addiction specialist even though Patient
15 AR was being prescribed a MME of 405.

16 59. Respondent's overall care and treatment of Patient AR constitutes unprofessional
17 conduct through gross negligence and/or repeated negligent acts, and/or dispensing dangerous
18 drugs without medical indication, and/or inadequate medical record keeping, including but not
19 limited to the following:

20 a. Respondent failed to get appropriate consultations for Patient AR.

21 b. Respondent had no appropriate treatment plan and objectives for opiate use.

22 c. Respondent failed to obtain/and or document that Patient AR was provided with an
23 adequate informed consent for treatment with controlled substances.

24 d. Respondent failed to appropriately monitor Patient AR's controlled substance regime
25 throughout the course of treatment.

26 e. Respondent failed to keep accurate and adequate medical records.

27 f. Respondent excessively prescribed without indication.

28

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct: Repeated Negligent Acts; and Self-Prescribing)

3 60. Respondent is subject to disciplinary action under sections 2234, and/or 2234(c),
4 and/or section 11170 of the Health and Safety Code in that Respondent committed unprofessional
5 conduct, and/or repeated negligent acts by prescribing a controlled substance to himself. The
6 circumstances are as follows:

7 61. Respondent prescribed himself 10 mg. Ambien daily throughout most of 2015 and
8 2016.

9 **PRAYER**

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

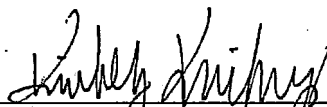
12 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 23282,
13 issued to Tolbert Jones Small, M.D.;

14 2. Revoking, suspending or denying approval of Tolbert Jones Small, M.D.'s authority
15 to supervise physician assistants and advanced practice nurses;

16 3. Ordering Tolbert Jones Small, M.D., if placed on probation, to pay the Board the
17 costs of probation monitoring; and

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

19
20 DATED: August 16, 2019

21 
22 KIMBERLY KIRCHMEYER
23 Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
28