

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

In the Matter of the Accusation Against

Bach Kim Nguyen, M.D.

**Physician's and Surgeons
License No. A 92027**

Respondent.

Case No. 800-2017-032082

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 November 18, 2020.

IT IS SO ORDERED: October 19, 2020.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6535
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

12 **Bach K. Nguyen, M.D.**
13 **41680 Ivy Street, Suite A**
Murrieta, CA 92562

14 **Physician's and Surgeon's Certificate**
15 **No. A 92027,**

16 Respondent.

Case No. 800-2017-032082

OAH No. 2020011109

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer ("Complainant") was the Executive Director of the Medical
22 Board of California. She brought this action solely in her official capacity. Since the filing of the
23 original Accusation in this matter, William Prasifka replaced Kimberly Kirchmeyer as the
24 Executive Director of the Board and Mr. Prasifka now maintains the complaint in his official
25 capacity as the Executive Director of the Board. He is represented in this matter by Xavier
26 Becerra, Attorney General of the State of California, by Tan N. Tran, Deputy Attorney General.

27 ///

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

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

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

10 **DISCIPLINARY ORDER**

11 17. It should be noted that in a prior disciplinary action entitled "In the Matter of the
12 Accusation Against Bach Kim Nguyen, M.D.," Case No. 800-2014-007285, the Medical Board of
13 California issued a decision, effective May 30, 2018 (the "2018 Decision"), in which
14 Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was
15 stayed and Respondent's license was placed on probation for a period of three (3) years with
16 certain terms and conditions. The 2018 Decision is now final and is incorporated by reference as
17 if fully set forth. The probation imposed by the 2018 Decision will also run concurrent with this
18 Decision and Order.

19 18. All terms and conditions of the 2018 Decision continue to apply and the termination
20 of Respondent's probationary period, pursuant to the 2018 Decision, will not be granted until
21 Respondent successfully passes the Clinical Competence Assessment Program, described below.
22 Respondent is hereby bound by those other terms and conditions of the 2018 Decision. A copy of
23 the 2018 Decision is also attached as Exhibit A and is incorporated herein by reference.

24 19. IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 92027
25 issued to Respondent Bach Kim Nguyen, M.D. (Respondent) is revoked pursuant to the 2018
26 Decision. However, the revocation is stayed and the following terms and conditions are added to
27 Respondent's current probation pursuant to the 2018 Decision.

28 ///

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

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

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


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

25 If Respondent fails to enroll, participate in, or successfully complete the clinical
26 competence assessment program within the designated time period, Respondent shall receive a
27 notification from the Board or its designee to cease the practice of medicine within three (3)
28 calendar days after being so notified. The Respondent shall not resume the practice of medicine

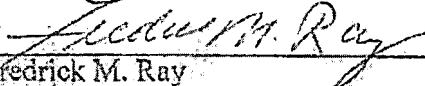
1 until enrollment or participation in the outstanding portions of the clinical competence assessment
2 program have been completed. If the Respondent did not successfully complete the clinical
3 competence assessment program, the Respondent shall not resume the practice of medicine until a
4 final decision has been rendered on the accusation and/or a petition to revoke probation. The
5 cessation of practice shall not apply to the reduction of the probationary time period.

6 ACCEPTANCE

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

12
13 DATED: 06/30/2020 
14 Bach Kim Nguyen, M.D.
15 Respondent

16
17 I have read and fully discussed with Respondent Bach Kim Nguyen, M.D. the terms and
18 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
19 I approve its form and content.

20 DATED: 6/30/2020 
21 Fredrick M. Ray
22 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: July 2, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

Tan N. Tran

TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation 800-2017-032082 and 2018 Decision

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Aug. 1* 20 *19*
BY *SUZANNA* 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. 800-2017-032082

13 **Bach K. Nguyen, M.D.**
14 **41680 Ivy Street, Suite A**
15 **Murrieta, CA 92562**

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. A 92027,**

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 July 1, 2005, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 92027 to Bach Kim Nguyen, 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 November 30, 2020, unless renewed.

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28 ///

1 **JURISDICTION**

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

5 4. Section 2004 of the Code states:

6 "The board shall have the responsibility for the following:

7 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
8 Act.

9 "(b) The administration and hearing of disciplinary actions.

10 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
11 administrative law judge.

12 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
13 disciplinary actions.

14 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
15 certificate holders under the jurisdiction of the board.

16 "(f) Approving undergraduate and graduate medical education programs.

17 "(g) Approving clinical clerkship and special programs and hospitals for the programs in
18 subdivision (f).

19 "(h) Issuing licenses and certificates under the board's jurisdiction.

20 "(i) Administering the board's continuing medical education program."

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

25 6. Section 2234 of the Code, states:

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

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

3 "(b) Gross negligence.

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

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

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

14 "(d) Incompetence.

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

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

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

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

25 7. Section 2241 of the Code states:

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

1 "(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or
2 prescription controlled substances to an addict for purposes of maintenance on, or detoxification
3 from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections
4 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this
5 subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer
6 dangerous drugs or controlled substances to a person he or she knows or reasonably believes is
7 using or will use the drugs or substances for a nonmedical purpose.

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

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

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

15 "(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety
16 Code.

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

19 "(A) Impaired control over drug use.

20 "(B) Compulsive use.

21 "(C) Continued use despite harm.

22 "(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due
23 to the inadequate control of pain is not an addict within the meaning of this section or Section
24 2241.5."

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

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 9. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
4 the Code for the commission of acts or omissions involving gross negligence in the care and
5 treatment of Patient 1.¹ The circumstances are as follows:

6 Patient 1

7 10. Patient 1 was a fifty-nine year old female who treated with Respondent beginning
8 about 2010 through October 2013.² Patient 1 was also being treated by multiple other medical
9 professionals, and was taking various other medications during this time period.³ Per the autopsy
10 report, Patient 1 died on December 13, 2013, from acute Fentanyl and Diphenhydramine
11 intoxication as a consequence of prescription drug abuse. The autopsy further revealed that
12 Patient 1 had swallowed a Fentanyl patch which was found in her esophagus. Toxicology results
13 confirmed the presence of Fentanyl, Lorazepam, Diphenhydramine, and Amphetamines, which
14 are all controlled substances subject to abuse.

15 11. Review of the medical records indicate that Respondent was apparently treating
16 Patient 1 for various maladies, including chronic fibromyalgia, chronic low back pain, shoulder
17 pain, depression, anxiety disorder with bipolar characteristics, chronic fatigue syndrome,
18 migraines, and hypertension. Per CURES, Respondent prescribed to Patient 1 various
19 medications to treat said maladies, including controlled medications such as Fentanyl patches,
20 Hydrocodone, and Lorazepam. During the time period Respondent was treating Patient 1, there
21 were many warning signs that Patient 1 may have been suffering from opioid abuse/dependency.⁴

22
23 ¹ The patient is identified by number to protect her privacy.

24 ² These are approximate dates based on the records which were available for review.

25 ³ The CURES report indicates that Patient 1 was also being prescribed numerous
26 prescriptions for controlled substances from other physicians, some of which overlapped the
27 timeframe Respondent was treating Patient 1. Patient 1's husband and son also indicated that
28 Patient 1 had addiction/abuse issues, and the records indicate that Patient 1's husband had even
written to Respondent on at least one occasion, regarding concerns he [the husband] had about
Patient 1's use of her prescribed medications.

⁴ Respondent asserts that he had tried numerous non-opiate therapies with Patient 1, but
due to refractory symptoms, Respondent decided to treat Patient 1's fibromyalgia pain with opiate
medications. Respondent also asserts that Patient 1 had been counseled on appropriate use of
opiates, but that she never signed an opiate use agreement.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Prescribing to an Addict)**

3 18. Respondent is subject to disciplinary action under section 2241 of the Code in that
4 Respondent prescribed controlled substances to Patient 1, who had signs of addiction.

5 19. The facts and circumstances as alleged in the First Cause for Discipline are
6 incorporated by reference as if set forth in full herein.

7 **DISCIPLINE CONSIDERATIONS**

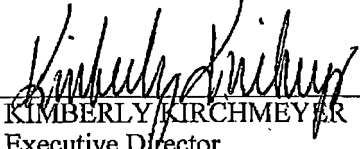
8 20. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that effective May 30, 2018 (the "2018" Decision), in a prior disciplinary
10 action entitled *In the Matter of the Accusation Against Bach Kim Nguyen, M.D.*, case no. 800-
11 2014-007285, before the Medical Board of California, Respondent's license was placed on three
12 years probation, with terms and conditions. The 2018 Decision is now final and is incorporated
13 by reference as if fully set forth.

14 **PRAYER**

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

- 17 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 92027,
18 issued to Bach K. Nguyen, M.D.;
- 19 2. Revoking, suspending or denying approval of Bach K. Nguyen, M.D.'s authority to
20 supervise physician assistants and advanced practice nurses;
- 21 3. Ordering Bach K. Nguyen, M.D., if placed on probation, to pay the Board the costs of
22 probation monitoring; and
- 23 4. Taking such other and further action as deemed necessary and proper.

24
25 DATED: August 1, 2019

26 
27 KIMBERLY KIRCHMEYER
28 Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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

In the Matter of the Accusation)
Against:)
)
)
)
Bach Kim Nguyen, M.D.)
)
Physician's and Surgeon's)
Certificate No. A 92027)
)
Respondent)
_____)

Case No. 800-2014-007285

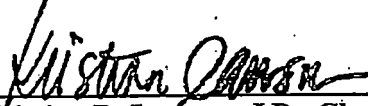
DECISION

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 30, 2018.

IT IS SO ORDERED: April 30, 2018.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
Deputy Attorney General
4 State Bar Number 147250
300 South Spring Street, Suite 1702
5 Los Angeles, California 90013
Telephone: (213) 269-6546
6 Facsimile: (213) 897-9395
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:
11 **BACH KIM NGUYEN, M.D.**
12 **41680 Ivy Street, Suite #A**
13 **Murrieta, CA 92562**
14 **Physician's and Surgeon's Certificate No. A**
92027
15 Respondent.

Case No. 800-2014-007285

OAH No. 2017081161

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
21 of California (Board). She brought this action solely in her official capacity and is represented in
22 this matter by Xavier Becerra, Attorney General of the State of California, by Colleen M.
23 McGurrin, Deputy Attorney General.

24 2. BACH KIM NGUYEN, M.D. (Respondent) is represented in this proceeding by
25 attorney Frederick M. Ray, Esq., whose address is: Law Offices of Ray & Bishop, 5000 Birch
26 Street, Suite 7000, Newport Beach, California 92660.

27 3. On or about July 1, 2005, the Board issued Physician's and Surgeon's Certificate No.
28 A.92027 to Respondent. Said Certificate was in full force and effect at all times relevant to the

1 charges brought in Accusation No. 800-2014-007285, and will expire on November 30, 2018,
2 unless renewed.

3 JURISDICTION

4 4. Accusation No. 800-2014-007285 was filed before the Board, and is currently
5 pending against Respondent. The Accusation and all other statutorily required documents were
6 properly served on Respondent on July 31, 2017. Respondent timely filed his Notice of Defense
7 contesting the Accusation.

8 5. A copy of Accusation No. 800-2014-007285 is attached as exhibit A and incorporated
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2014-007285. Respondent has also carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

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

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

23 CULPABILITY

24 9. Respondent understands and agrees that the charges and allegations in Accusation
25 No. 800-2014-007285, if proven at a hearing, constitute cause for imposing discipline upon his
26 Physician's and Surgeon's Certificate.

27 10. For the purpose of resolving the Accusation without the expense and uncertainty of
28 further proceedings, Respondent agrees that he does not contest that, at an administrative hearing,

1 Complainant could establish a *prima facie* case with respect to the charges and allegations
2 contained in Accusation No. 800-2014-007285, and that he hereby gives up his right to contest
3 those charges thereby subjecting his license to disciplinary action.

4 11. Respondent agrees that if he ever petitions for early termination or modification of
5 probation, or if the Board ever petitions for revocation of probation or any other action against
6 him, all of the charges and allegations contained in Accusation No. 800-2014-007285 shall be
7 deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any
8 other licensing proceeding involving Respondent in the State of California.

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

12 CONTINGENCY

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

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

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

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 92027 issued
3 to Respondent BACH KIM NGUYEN, M.D. is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for three (3) years on the following terms and conditions.

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

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

17 2. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this
18 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
19 for its prior approval educational program(s) or course(s) which shall not be less than 50 hours
20 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
21 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
22 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
23 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
24 completion of each course, the Board or its designee may administer an examination to test
25 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 75
26 hours of CME of which 50 hours were in satisfaction of this condition.

27 3. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective
28 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in

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

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

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

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

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

1 this Decision.

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

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

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

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

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

1 responsibility.

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

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

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

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

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

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

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

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

10 9. GENERAL PROBATION REQUIREMENTS.

11 Compliance with Probation Unit

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

13 Address Changes

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

19 Place of Practice

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

23 License Renewal

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

26 Travel or Residence Outside California

27 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
28 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty

1 (30) calendar days.

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

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

8 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
9 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
10 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
11 defined as any period of time Respondent is not practicing medicine as defined in Business and
12 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
13 patient care, clinical activity or teaching, or other activity as approved by the Board. If
14 Respondent resides in California and is considered to be in non-practice, Respondent shall
15 comply with all terms and conditions of probation. All time spent in an intensive training
16 program which has been approved by the Board or its designee shall not be considered non-
17 practice and does not relieve Respondent from complying with all the terms and conditions of
18 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
19 on probation with the medical licensing authority of that state or jurisdiction shall not be
20 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
21 period of non-practice.

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

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

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

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

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

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

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

27 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
28 with probation monitoring each and every year of probation, as designated by the Board, which

1 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
2 California and delivered to the Board or its designee no later than January 31 of each calendar
3 year.

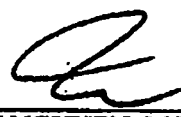
4 ACCEPTANCE

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

10

11

DATED: 01/31/2018



BACH KIM NGUYEN, M.D.
Respondent

12

13

14

15

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

16

17

DATED: 1/31/18



FREDERICK M. RAY, ESQ.
Attorney for Respondent

18

ENDORSEMENT

19

20

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

21

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27

28

Dated: 2/1/2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General



COLLEEN M. MCGURRIN
Deputy Attorney General
Attorneys for Complainant

LA2017605059; 2946569

Exhibit A

Accusation No. 800-2014-007285

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 State Bar No. 56332
California Department of Justice
4 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2556
Facsimile: (213) 897-9395
6 *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. 800-2014-007285

13 **BACH KIM NGUYEN, M.D.**

A C C U S A T I O N

14 41680 Ivy Street, Suite A
Murrieta, California 92562

15 Physician's and Surgeon's Certificate No. A-
16 92027,

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about July 1, 2005, the Medical Board issued Physician's and Surgeon's
25 Certificate Number A-92027 to Bach Kim Nguyen, M.D. (Respondent). At all times relevant to
26 the matters set forth below, said license has been in full force and effect and will expire, unless
27 renewed, on November 30, 2018.
28

1 JURISDICTION

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

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

8 5. Section 2234 of the Code, states:

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

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

14 "(b) Gross negligence.

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

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

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

25 "(d) Incompetence.

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

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

1 back injury from sports." It was noted that the Patient had "a flare up for his lower back lately and
2 has been having "neck spasms." "No radiation down arms or legs." The Review of Systems for
3 this visit was essentially the same as the initial visit but neck spasms were added. The
4 examination included an exam of the neck and back and documented a "negative straight leg raise
5 test." The Patient was changed to Soma TID (#90) and continued on Norco 10/325 (#90).

6 10. A visit on June 4, 2010, documented insomnia periodically. The Review of Systems
7 was essentially the same as the initial visit. Exam of back is "negative for radiculopathy."
8 Respondent recommended ice/warm compresses TID, moderate exercise and refilled Norco
9 10/325 (#90) and Soma (#90).

10 11. A visit on June 29, 2010, documented improved insomnia and the Patient "denies any
11 side effects from the medications." His Review of Systems was essentially the same as the initial
12 visit. The Patient's back was examined and the notation made, "paraspinal muscle spasm and
13 negative straight leg raise test. Recommended ice/warm compresses TID, exercise and ibuprofen
14 prn and use of soma and Norco prn. Refilled Norco 10/325 (#90) and Soma (#90).
15 Recommended ice/warm compresses and exercise."

16 12. A visit on July 28, 2010; documented that "soma and Norco are working well for
17 him" to control lower back pain. He [the Patient] does report a "constant heartburn sensation,
18 especially at night." "No tar or blood in stools." Exam with epigastric tenderness. Switched from
19 Prilosec OTC to Nexium 40 mg daily. Refilled Norco 10/325 (#90) and Soma (#90).
20 Recommended ice/warm compresses and exercise.

21 13. The August 30, 2010, visit documented good control of back pain. Able to drive long
22 distances every day. Desires lab work. Review of symptoms with no abdominal pain. Adequate
23 exam for symptoms performed. Refilled Norco 10/325 (#90) and Soma (#90). Recommended
24 ice/warm compresses and exercise.

25 14. A September 29, 2010, visit documents a "lump under left arm." Exam documented a
26 "pea-sized lump in the left axillary area with no erythema, discharge and small opening in
27 middle." Diagnosed with hidradenitis and recommended observation. Review of Systems
28 essentially the same as initial visit, except now is positive for "psychiatric symptoms and

1 insomnia." For lumbago, the Respondent documented "discussed with the Patient and will stop
2 the Norco, but start Patient on oxycodone 15 mg q.i.d (#120) and continue soma QID."

3 Recommended ice/warm compresses and exercise.

4 15. October 27, 2010, and November 24, 2010, visits were similar with description of
5 lower back pain "worsening with prolonged driving which is his career." Review of Systems
6 essentially the same as the initial visit, except now is positive for "psychiatric symptoms and
7 insomnia." Patient was continued on oxycodone 15 mg q.i.d and continue Soma QID.

8 Recommended ice/warm compresses and exercise.

9 16. During the clinic visits on December 22, 2010, and January 26, 2011, there was an
10 escalation of the oxycodone dosage to 20 mg tablets initially then 30 mg tablets. Notes record that
11 the Patient "denies any side effects so far." Review of Systems is essentially the same as initial
12 visit, except now is positive for "psychiatric symptoms and insomnia." Temazepam 30 mg at
13 bedtime was also added as needed for insomnia. Recommended ice/warm compresses and
14 exercise.

15 17. On the clinic visit of April 11, 2011, Respondent documented that "For the past
16 month, due to weather changes, Patient has been having worsening of the lower back pain, mostly
17 on the left side." Back exam with paraspinal muscle tenderness. Oxycodone increased to 30 mg
18 q4h prn (#120 prescribed). Respondent also added diazepam 10 mg bid prn for muscle spasm.
19 Recommended ice/warm compresses and exercise. When asked in his interview if he ever
20 considered doing more diagnostic testing for back pain besides giving the Patient pain medication,
21 Respondent replied that he "always advise the Patients that he need to have more studies done
22 including X-ray or MRI. I also advised the Patients to go for physical therapy, and also a referral
23 to pain management. However, the Patients all those time they are declining." When pressed
24 during his interview that the Patient's "pain level hasn't gotten better, but instead it got worse. So
25 did that cause you any concern that increasing the dosage of the medication didn't seem to treat
26 this problem?" Respondent responded "yes" but qualified his response by stating that he "did offer
27 the Patient consulting with a spine specialist and the pain specialist as well as physical therapy
28 and again the Patient decline."

1 18. On June 22, 2011, in the clinic, the Patient complained of malaise and fatigue.
2 Review of Systems now is positive for depression, anxiety, difficulty concentrating, and sleep
3 disturbance. Exam unchanged. Patient continued on oxycodone 30 mg 5x/day, Soma TID,
4 Ambien 10 mg qhs prn, and was started on lorazepam bid and diazepam was stopped.
5 Recommended ice/warm compresses and exercise. No referrals made.

6 19. At the July 18, 2011, visit, the Patient reported "having increase of stress and anxiety
7 lately with no able to sleep at night time." Exam unchanged. Lorazepam discontinued and started
8 on Xanax 0.5 mg TID prn. Patient continued on oxycodone and Ambien, but Soma discontinued.
9 Recommended ice/warm compresses and exercise. No referrals made. The Patient's medical
10 condition for his chronic low back pain, anxiety, and insomnia were fairly stable between July 18,
11 2011, until September 7, 2011. No medication changes were made.

12 20. On September 7, 2011, the Patient was seen and stated that he developed nausea,
13 vomiting, diarrhea and body cramps after he "stopped the medications about a week ago due to
14 employment drug screening." The Patient was diagnosed with drug withdrawal and given an
15 intramuscular injection of Zofran 4 mg and a prescription for Phenergan 25 mg q4h prn. He then
16 refilled prescriptions for oxycodone, Xanax, and Ambien. No referral was made. Respondent
17 acknowledged that he was aware that the Patient was dependent on narcotics at this point.

18 21. On June 15, 2012, the clinic note mentions that the Patient has a history of ADD
19 (attention deficit disorder) and anxiety and he has been under a lot of stress due to "wife's work
20 issue" and having problems sleeping at night. Exam remarkable for epigastric tenderness. Patient
21 referred to GI specialist for an esophagogastroduodenoscopy for longstanding GERD. Xanax dose
22 increased to 1 mg TID prn. Patient continued on oxycodone and Ambien.

23 22. On his August 1, 2012, visit, the Patient complained of "increase of anxiety and stress
24 with depression [due to many] issues going on with him and his family." Exam unchanged. The
25 Patient was given a work excuse for six months. Continued on oxycodone, Ambien, and Xanax.
26 No referral made. Respondent stated that he diagnosed depression "mostly with questionnaires
27 and Patients' report," but he never had Patient complete a questionnaire. Respondent did not even
28 have a depression questionnaire available in his office at that time.

1 23. During the period between August 1, 2012, and January 15, 2013, the Patient
2 continued to have the same symptoms. He had ongoing anxiety, depression and insomnia because
3 both he and his wife were now unemployed and on disability. The Patient was continued on the
4 same doses of oxycodone, Ambien, and Xanax. Respondent did recommend "behavior
5 modification treatments," but did not elaborate on specifics and no mental health referral was
6 made. No antidepressants were initiated.

7 24. On the March 4, 2013, clinic visit, the Patient reported that "lately stress has been
8 high for which causing more panic attacks, constant under stress . . . and back has been flaring
9 up with the amount of stress . . ." Exam unchanged. Continued on same doses of oxycodone and
10 Ambien, but Xanax dose increased to 2 mg TID. No referral made.

11 25. At a May 20, 2013, clinic visit, the Patient stated "pain has been worse attributed to
12 the changes in the weather." Exam unchanged. Flexeril 10 mg TID added to oxycodone, Xanax,
13 and Ambien. The Patient's condition was fairly stable until he was seen on August 26, 2013 when
14 he again stated that "pain has been worse attributed to the changes in the weather." Exam
15 unchanged. Respondent told him to stop the oxycodone and start morphine sulfate IR 15 mg q4h
16 prn. He was continued on Flexeril, Xanax, and Ambien.

17 26. On July 16, 2013, Respondent saw the Patient for follow-up and documented that the
18 Patient has "long history of chronic lower back pain with spinal stenosis." When he was
19 interviewed, Respondent was asked how he knew that the Patient had spinal stenosis. Respondent
20 answered, "that's my clinical judgment . . . during my physical exam, the patient has worsening
21 pain with hyperextension of his back and that's indicative of the patient having spondylosis and
22 the underlying reason of spondylosis is degenerative disc disease and is causing the spinal canal
23 narrowing." When asked to clarify what part of the spinal canal was narrowed, Respondent stated:
24 "spinal stenosis, I'm referring to the central canal where the spinal cord is running inside." When
25 asked about a referral to have a surgical consult, Respondent replied that he "did offer the patient
26 to be seen by a pain specialist or spine specialist, however the Patient declined."

27 27. On his October 21, 2013 clinic visit, the Patient reported, "trying to get off of the
28 medication, however, used EtOH [ethyl alcohol] with vodka for the condition. Patient went to

1 Disneyland and collapsed with seizure activities. Patient had about three of the episodes during
2 the day. Patient biting his tongue causing laceration. Went to Anaheim Regional ER for
3 treatments." Exam with "right side lateral tongue with laceration, healed well." Back exam
4 unchanged. No neurologic exam done. Refilled prescriptions for oxycodone 30 mg q4h prn,
5 Flexeril 10 mg TID, Xanax 2 mg TID, Ambien 10 mg qhs. "Advised the patient to stop using
6 EtOH. Patient most likely having seizure with EtOH withdrawal." No-referral made. No
7 documented discussion about driving or DMV report. When interviewed Respondent was asked
8 if he had any concerns about the seizures. He responded: "very straightforward that the patient
9 was using vodka and he was drunk. He's also abruptly stopped all of his narcotic medication while
10 he's been on it for a couple years; so that my judgment at that time he had the seizure from drug
11 withdrawal." Respondent also did not perform a neurological exam or request medical records
12 from Anaheim Regional Hospital, nor provided a referral to a neurologist nor enforced that the
13 Patient should not be driving.

14 28. During a clinic visit on January 30, 2014, the Patient stated that he is "not able to
15 focus [and] quite often finds himself become inattentive and easily distracted. Never been
16 diagnosed with ADD [but] has positive family history of ADD." Exam unchanged. No neurologic
17 or psychiatric assessment done. Prescribed Concerta 27 mg daily and "recommended seeking
18 consultation from psychiatrist." No formal referral made.

19 29. Of note, during the entire period that the Patient was cared for at Ivy Springs Medical
20 Care clinic for chronic low back pain, anxiety, depression, and insomnia, Respondent made no
21 referrals to a physical therapist, a pain specialist, a neurologist, spine specialist, or a mental health
22 professional. Respondent did state that he verbally offered this to the Patient but the Patient
23 declined every time. These discussions were never documented in the chart.

24 30. Also, no random urine drug screening or intermittent CURES report checks were ever
25 performed. Respondent acknowledged during his interview that he never performed a CURES
26 report or random urine drug screening while the Patient was living. There was no narcotics
27 contract signed. Respondent states that he had a "verbal agreement" with the Patient described as
28 follows: "the patient's required to come to the office once a month and the patients can only

1 receive pain medication from myself and that Patient have to fill the prescription at the same
2 pharmacy, if the Patient loses the prescription the Patient won't get any replacement, and if the
3 Patient breaks the contract they will be discharged from the office . . . and the Patient is expected
4 to have a drug screen unannounced." Respondent never checked to make sure that the Patient
5 followed this verbal contract by running a CURES report or performing random urine drug
6 testing. Also, no informed consent discussion of risks, benefits, and alternatives to chronic
7 narcotics or benzodiazepines was documented in the chart. Respondent did state in his interview
8 that he "does verbally advise the Patients of the risks and benefits of the medication that he is
9 receiving, including dependency, addiction, overdose, and even death." Respondent then
10 acknowledged, when asked if he ever documented this in the medical records, that he "did not."

11 31. Finally, Respondent never performed any imaging studies of the Patient's back during
12 this four-year period of care. When asked in his interview if he ever considered doing more
13 diagnostic testing for back pain besides giving the Patient pain medication, Respondent replied
14 that he "always advise the Patients that he need to have more studies done including X-ray or
15 MRI. I also advised the Patients to go for physical therapy, and also a referral to pain
16 management. However, the Patients all those time they are declining." Respondent never
17 documented that he advised radiologic imaging to the Patient and the Patient declined.
18 Respondent did state "within a year" when asked "how recent should X-rays be in order for them
19 to be reliable." Respondent even answered "yes" when asked "so [the Patient] was OK getting X-
20 rays for his esophagus but not for his lower back which was his chief complaint?" The Patient did
21 have a lumbosacral X-ray series performed on August 6, 2007 at the Hemet Valley Imaging
22 Medical Group. The X-ray was ordered by Nathan Howard, M.D., and was unremarkable.

23 32. The Patient was found by his adolescent son unresponsive with agonal breathing on
24 February 15, 2014. 911 was called and the Patient suffered a cardiac arrest and could not be
25 resuscitated at the Chapman Hospital ER. He expired on that same day. His death certificate
26 stated that the causes of death are myocarditis, encephalitis, meningitis and pneumonitis. His
27 toxicology report found evidence of oxycodone, oxymorphone, alprazolam, diazepam, and
28

1 cyclobenzaprine in his system. The coroner's report revealed evidence of lymphocytic
2 myocarditis, acute bronchopneumonia, aseptic meningoencephalitis, and cerebral edema.

3 33. Respondent received a telephone call on February 21, 2014, from the Patient's wife,
4 Melissa, informing him that the Patient had passed away the previous Saturday and had been
5 pronounced dead at Chapman Hospital ER. The Respondent recorded in his chart: "Autopsy
6 underway, but wife informed the patient may have OD." Importantly, at no time between March
7 31, 2010, and February 15, 2014, did any family member or acquaintance of the Patient ever
8 contact Respondent about an alcohol abuse problem. Respondent did receive a phone call from
9 the Patient's sister in late February 2014 during which the sister informed him "that the patient
10 was an alcoholic and had been drinking vodka every day for some time. The patient's sister
11 additionally informed Dr. Nguyen that the patient had been taking other family members'
12 medications including his wife and mother-in-law . . . she also reported that he had taken
13 leftover morphine and Dilaudid . . . and reported the cause of death had been an overdose."

14 FIRST CAUSE FOR DISCIPLINE

15 (Gross Negligence)

16 34. Respondent Bach Kim Nguyen, M.D., is subject to disciplinary action under section
17 2234 subdivision (b) of the Code for acts of gross negligence in his care and treatment of the
18 Patient. The circumstances are as follows:

19 Continuation of Chronic Narcotic and Benzodiazepine Prescribing with Evidence of 20 Drug Addiction and Mental Illness

21 35. Prescribing opioids for patients with a history of substance abuse disorder is
22 challenging because such patients are more vulnerable to drug misuse, abuse, and addiction. The
23 standard of care requires that ongoing use of controlled substances should occur in a highly
24 controlled setting that may include co-management with a pain specialist and addiction specialist.
25 Use of chronic opioid therapy in patients with mental illness should only be for well-defined
26 somatic or neuropathic pain conditions under close monitoring, and physicians should seek
27 consultation from appropriate specialists.

28

1 36. Business and Professions Code section 2241.5 (d) states that: "A physician and
2 surgeon shall exercise reasonable care in determining whether a particular patient or condition, or
3 the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of
4 drug abuse, requires consultation with, or referral to, a more qualified specialist." The care of a
5 patient with a history of substance abuse or addiction requires extra monitoring, documentation,
6 and often consultation with an addiction specialist.

7 37. The Patient had an alcohol use disorder, evidence of opioid addiction, and a mood
8 disorder with depression and anxiety. An opioid risk tool performed at the outset of care would
9 have scored him as a moderate high risk candidate for chronic opioid therapy (depending on his
10 family history of substance abuse which was not documented). Psychological screening and
11 alcohol use disorder screening tests may have been positive as well.

12 38. Nevertheless, the Patient clearly was identified as having an opioid addiction problem
13 by September 7, 2011. He was identified as having an alcohol use disorder definitely by October
14 21, 2013, and was diagnosed with mental illness as early as January 26, 2011.

15 39. The Patient was continued on chronic opioid and benzodiazepine therapy despite a
16 substance abuse disorder, evidence of opioid and possibly benzodiazepine addiction, and a mood
17 disorder. (No efforts were made to wean the chronic opioid and benzodiazepine therapy.) No
18 referrals were made.

19 40. The continuation of chronic opioid and benzodiazepine therapy with no efforts to
20 taper these controlled substances and no referrals to a pain specialist or addiction specialist or
21 mental health specialist in a patient with definite alcoholism, opioid addiction, depression, and
22 anxiety is an extreme departure from the standard of care.

23 **Lack of Adjustment When Chronic Pain Treatment Plan Was Ineffective**

24 41. The standard of care for prescribing controlled substances for pain requires the
25 presence of a treatment plan with stated goals and objectives by which the treatment plan can be
26 assessed prior to prescribing controlled substances. These objectives are summarized by the five
27 "A's" method for chronic pain management assessment:

28 Analgesia: the patient has a reduction in pain

1 Activity: the patient is demonstrating an improved level of functioning.

2 Adverse: the patient is not experiencing any side effects

3 Aberrance: the patient is complying with the pain management agreement and there are no
4 signs of medication abuse or diversion

5 Affect: the patient's behavior and mood are appropriate.

6 42. A treatment plan with stated objectives should be established for all patients receiving
7 chronic narcotics for pain management. Respondent continued to escalate the chronic opioid
8 therapy and benzodiazepine therapy even though the medication changes were not reducing the
9 pain, the Patient developed medication side effects, developed a mood disorder, and had signs of
10 addiction.

11 43. Despite a failing chronic pain management plan, he did not consult a pain specialist or
12 addiction specialist or mental health professional.

13 44. The failure to adjust a failing chronic pain management plan, obtain consultations and
14 the inappropriate escalation of chronic opioids and benzodiazepines even though the pain failed to
15 improve and he developed evidence of drug addiction and a mood disorder is an extreme
16 departure from the standard of care.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Repeated Negligent Acts)

19 45. Respondent Bach Kim Nguyen, M.D., is subject to disciplinary action under section
20 2234 subdivision (c) of the Code for repeated negligent acts. The circumstances are as follows.

21 **Inadequate work-up and treatment for a patient with a recent seizure**

22 46. A patient with a new-onset seizure should have a thorough examination and
23 evaluation for the etiology of the seizure. This includes a thorough neurological examination,
24 investigation into a metabolic abnormality, investigation into a structural brain abnormality
25 (especially if a focal neurological deficit is apparent), investigation into an infectious etiology
26 may be warranted, investigation into illicit drug use, and consideration of an
27 electroencephalogram.

28 47. In addition, a patient with a recent seizure should not be driving, the patient must be

1 informed of this, and a DMV report must be filed (unless already done).

2 48. Respondent initially attributed the Patient's seizures to alcohol withdrawal, writing in
3 the chart "patient most likely having seizure with EtOH withdrawal." However, in his interview
4 he attributes the seizure to "drug withdrawal" that could have been benzodiazepine withdrawal or
5 alcohol. When asked if he had any concerns about the seizures, Respondent responded that "very
6 straightforward that the patient was using vodka and he was drunk. He's also abruptly stopped all
7 of his narcotic medication while he's been on it for a couple years; so that my judgment at that
8 time he had the seizure from drug withdrawal." Respondent also did not perform a neurological
9 exam or request medical records from Anaheim Regional Hospital, provide a referral to a
10 neurologist or enforce that the Patient should not be driving.

11 49. The lack of any neurological exam or work-up for a new-onset of seizure, lack of
12 neurology referral, and lack of enforcement of no driving represents a simple departure from the
13 standard of care.

14 **Lack of Informed Consent for Use of Controlled Substances**

15 50. The standard of care for prescribing controlled substances for pain requires that all
16 patients receive informed consent about these medications including a discussion of the risks,
17 benefits, and potential alternatives to chronic narcotic therapy.

18 51. Respondent stated that he provided informed consent prior to initiating chronic opioid
19 and benzodiazepine therapy to the Patient; however, this consent was never documented in the
20 chart.

21 52. The absence of any documentation of a narcotic or controlled substance use informed
22 consent discussion represents a simple departure from the standard of care.

23 **Insufficient use of diagnostic testing to establish cause of chronic lower back pain**

24 53. All clinicians should perform a diligent investigation as to the cause of chronic
25 nonmalignant pain. This includes a careful history and exam and may include radiologic
26 assessment of the area, focused lab testing to narrow down a differential diagnosis, and potentially
27 involve consultants to determine the etiology of the pain and suggest therapeutic modalities to
28 help with pain management.

1 54. Respondent never performed any radiologic testing or specialized testing to determine
2 the etiology of the Patient's chronic low back pain. Respondent clinically thought the Patient had
3 central canal stenosis of the spine stating, "that's my clinical judgment . . . during my physical
4 exam, the patient has worsening pain with hyper extension of his back and that's indicative of the
5 patient having spondylosis and the underlying reason of spondylosis is degenerative disc disease
6 and is causing the spinal canal narrowing." When asked to clarify what part of the spinal canal is
7 narrowed, Respondent stated: "spinal stenosis, I'm referring to the central canal where the spinal
8 cord is running inside."

9 55. Spinal stenosis can be suspected by clinical exam, but it must be confirmed using an
10 MRI of the lumbar spine. Spondylosis must be confirmed using a lumbosacral X-ray series. .

11 56. The insufficient use of radiologic imaging to confirm the etiology of chronic lower
12 back pain is a simple departure from the standard of care.

13 **Absence of a signed chronic narcotics contract**

14 57. All patients who are prescribed chronic narcotics should have a documented and
15 signed pain management agreement that outlines the joint responsibilities of the physician and the
16 patient. Elements of such an agreement should include an acknowledgment by the patient that
17 chronic opioid use may lead to addiction or overdose, that the patient will obtain his/her opioids
18 and controlled substances by only one provider at one pharmacy, will take the medication only as
19 prescribed, will undergo periodic random drug testing, will go to ancillary services when told to
20 do so (physical therapy, counseling, consultations, etc.), will not drink alcohol or take street
21 drugs, and will not participate in drug diversion.

22 58. Respondent stated that he had a verbal agreement with the Patient about chronic
23 controlled substance use but nothing was signed or documented. Respondent states that he had a
24 "verbal agreement" with the Patient that included "the patient's required to come to the office once
25 a month and the patients can only receive pain medication from myself and that patient have to fill
26 the prescription at the same pharmacy, if the patient loses the prescription the patient won't get
27 any replacement, and if the patient breaks the contract they will be discharged from the office . . .
28 and the patient is expected to have drug screen unannounced."

1 59. Not having a signed narcotics contract documented in the chart is a simple departure
2 from the standard of care.

3 **Insufficient compliance monitoring for patients on chronic opioids and controlled**
4 **substances**

5 60. All patients who are prescribed chronic controlled substances, especially chronic
6 narcotics, should undergo a regular prescription drug monitoring program such as CURES
7 (Controlled Substances Utilization Review and Evaluation System). A CURES report allows a
8 clinician to verify that the patient is receiving controlled substances from only one provider and
9 from only one pharmacy to comply with their pain management contract. In addition, patients
10 should undergo frequent (usually at least quarterly) random urine drug testing to confirm that they
11 are not abusing any illicit drugs which would also be a violation of their pain management
12 contract.

13 61. Respondent never ran a CURES report or performed any urine drug screens on the
14 Patient to confirm compliance. This represents a simple departure from the standard of care.

15 62. Failure to ever run a CURES report or perform any urine drug screens represents a
16 simple departure from the standard of care.

17 63. There was insufficient psychological evaluation and screening for substance abuse
18 prior to initiation of chronic narcotics.

19 64. The standard of care for prescribing controlled substances for pain requires
20 performing a thorough screening for psychological disorders and occult substance abuse prior to
21 considering the initiation of chronic opioid therapy. This screening can include the use of the
22 Opioid Risk Tool, depression screening with the PHQ-9 or Becks Depression test, or the CAGE-
23 AID tool for risk of an alcohol use disorder, etc.

24 65. Respondent never documented any psychological screening, substance abuse disorder
25 screening or depression screening for the Patient during his care.

26 66. Failure to perform any psychological screening, substance abuse disorder screening,
27 or depression screening prior to or during chronic opioid therapy represents a simple departure
28 from the standard of care.

1 **Insufficient use of consultants for patients with ineffective pain management, mood**
2 **disorders, and addiction**

3 67. Business and Professions Code section 2241.5 (d) states that "A physician and
4 surgeon shall exercise reasonable care in determining whether a particular patient or condition, or
5 the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of
6 drug abuse, requires consultation with, or referral to, a more qualified specialist." The care of a
7 patient with a history of substance abuse or addiction requires extra monitoring, documentation,
8 and often consultation with an addiction specialist.

9 68. The Patient had a dual diagnosis disorder and ineffective pain management of his
10 chronic nonmalignant pain. Chronic opioid and benzodiazepine use is very risky and challenging
11 in a Patient with a substance abuse disorder, opioid addiction, and has both depression and
12 anxiety. In addition, the pain seemed to be worsening despite escalating doses of both opioids and
13 benzodiazepines signifying an inadequate pain management plan. In addition, Respondent
14 clinically suspected a central spinal stenosis of the lower spine which may require surgical
15 intervention if present. Finally, the Patient had a seizure of unclear etiology. No referrals were
16 made to any physical therapist, pain specialist, neurologist, spine specialist, or mental health
17 professional.

18 69. Failure to obtain any consultation for the numerous problems this Patient had
19 represents a simple departure from the standard of care.

20 **Inadequate medical record keeping**

21 70. The standard of care for prescribing controlled substances for pain requires that all
22 physicians keep accurate and complete records to include all of the elements stated above.

23 71. Respondent failed to document a narcotics contract, medication informed consent or
24 his recommendation to obtain referrals or to perform diagnostic imaging.

25 72. Poor and insufficient documentation of these key areas represents a simple departure
26 from the standard of care.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Medical Records)**

3 73. By reason of the facts set forth above in Paragraphs 71 through 73, Respondent Bach
4 Kim Nguyen, M.D., is subject to disciplinary action under section 2266 of the Code for failure to
5 maintain adequate and accurate records of medical care and treatment.

6
7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A-92027,
11 issued to Bach Kim Nguyen, M.D.;
- 12 2. Revoking, suspending or denying approval of his authority to supervise physician
13 assistants and advanced practice nurses;
- 14 3. If placed on probation, ordering him to pay the Board the costs of probation
15 monitoring; and
- 16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: July 31, 2017


19 KIMBERLY KIRCHMEYER
20 Executive Director
21 Medical Board of California
22 Department of Consumer Affairs
23 State of California

24 *Complainant*

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