

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

In the Matter of the Accusation Against:

Benjamin Graham, Jr., M.D.

Physician's & Surgeon's
Certificate No. G 35252

Respondent.

Case No. 800-2018-043785

DECISION

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand 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 December 4, 2020.

IT IS SO ORDERED November 5, 2020.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
4 State Bar No. 267098
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **BENJAMIN GRAHAM, JR., M.D.**
14 **P.O. Box 129**
Mendocino, CA 95460-0129
15 **Physician's and Surgeon's Certificate**
16 **No. G 35252**

17 Respondent.

Case No. 800-2018-043785

OAH No. 2020060247

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPRIMAND**

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

21 **PARTIES**

22 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Xavier Becerra, Attorney General of the State of California, via Joshua M. Temple,
25 Deputy Attorney General.

26 2. Respondent Benjamin Graham, Jr., M.D. (Respondent) is represented in this
27 proceeding by attorney Adam G. Slote, Slote, Links & Boreman, LLP, One Embarcadero Center,
28 Suite 400, San Francisco, CA 94111.

1 3. On August 9, 1977, the Board issued Physician's and Surgeon's Certificate
2 No. G 35252 to Benjamin Graham, Jr., M.D. (Respondent). The certificate was in full force and
3 effect at all times relevant to the charges brought in Accusation No. 800-2018-043785, and will
4 expire on March 31, 2021, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 800-2018-043785 (Accusation) was filed before the Board and is
7 currently pending against Respondent. The Accusation and all other statutorily required
8 documents were properly served on Respondent, on March 26, 2020. Respondent timely filed his
9 Notice of Defense contesting the Accusation.

10 5. A copy of the Accusation is attached as Exhibit A and incorporated herein by
11 reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in the Accusation. Respondent has also carefully read, fully discussed
15 with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order
16 for Public Reprimand.

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

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

25 **CULPABILITY**

26 9. Respondent understands and agrees that the charges and allegations in the
27 Accusation, if proven at a hearing, constitute cause for imposing discipline upon his Physician's
28 and Surgeon's Certificate.

1 10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case
2 for the charges in the Accusation, and Respondent hereby gives up his right to contest those
3 charges.

4 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
5 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

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

18 13. Respondent agrees that if an accusation and/or petition to revoke probation is filed
19 against him before the Board, all of the charges and allegations contained in the Accusation shall
20 be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding.

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

24 15. In consideration of the foregoing admissions and stipulations, the parties agree that
25 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
26 enter the following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Respondent Benjamin Graham, Jr., M.D., holder of
3 Physician's and Surgeon's Certificate No. G 35252, is **publicly reprimanded**, pursuant to
4 Business and Professions Code section 2227. This Public Reprimand is issued as a result of the
5 following conduct by Respondent as set forth in the Accusation:

6 Regarding his treatment of three patients between 2011 and 2015, Respondent failed
7 to reduce the dosages of or create a tapering schedule for the narcotics that he
8 prescribed patient P-1, and he failed to document an indication for prescribing
9 promethazine to patients P-1, P-2, and P-3.

10 1. **CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT.**

11 Within 60 calendar days of the effective date of this Decision, Respondent must provide
12 documentary proof to the Board or its designee that Respondent's DEA permit has been
13 surrendered to the Drug Enforcement Administration for cancellation, together with any state
14 prescription forms and all controlled substances order forms. Thereafter, Respondent shall not
15 reapply for a new DEA permit without the prior written consent of the Board or its designee.

16 2. **SUBMISSION OF DISABLED PHYSICIAN APPLICATION.** Within 60

17 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its
18 designee a Disabled Physician Application to convert his Physician's and Surgeon's Certificate
19 into disabled status. The application shall include certification of Respondent's disability by his
20 physician.

21 3. **FUTURE ADMISSIONS CLAUSE.** If Respondent should ever apply or

22 reapply for a new license or certification, or petition for reinstatement of a license, by any other
23 health care licensing agency in the State of California, all of the charges and allegations contained
24 in the Accusation shall be deemed to be true, correct, and admitted by Respondent for the purpose
25 of any Statement of Issues or any other proceeding seeking to deny or restrict such license or
26 certification.

27 4. **VIOLATION OF ORDER.** Any violation of the terms of this order shall

28 constitute unprofessional conduct and grounds for further disciplinary action.

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1 ACCEPTANCE

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

8 *Benjamin Graham, jr MD*
9 DATED: 08 / 23 / 2020
10 BENJAMIN GRAHAM, JR., M.D.
Respondent

11 I have read and fully discussed with Respondent Benjamin Graham, Jr., M.D. the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
13 for Public Reprimand. I approve its form and content.

14 DATED: 08 / 23 / 2020 *Adam Slote*
15 ADAM G. SLOTE
Attorney for Respondent

16
17 ENDORSEMENT

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

20 DATED: August 23, 2020 Respectfully submitted,
21 XAVIER BECERRA
22 Attorney General of California
23 E. A. JONES III
24 Supervising Deputy Attorney General

25 *Joshua M. Temple*
26 JOSHUA M. TEMPLET
27 Deputy Attorney General
28 *Attorneys for Complainant*

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Exhibit A

Accusation No. 800-2018-043785

1 XAVIER BECERRA
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2 E. A. JONES III
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
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Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 800-2018-043785

14 **Benjamin Graham, Jr., M.D.**
15 **P.O. Box 129**
Mendocino, CA 95460-0129

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. G 35252,**

Respondent.

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20 **PARTIES**

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

24 **JURISDICTION**

25 2. On August 9, 1977, the Board issued Physician's and Surgeon's Certificate Number
26 G 35252 to Benjamin Graham, Jr., M.D. (Respondent). The certificate was in full force and effect
27 at all times relevant to the charges brought herein and will expire on March 31, 2021, unless
28 renewed.

STATUTORY PROVISIONS

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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 (Code) unless otherwise
4 indicated.

5 4. Section 2004 provides that the Board shall have the responsibility for the enforcement
6 of the disciplinary and criminal provisions of the Medical Practice Act.

7 5. Section 2227 of the Code authorizes the Board to take action against a licensee who
8 has been found guilty under the Medical Practice Act by revoking his or her license, suspending
9 the license for a period not to exceed one year, placing the license on probation and requiring
10 payment of costs of probation monitoring, or taking such other action as the Board deems proper.

11 6. Section 2234 of the Code states:

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

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

....

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

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

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

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1 **FACTUAL ALLEGATIONS**

2 **Respondent's treatment of patient P-1**

3 Respondent assumed care of patient P-1¹ in approximately June 2012 and treated him for
4 chronic pain stemming from a failed back surgery through the patient's death, in August 2014.
5 Respondent prescribed P-1 several medications for his pain, including fentanyl² 150 mcg/hr and
6 hydrocodone³ 120 pills per month. The patient's treatment also included promethazine⁴ among
7 other medications. Respondent's records do not document an indication for prescribing the patient
8 promethazine.

9 P-1 had a history of overdosing on his medications, including on July 12, 2012, and
10 August 27, 2013. P-1 had visited the emergency room several times for narcotic misuse and, at
11 various times in 2012, the emergency room removed fentanyl, Norco,⁵ and other medications
12 from his medication list.

13 **Respondent's treatment of patients P-2 and P-3**

14 Respondent treated patient P-2 for failed back syndrome for two decades, through
15 approximately June 2015. Respondent prescribed P-2 seven fentanyl lozenges per day, 40-mg of
16 methadone⁶ per day, and 960 mg of oxycodone⁷ per day. Respondent also prescribed P-2
17 promethazine. Respondent's records do not document an indication for prescribing the patient
18 promethazine.

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22 ¹ The three patients at issue in this document are designated as patients P-1, P-2, and P-3
23 to protect their privacy. Respondent knows their names and can confirm their identity through
24 discovery.

25 ² Fentanyl is an opioid analgesic used primarily for anesthesia and sedation.

26 ³ Hydrocodone/acetaminophen, an opioid analgesic, is a combination of hydrocodone
27 bitartrate, an opioid, and acetaminophen, an analgesic. It is used to treat pain.

28 ⁴ Promethazine is an antihistamine and antiemetic. It is used to treat allergies, nausea, and
anxiety before and after surgery.

⁵ Norco is a brand name of hydrocodone/acetaminophen.

⁶ Methadone is an opioid used to treat pain, as maintenance therapy, and to help with
tapering in patients with opioid dependence.

⁷ Oxycodone/acetaminophen, an opioid analgesic, is a combination of oxycodone, an
opioid, and acetaminophen, an analgesic. It is used to treat pain.

1 Respondent treated patient P-3 for chronic back pain, between approximately March 2011
2 and June 2015. Respondent prescribed P-3 600 methadone tablets per month, among other
3 medications, including hydromorphone⁸ and promethazine.

4 Respondent's records do not document an indication for his long-term prescribing of
5 promethazine to the patient. A single entry in Respondent's records, for P-1's September 23, 2013
6 office visit, states that the patient was using promethazine for reflux esophagitis. Promethazine is
7 not an appropriate medication for the long term treatment of reflux esophagitis.

8 **CAUSE FOR DISCIPLINE**

9 **(Repeated Negligent Acts)**

10 7. Respondent's conduct described above and summarized as follows constitutes
11 unprofessional conduct in violation of Code section 2234, subdivision (c) (repeated negligent
12 acts):

13 A. Respondent's failure to reduce the dosages of or create a tapering schedule for
14 the narcotics that he prescribed P-1 despite P-1's history of overdosing on his medications
15 was a departure from the standard of care.

16 B. Respondent's prescribing of promethazine without indication to patients P-1,
17 P-2, and/or P-3 was a departure from the standard of care. Promethazine has a history as a
18 well-recognized substance of abuse when mixed with narcotics, and Respondent was
19 concurrently prescribing each of these patients significant dosages of narcotics.

20 **PRAYER**

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

23 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 35252,
24 issued to Benjamin Graham, Jr., M.D.;

25 2. Revoking, suspending, or denying approval of Benjamin Graham, Jr., M.D.'s
26 authority to supervise physician assistants and advanced practice nurses;

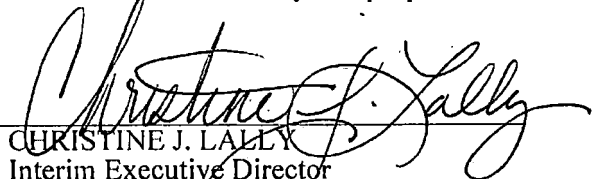
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28 ⁸ Hydromorphone is an opioid. It is used to treat pain.

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- 3. Ordering Benjamin Graham, Jr., M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: MAR 26 2020


CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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