

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

In the Matter of the Accusation
Against:

Subhash Mishra, M.D.

Physician's and Surgeon's
Certificate No. C51768

Respondent

Case No. 800-2017-029054

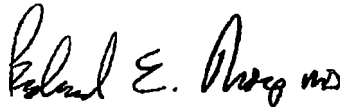
DECISION

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 14, 2021.

IT IS SO ORDERED: April 16, 2021.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D., Chair
Panel B

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
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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:

13 **SUBHASH MISHRA, M.D.**
14 **270 Perkins Street**
Sonoma, CA 95476

15 **Physician's and Surgeon's Certificate No. C**
16 **51768**

17 Respondent.

Case No. 800-2017- 029054

OAH No. 2020080799

18 **STIPULATED SETTLEMENT AND**
19 **DISCIPLINARY ORDER**

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
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, by Alice W. Wong, Deputy
25 Attorney General.

26 2. Respondent Subhash Mishra, M.D. (Respondent) is represented in this proceeding by
27 attorney Robert S. Willoughby, whose address is: 275 Battery Street, Suite 1600, San Francisco,
28 CA 94111-3370. On or about October 15, 2004, the Board issued Physician's and Surgeon's

1 Certificate No. C 51768 to Subhash Mishra, M.D. The Physician's and Surgeon's Certificate was
2 in full force and effect at all times relevant to the charges brought in Accusation No.
3 800-2017-032326, and will expire on February 28, 2022, unless renewed.

4 **JURISDICTION**

5 3. Accusation No. 800-2017-032326 was filed before the Board, and is currently
6 pending against Respondent. The Accusation and all other statutorily required documents were
7 properly served on Respondent on October 1, 2018. Respondent timely filed his Notice of
8 Defense contesting the Accusation.

9 4. A copy of Accusation No. 800-2017-032326 is attached as exhibit A and incorporated
10 herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 800-2017-032326. Respondent has also carefully read,
14 fully discussed with his counsel, and understands the effects of this Stipulated Settlement and
15 Disciplinary Order.

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

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

24 **CULPABILITY**

25 8. Respondent understands and agrees that the charges and allegations in Accusation
26 No. 800-2017-032326, if proven at a hearing, constitute cause for imposing discipline upon his
27 Physician's and Surgeon's Certificate.

28

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

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 51768 issued
9 to Respondent Subhash Mishra, M.D. is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for three (3) years on the following terms and conditions:

11 1. **CONTROLLED SUBSTANCES - PARTIAL RESTRICTION.** Respondent shall not
12 order, prescribe, dispense, administer, furnish, or possess any Schedule II or Schedule III
13 controlled substances as defined by the California Uniform Controlled Substances Act, until
14 Respondent has successfully completed a course in Prescribing Practices, as specified in
15 paragraph 4. Respondent shall submit to the Board or its designee a certification of successful
16 completion of the course. This partial restriction shall remain in effect until Respondent has been
17 notified in writing by the Board or its designee that the Board accepts that the requirement of a
18 Prescribing Practices Course has been successfully completed and that the partial restriction has
19 been lifted.

20 Respondent shall not issue an oral or written recommendation or approval to a patient or a
21 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
22 purposes of the patient within the meaning of Health and Safety Code section 11362.5. If
23 Respondent forms the medical opinion, after an appropriate prior examination and medical
24 indication, that a patient's medical condition may benefit from the use of marijuana, Respondent
25 shall so inform the patient and shall refer the patient to another physician who, following an
26 appropriate prior examination and medical indication, may independently issue a medically
27 appropriate recommendation or approval for the possession or cultivation of marijuana for the
28 personal medical purposes of the patient within the meaning of Health and Safety Code section

1 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that
2 Respondent is prohibited from issuing a recommendation or approval for the possession or
3 cultivation of marijuana for the personal medical purposes of the patient and that the patient or
4 the patient's primary caregiver may not rely on Respondent's statements to legally possess or
5 cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully
6 document in the patient's chart that the patient or the patient's primary caregiver was so
7 informed. Nothing in this condition prohibits Respondent from providing the patient or the
8 patient's primary caregiver information about the possible medical benefits resulting from the use
9 of marijuana.

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

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

22 3. EDUCATION COURSE. Within 60 calendar days of the effective date of this
23 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
24 for its prior approval educational program(s) or course(s) in pain management, which shall not be
25 less than 10 hours per year, for each year of probation. The educational program(s) or course(s)
26 in pain management shall be aimed at correcting any areas of deficient practice or knowledge and
27 shall be Category I certified. The educational program(s) or course(s) in pain management shall
28 be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME)

1 requirements for renewal of licensure. Following the completion of each course, the Board or its
2 designee may administer an examination to test Respondent's knowledge of the course.

3 Respondent shall provide proof of attendance for 35 hours of CME of which 10 hours were in
4 satisfaction of this condition.

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

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

19 Respondent shall submit a certification of successful completion to the Board or its
20 designee not later than 15 calendar days after successfully completing the course, or not later than
21 15 calendar days after the effective date of the Decision, whichever is later.

22 5. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
23 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
24 advance by the Board or its designee. Respondent shall provide the approved course provider
25 with any information and documents that the approved course provider may deem pertinent.
26 Respondent shall participate in and successfully complete the classroom component of the course
27 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
28 complete any other component of the course within one (1) year of enrollment. The medical

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

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

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

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

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

27 Within 60 calendar days of the effective date of this Decision, and continuing throughout
28 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall

1 make all records available for immediate inspection and copying on the premises by the monitor
2 at all times during business hours and shall retain the records for the entire term of probation.

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

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

14 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
15 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
16 name and qualifications of a replacement monitor who will be assuming that responsibility within
17 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
18 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
19 notification from the Board or its designee to cease the practice of medicine within three (3)
20 calendar days after being so notified. Respondent shall cease the practice of medicine until a
21 replacement monitor is approved and assumes monitoring responsibility.

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

27 7. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
28 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice

1 where: 1) Respondent merely shares office space with another physician but is not affiliated for
2 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
3 location.

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

9 If, during the course of the probation, the Respondent's practice setting changes and the
10 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
11 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
12 If Respondent fails to establish a practice with another physician or secure employment in an
13 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
14 shall receive a notification from the Board or its designee to cease the practice of medicine within
15 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
16 appropriate practice setting is established.

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

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

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

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

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

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

9 12. GENERAL PROBATION REQUIREMENTS.

10 Compliance with Probation Unit

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

12 Address Changes

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

18 Place of Practice

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

22 License Renewal

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

25 Travel or Residence Outside California

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

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

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

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

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

26 Respondent's period of non-practice while on probation shall not exceed two (2) years.
27 Periods of non-practice will not apply to the reduction of the probationary term. Periods of non-
28 practice for a Respondent residing outside of California will relieve Respondent of the

1 responsibility to comply with the probationary terms and conditions with the exception of this
2 condition and the following terms and conditions of probation: Obey All Laws; General Probation
3 Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled
4 Substances; and Biological Fluid Testing.

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

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

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

26 18. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
27 with probation monitoring each and every year of probation, as designated by the Board, which
28 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

1 California and delivered to the Board or its designee no later than January 31 of each calendar
2 year.

3 19. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
4 a new license or certification, or petition for reinstatement of a license, by any other health care
5 licensing action agency in the State of California, all of the charges and allegations contained in
6 Accusation No. 800-2017-032326 shall be deemed to be true, correct, and admitted by
7 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
8 restrict license.

9
10 ACCEPTANCE

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

16
17 DATED: 1/12/21 S. Mishra
18 SUBHASH MISHRA, M.D.
19 Respondent

20 I have read and fully discussed with Respondent Subhash Mishra, M.D. the terms and
21 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
22 I approve its form and content.

23 DATED: 1/12/2021 Robert S. Willoughby
24 ROBERT S. WILLOUGHBY
25 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: January 13, 2021 _____

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

Alice W. Wong

ALICE W. WONG
Deputy Attorney General
Attorneys for Complainant

SF2018201061

Exhibit A

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *October 1, 2018*
BY *[Signature]* ANALYST

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

10 In the Matter of the Accusation Against:

Case No. 800-2017-029054

11 **Subhash Mishra, M.D.**
12 **270 Perkins Street**
13 **Sonoma, CA 95476**

ACCUSATION

14 **Physician's and Surgeon's Certificate**
15 **No. C 51768,**

Respondent.

16
17
18 Complainant alleges:

PARTIES

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

22 2. On or about October 15, 2004, the Medical Board issued Physician's and Surgeon's
23 Certificate Number C 51768 to Subhash Mishra, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on February 29, 2020, unless renewed.
26
27
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 “(g) The practice of medicine from this state into another state or country without meeting
2 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
3 apply to this subdivision. This subdivision shall become operative upon the implementation of the
4 proposed registration program described in Section 2052.5.

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

8 6. Section 2242 of the Code states:

9 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
10 without an appropriate prior examination and a medical indication, constitutes unprofessional
11 conduct.

12 “(b) No licensee shall be found to have committed unprofessional conduct within the
13 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
14 the following applies:

15 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
16 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs
17 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
18 of his or her practitioner, but in any case no longer than 72 hours.

19 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
20 vocational nurse in an inpatient facility, and if both of the following conditions exist:

21 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
22 who had reviewed the patient's records.

23 “(B) The practitioner was designated as the practitioner to serve in the absence of the
24 patient's physician and surgeon or podiatrist, as the case may be.

25 “(3) The licensee was a designated practitioner serving in the absence of the patient's
26 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
27 the patient's records and ordered the renewal of a medically indicated prescription for an amount
28 not exceeding the original prescription in strength or amount or for more than one refill.

1 11. Respondent saw P-1 on September 25, 2015 for follow-up for medications. On this
2 visit, the HPI section noted that P-1 saw a hematologist who recommended to P-1 that he quit
3 drinking alcohol. P-1 reported he was drinking one-half to one pint of bourbon per day and
4 wished to quit drinking alcohol. Respondent prescribed Naltrexone,⁵ which is an oral opiate
5 antagonist used for treatment of alcoholism and opiate addiction by blocking the effects of
6 alcohol and opiates. On the same day, Respondent prescribed Naltrexone and Norco to P-1
7 without any warning on the importance of stopping all opiates for at least 7 days prior to starting
8 Naltrexone or the risks associated with sudden stopping of alcohol.

9 12. Later in the day, P-1 was brought to Sonoma Valley Hospital by ambulance due to
10 altered mental status and agitation and was later diagnosed with acute opiate withdrawal
11 precipitated by the Naltrexone. During P-1's hospital stay, P-1 developed an aspiration
12 pneumonia, acute kidney issues and rhabdomyolysis.⁶

13 13. Respondent did not address P-1's long history of alcohol use while P-1 was under his
14 care and did not screen or offer treatment for alcohol use disorder until it was brought to his
15 attention by the hematologist.

16
17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate**
19 **Records and/or Prescribing Without an Appropriate Prior Examination)**

20 14. Respondent is guilty of unprofessional conduct and subject to disciplinary action
21 under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence),
22

23 ⁵ Naltrexone, also known by the trade name ReVia, includes prescribing warnings to
24 physicians who prescribe Naltrexone that they must specifically counsel their patients to avoid
25 opiates including those in cough syrup and to ensure that they do not have any opiates in their
26 bloodstream when they take the first dose of Naltrexone. It is recommended that patients have a
27 minimum of 7-10 days *off all opiates prior to starting* Naltrexone in order to prevent acute
28 precipitated opiate withdrawal. In patients taking both opiates and Naltrexone, withdrawal
symptoms can begin to appear within five minutes of ingesting the Naltrexone. Symptoms can
include confusion, hallucinations, vomiting, diarrhea, dehydration which can affect kidney and
liver function.

⁶ Rhabdomyolysis is a serious syndrome due to a direct or indirect muscle injury. It results
from the death of muscle fibers and release of their contents into the bloodstream which can lead
to serious complications such as renal (kidney) failure.

1 and/or (c) (repeated negligent acts); (d) (incompetence), and/or 2242 (prescribing without an
2 appropriate prior examination); and/or 2266 (inadequate records) of the Code in that Respondent
3 engaged in the conduct described above including, but not limited to, the following:

- 4 A. Respondent prescribed Naltrexone for treatment of alcoholism and Norco for chronic
5 pain at the same visit on September 25, 2015 and did not discuss with P-1 the
6 importance of stopping all opiates for at least 7 days *prior* to starting the Naltrexone.
7 B. Respondent demonstrated a lack of knowledge about the risks of taking Naltrexone
8 and Norco together, especially in a patient who had been taking opiates for many
9 years.
10 C. Respondent did not advise the patient to wait to start the Naltrexone nor did he
11 counsel P-1 on the risks associated with sudden stopping of alcohol.
12 D. Respondent did not take into account the altered metabolism of the medication with
13 P-1's known liver disease which likely increased the blood levels of the Naltrexone.
14 E. Respondent did not appropriately counsel P-1 regarding the risks of acute alcohol
15 withdrawal and did not screen or offer appropriate treatment for P-1's alcohol use
16 disorder.
17 F. Respondent prescribed opiates without appropriately monitoring for abuse, misuse, or
18 diversion and did not counsel P-1 regarding the risks of opiate use or offered safer
19 alternatives in a patient with a history of substance abuse.
20 G. Respondent failed to thoroughly and accurately document physical examinations of
21 P-1.

22 **PATIENT P-2**

23 15. Patient P-2, a male born in 1950, first saw Respondent in 2014. P-2 had chronic back
24 pain related to a prior motor vehicle accident as well as hypertension and active Hepatitis C
25 related to prior IV drug use.

26 16. Respondent saw P-2 approximately every three months for pain medication refills for
27 P-2's chronic back pain. Over the course of care between 2014 and 2017, there was no
28 examination of P-1's back or neck and the HPI never mentioned any back or neck pain other than

1 the initial visit on January 22, 2014 which reported P-2 was in a head on collision in 2007
2 resulting in neck and back pain and numbness in P-2's right arm. Physical examinations at nearly
3 all visits are repeated verbatim. The diagnosis associated with the pain medications include only
4 "backache unspecified" or "chronic pain syndrome." Respondent did not order any diagnostic
5 studies or other evaluations of P-2's back or neck pain and did not make any referrals or
6 recommendations for pain management, imaging studies or physical therapy.

7 17. Respondent gradually increased P-2's pain medication over the three year course of
8 care without any objective evidence of disease related to P-2's complaints of back and neck pain.
9 Between September 2016 through November 2017, Respondent prescribed up to 400 mg of
10 oxycodone daily plus 90 mg MS-Contin⁷, or a total of 690 MME,⁸ well over the recommended
11 dosage.

12 18. Although there was one signed controlled substance agreement, there was no
13 documentation regarding any discussion of the risks of the opiates prescribed or safer alternatives
14 to pain management. There were no CURES reports referenced or included in the chart
15 documentation and there were no urine toxicology screenings ordered.

17 SECOND CAUSE FOR DISCIPLINE

18 **(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate** 19 **Records and/or Prescribing Without an Appropriate Prior Examination)**

20 19. Respondent is guilty of unprofessional conduct and subject to disciplinary action
21 under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence),
22 and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior
23 examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the
24 conduct described above including, but not limited to, the following:

25 ⁷ Morphine sulfate is sold under the trade name MS-Contin and is an opioid agonist
26 indicated for the relief of moderate to severe acute and chronic pain. Morphine sulfate is a
27 dangerous drug as defined in section 4022 and a schedule II controlled substance. Respondent
prescribed MS-Contin, 15 mg per day during the time period between May 2017 to October 2017.

28 ⁸ MME stands for morphine milligram equivalency. This is used convert the many
different opioids into one standard value based on morphine and its potency. Oxycodone, for
example, is 1.5 times as potent as morphine so 320 mg of oxycodone is equivalent to 480 MME.

- 1 A. Respondent prescribed high dose opiates (over 600 MME per day) without any
2 objective medical diagnoses in a patient with known history of IV drug use.
- 3 B. Respondent prescribed high dose opiates without close monitoring with CURES
4 reports or urine toxicology screenings.
- 5 C. Respondent prescribed opiates without appropriately monitoring for abuse, misuse, or
6 diversion and did not counsel P-2 regarding the risks of opiate use or offer safer
7 alternatives in a patient with a history of substance abuse.
- 8 D. Respondent failed to thoroughly and accurately document physical examinations of
9 P-2.

10 **PATIENT P-3**

11 20. Patient P-3, a female born in 1950, initially saw Respondent on January 22, 2014 to
12 establish care. The history reports P-3 disclosed she uses marijuana regularly and drinks 2-3
13 glasses of wine 3-4 nights per week. P-3 complained of “ongoing back pain for over 20 years,
14 shoulder pain for two months” and requested prescription for oxycodone. Review of system notes
15 “no joint pains, myalgia but gets arthritis with tomatoes or potatoes.” There was no examination
16 of P-3’s back or any joints. Respondent prescribed oxycodone, 5 mg four times a day for pain.
17 Respondent saw P-3 approximately every three months for pain medication refills.

18 21. On June 17, 2015, P-3 presented with complaints of palpitations and elevated blood
19 pressure and pulse. Respondent adjusted P-3’s blood pressure medications and refilled P-3’s pain
20 medication, noting “refilled oxycodone, encouraged [P-3] to try to wean down” but yet wrote the
21 same prescription amount over the two years of care.

22 22. On July 16, 2015, P-3 was seen for follow up to review medication and noted “not
23 needing as much oxycodone but sleep is still poor even with temazepam⁹ and melatonin.” The
24 physical examination was only the verbatim general statements repeated at nearly every visit.

25
26
27 ⁹ Temazepam, also known by the trade name Restoril, is a benzodiazepine. It is a sedative
28 used to treat anxiety. It is a dangerous drug as defined in section 4022 and a Schedule IV
controlled substance.

1 Diagnosis included "insomnia unspecified." Respondent prescribed oxycodone and Ambien¹⁰
2 and advised P-3 to "try two temazepam" if P-3 had continued insomnia.

3 23. On February 1, 2016, P-3 was seen for follow-up medications, needing Ambien refills
4 on days she sleeps at night and temazepam on days she sleeps during the day and worked the
5 night shift. The only physical exam notes are again the verbatim general description at nearly
6 every visit. Respondent refilled P-3's Ambien and oxycodone.

7 24. Respondent prescribed to P-3 temazepam, 15 mg, #30 per month between October
8 2015 through May of 2018, as well as Ambien, 5 mg, #25 per month between July 2015 through
9 March 2016, then increasing to 10 mg, #30 per month between April 2016 through August 2016.

10 25. Respondent continued to prescribe oxycodone, 5 mg, #90-120 per three months
11 between June 2015 through March 2018 without any objective evidence of any disease.
12 Respondent never examined any of P-3's joints or spine. Only one x-ray was obtained which
13 revealed some mild degenerative change. Respondent did not order any CT, MRI, nerve
14 conduction studies, or referral to specialist evaluations to determine the cause of P-3's pain.
15 Respondent never requested or obtained any prior medical records of P-3's back pain.

16 26. There was no controlled substance agreement ever reviewed or signed by P-3. There
17 was no documentation regarding any discussion of the risks of benzodiazepines, including
18 respiratory depression, sedation and addiction, especially in combination with opiates, Ambien,
19 marijuana, and alcohol. Respondent did not discuss safer alternatives to treat P-3's insomnia.
20 There were no CURES reports referenced or included in the chart documentation and there were
21 no urine toxicology screenings ordered.

22 THIRD CAUSE FOR DISCIPLINE

23 **(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate** 24 **Records and/or Prescribing Without an Appropriate Prior Examination)**

25 27. Respondent is guilty of unprofessional conduct and subject to disciplinary action
26 under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence),

27 ¹⁰ Zolpidem, also known by the trade name Ambien, belongs to a class of drugs called
28 sedative-hypnotics. It is used to treat insomnia in adults. It is a dangerous drug as defined in
section 4022, and a schedule IV controlled substance.

1 and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior
2 examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the
3 conduct described above including, but not limited to, the following:

- 4 A. Respondent prescribed benzodiazepines in combination with opiates, Ambien,
5 marijuana, and alcohol without discussing and offering safer alternatives to P-3.
6 B. Respondent prescribed oxycodone at each visit for back pain or arthritis without any
7 objective evidence of any disease and never examined any of P-3's joints or spine.
8 C. Respondent failed to obtain diagnostic studies such as CT, MRI, nerve conduction
9 studies, or referral to specialist evaluations to determine the cause of P-3's back pain.
10 D. Respondent prescribed opiates without close monitoring with CURES reports or urine
11 toxicology screenings.
12 E. Respondent prescribed opiates without appropriately monitoring for abuse, misuse, or
13 diversion and did not counsel P-3 regarding the risks of opiate use or offered safer
14 alternatives in a patient with a history of substance abuse.
15 F. Respondent failed to thoroughly and accurately document physical examinations of
16 P-3.

17
18 **PATIENT P-4**

19 28. Patient P-4, a female born in 1971, began seeing Respondent in 2006. Patient P-4
20 saw Respondent on a monthly basis for chronic pain, hypertension and diabetes.

21 29. Respondent saw P-4 regularly for pain medication refills for chronic back pain.
22 Review of the CURES report from 2015 through 2018 notes that Respondent was prescribing
23 OxyContin, 10 mg, #60 per month and oxycodone, 5 mg, #100 per month.

24 30. Patient P-4 reported on one occasion that she was taking extra pain medications or
25 taking controlled substance pain medications from friends. Respondent did not screen P-4 for
26 opiate use disorder.

27 31. No CURES reports were reviewed or referenced. Only one saliva toxicology
28 screening was performed on November 13, 2014 which was positive for diazepam and

1 hydrocodone and negative for oxycodone. The order notes that P-4 was being prescribed
2 oxycodone, OxyContin and Soma¹¹ at the time. Respondent did not note or discuss the aberrant
3 findings with P-4. Respondent also did not order any further toxicology screening.

4
5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate**
7 **Records and/or Prescribing Without an Appropriate Prior Examination)**

8 32. Respondent is guilty of unprofessional conduct and subject to disciplinary action
9 under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence),
10 and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior
11 examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the
12 conduct described above including, but not limited to, the following:

- 13 A. Respondent prescribed long-term opiates without offering safer alternatives for
14 treatment of P-4's chronic back pain.
- 15 B. Respondent prescribed long-term opiates without close monitoring with CURES
16 reports or monitoring for abuse, misuse, or diversion.
- 17 C. Respondent did not screen P-4 for opiate use disorder even though P-4 exhibited some
18 signs of the disorder, including prescriptions running out early and taking pain
19 medications from friends or family members.
- 20 D. Respondent only ordered one toxicology screening over a four-year period and
21 obtained an aberrant result which was not addressed or discussed with P-4.
22 Respondent did not order further toxicology screening after obtaining an aberrant
23 result.

24 **PATIENT P-5**

25 33. Patient P-5, a male born in 1957, began seeing Respondent in 2009. Patient P-5's
26 intake form noted past chemical dependency and substance abuse as well as family history of

27 _____
28 ¹¹ Carisoprodol, also known by the trade name Soma, is a muscle-relaxant and sedative. It
is a dangerous drug as defined in section 4022 and is a Schedule III controlled substance.

1 substance abuse and bipolar disorder. Patient P-5's medical issues include hypertension,
2 depression, hip and back pain, morbid obesity, tobacco and marijuana use, and diabetes.

3 34. Respondent saw P-5 approximately every two to three months for medication refills
4 for Methadone¹², Norco and/or alprazolam.¹³

5 35. Respondent did not indicate why Methadone was prescribed to treat P-5 for chronic
6 pain. There was no documented justification for why Respondent chose this medication.
7 Respondent did not counsel P-5 and did not obtain informed consent regarding the cardiac risks
8 of Methadone use. There is no mention or note of these risks in the medical records or controlled
9 substance agreement signed by P-5. Respondent did not monitor P-5 with EKG for cardiac
10 complications.

11 36. Respondent prescribed P-5 with Methadone, 10 mg, 120-240 tablets per month, for a
12 time concomitantly with Norco, 10 mg, #180 per month, which equates to approximately 320 –
13 960 MME per day of Methadone, plus 60 MME per day of Norco. Respondent did not counsel P-
14 5 regarding the risk of accidental overdose which is especially concerning given P-5's concurrent
15 marijuana, benzodiazepine and alcohol use.

16 37. Only one CURES report was ever reviewed or referenced. Respondent did not
17 counsel P-5 regarding the risks of long-term opiate use other than the one signed controlled
18 substance agreement dated June 4, 2013. Respondent did not screen P-5 for opiate use disorder
19 even though P-5 exhibited signs of the disorder, including running out early on prescriptions and
20 taking medications from friends or family members. Only one toxicology screening was
21 performed during the four-year period of treatment which had an aberrant result. Respondent
22 never reviewed or discussed the aberrant result with P-5 and did not order any further toxicology
23 screening.

24
25 ¹² Methadone is an opioid used to treat pain and as maintenance therapy or to help with
26 tapering in people with opioid dependence. It is a dangerous drug as defined in section 4022 and
a Schedule II controlled substance. Methadone also causes cardiac conduction defects,
arrhythmia and can cause respiratory depression and death.

27 ¹³ Alprazolam, also known by the trade name Xanax, is a benzodiazepine. It is a
28 psychotropic drug used to treat anxiety and panic disorders. Alprazolam is contra-indicated in
patients with narrow-angle glaucoma or who are taking certain medications. It is a dangerous
drug as defined in section 4022, and a schedule IV controlled substance.

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate Records and/or Prescribing Without an Appropriate Prior Examination)

38. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

- A. Respondent prescribed Methadone for a number of years to treat P-5's chronic pain without any justification or discussion with P-5 on the cardiac risks of the medication or note the risks associated with the use of Methadone in P-5's medical records.
- B. Respondent prescribed alprazolam three times a day to P-5 for many years for anxiety with no attempt to wean P-5 down from benzodiazepines and offer P-5 safer modalities for treatment of anxiety.
- C. Respondent prescribed long-term opiates without discussing or offering safer alternatives for treatment of chronic back pain.
- D. Respondent prescribed long-term opiates without close monitoring with CURES reports or monitoring for abuse, misuse, or diversion.
- E. Respondent did not screen P-5 for opiate use disorder even though P-5 exhibited some signs of the disorder, including running out early on prescriptions and taking medications from friends or family members.
- F. Respondent only ordered only one toxicology screening over a four-year period and obtained an aberrant result which should have been addressed or discussed with P-5.
- G. Respondent failed to thoroughly and accurately document physical examinations of P-5.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 51768, issued to Subhash Mishra, M.D.;
2. Revoking, suspending or denying approval of Subhash Mishra, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Subhash Mishra, 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: October 1, 2018


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

SF2018201061