

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

In the Matter of the First Amended
Accusation Against:

Joerg Schuller, M.D.

Physician's & Surgeon's
Certificate No A 60661

Respondent

Case No. 800-2016-026392

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 23, 2021.

IT IS SO ORDERED June 24, 2021.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 State Bar No. 235250
California Department of Justice
4 2550 Mariposa Mall, Room 5090
Fresno, CA 93721
5 Telephone: (559) 705-2313
Facsimile: (559) 445-5106
6 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
12 Against:

13 **JOERG SCHULLER, M.D.**
14 1775 Third Street
Atwater, CA 95301

15 Physician's and Surgeon's Certificate No. A
16 60661.

17 Respondent.

Case No. 800-2016-026392

OAH No. 2020110405

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

24 **PARTIES**

25 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
26 California (Board). He brought this action solely in his official capacity and is represented in this
27 matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl,
28 Supervising Deputy Attorney General.

1 2. Respondent Joerg Schuller, M.D. (Respondent) is represented in this proceeding by
2 attorney David A. Depolo, Esq., whose address is: 201 North Civic Drive, Suite 239
3 Walnut Creek, CA 94596.

4 3. On or about July 31, 1996, the Board issued Physician's and Surgeon's Certificate
5 No. A 60661 to Joerg Schuller, M.D. (Respondent). The Physician's and Surgeon's Certificate
6 was in full force and effect at all times relevant to the charges brought in First Amended
7 Accusation No. 800-2016-026392, and will expire on July 31, 2022, unless renewed.

8 **JURISDICTION**

9 4. First Amended Accusation No. 800-2016-026392 was filed before the Board, and is
10 currently pending against Respondent. The First Amended Accusation and all other statutorily
11 required documents were properly served on Respondent on March 20, 2020. The First Amended
12 Accusation was deemed controverted pursuant to Government Code Section 11507 in light of the
13 fact that Respondent timely filed his Notice of Defense contesting the original Accusation No.
14 800-2016-026392.

15 5. A copy of First Amended Accusation No. 800-2016-026392 is attached as exhibit A
16 and incorporated herein by reference.

17 **ADVISEMENT AND WAIVERS**

18 6. Respondent has carefully read, fully discussed with counsel, and understands the
19 charges and allegations in First Amended Accusation No. 800-2016-026392. Respondent has
20 also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated
21 Settlement and Disciplinary Order.

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

1 purposes of any such proceeding or any other licensing proceeding involving Respondent in the
2 State of California.

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

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

9 **DISCIPLINARY ORDER**

10 A. **PUBLIC REPRIMAND.**

11 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 60661 issued
12 to Respondent Joerg Schuller, M.D. shall be and is hereby Publicly Reprimanded pursuant to
13 California Business and Professions Code section 2227, subdivision (a)(4). This Public
14 Reprimand is issued in connection with the charges and allegations set forth in First Amended
15 Accusation No. 800-2016-026392.

16 B. **CONTROLLED SUBSTANCES - PARTIAL RESTRICTION.**

17 Respondent shall not order, prescribe, dispense, administer, furnish, or possess any
18 controlled substances as defined by the California Uniform Controlled Substances Act, except for
19 those drugs listed in Schedule(s) III, IV and V of the Act.

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 Violation of this restriction of Respondent's practice shall constitute unprofessional conduct
11 and is grounds for further discipline.

12 C. EDUCATION COURSE.

13 Within 60 calendar days of the effective date of this Decision, Respondent shall submit to
14 the Board or its designee for its prior approval educational program(s) or course(s) which shall
15 not be less than 40 hours. The educational program(s) or course(s) shall be aimed at correcting
16 any areas of deficient practice or knowledge and shall be Category I certified. The educational
17 program(s) or course(s) shall be at Respondent's expense and shall be in addition to the
18 Continuing Medical Education (CME) requirements for renewal of licensure. Following the
19 completion of each course, the Board or its designee may administer an examination to test
20 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
21 hours of CME of which 40 hours were in satisfaction of this condition.

22 Failure to complete the educational program(s) or course(s) and provide proof of attendance
23 within one year of the effective date of this Decision shall constitute unprofessional conduct and
24 is grounds for further discipline.

25 D. PRESCRIBING PRACTICES COURSE.

26 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
27 course in prescribing practices approved in advance by the Board or its designee. Respondent
28 shall provide the approved course provider with any information and documents that the approved

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

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

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

15 Failure to complete the prescribing practices course and provide a certificate of successful
16 completion within one year of enrollment shall constitute unprofessional conduct and is grounds
17 for further discipline.

18 E. MEDICAL RECORD KEEPING COURSE.

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

28 A medical record keeping course taken after the acts that gave rise to the charges in the

1 First Amended Accusation, but prior to the effective date of the Decision may, in the sole
2 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
3 course would have been approved by the Board or its designee had the course been taken after the
4 effective date of this Decision.


5 Respondent shall submit a certification of successful completion to the Board or its
6 designee not later than 15 calendar days after successfully completing the course, or not later than
7 15 calendar days after the effective date of the Decision, whichever is later.

8 Failure to complete the medical record keeping course and provide a certificate of
9 successful completion within one year of enrollment shall constitute unprofessional conduct and
10 is grounds for further discipline.

11
12 ACCEPTANCE

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

18
19 DATED: 01/25/2021

20 
JOERG SCHULLER, M.D.
Respondent

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

24 DATED: 1/28/21

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DAVID A. DEPOLO, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: 1/28/21

Respectfully submitted,
XAVIER BECERRA
Attorney General of California



STEVE DIEHL
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2016-026392

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 State Bar No. 235250
2550 Mariposa Mall, Room 5090
4 Fresno, CA 93721
Telephone: (559) 705-2313
5 Facsimile: (559) 445-5106
Attorneys for Complainant
6

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 800-2016-026392

13 **JOERG SCHULLER, M.D.**
14 1775 Third Street
Atwater, CA 95301

FIRST AMENDED ACCUSATION

15 **Physician's and Surgeon's Certificate**
16 **No. A 60661,**

Respondent.

17 **PARTIES**

18 1. Christine J. Lally (Complainant) brings this First Amended Accusation solely in her
19 official capacity as the Interim Executive Director of the Medical Board of California,
20 Department of Consumer Affairs (Board).

21 2. On or about July 31, 1996, the Medical Board issued Physician's and Surgeon's
22 Certificate Number A 60661 to Joerg Schuller, M.D. (Respondent). The Physician's and
23 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
24 herein and will expire on July 31, 2020, unless renewed.

25 **JURISDICTION**

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

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4. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

- (1) Have his or her license revoked upon order of the board.
- (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
- (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
- (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

STATUTORY PROVISIONS

5. Section 2234 of the Code, states:

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

- (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
- (b) Gross negligence.
- (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
 - (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
 - (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the

1 licensee's conduct departs from the applicable standard of care, each departure
2 constitutes a separate and distinct breach of the standard of care.

3 (d) Incompetence.

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

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

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

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

15 DEFINITIONS

16 7. Almotriptan (Axert.) A vasoconstrictor medication used to treat migraine headaches.

17 8. Alprazolam (Xanax.) A short-acting benzodiazepine used for short-term management
18 of anxiety disorders. Side effects include sedation. Alprazolam is a Schedule IV controlled
19 substance.

20 9. Amitriptyline. An antidepressant and antianxiety medication also used to treat
21 neuropathic pain and migraine headaches. Side effects include drowsiness.

22 10. Buprenorphine (Butrans.) An opioid medication used to treat opioid addiction, acute
23 pain, and chronic pain. Buprenorphine is a Schedule III controlled substance.

24 11. Butorphanol. An opioid medication used to treat migraine headaches. Butorphanol is
25 a Schedule IV controlled substance.

26 12. Carisoprodol (Soma.) A muscle relaxant medication used to treat musculo-skeletal
27 pain. Side effects include headache, dizziness, and sleepiness. Carisoprodol is a Schedule IV
28 controlled substance.

13. Fentanyl (Actiq, Subsys, Duragesic.) An extremely potent opioid medication used to
treat severe chronic pain. Under the brand name Actiq, fentanyl is sold as a sugar-based lozenge
which allows absorption slowly in the mouth through the mucosal surfaces. Under the brand

1 name Subsys, fentanyl is sold as a sublingual spray. Under the brand name Duragesic, fentanyl is
2 sold as a transdermal patch. Side effects include respiratory depression. Fentanyl is a Schedule II
3 controlled substance.

4 14. Flurazepam (Dalmane.) A benzodiazepine derivative with sedative properties, used
5 to treat insomnia. Flurazepam is a Schedule IV controlled substance.

6 15. Hydrocodone (Lortab, Norco, Vicodin.) An opioid medication used to treat moderate
7 to severe pain. In combination with acetaminophen, it is sold under the brand names Lortab,
8 Norco, and Vicodin, among others. Side effects include respiratory depression. Effective
9 October 6, 2014, the Drug Enforcement Administration rescheduled hydrocodone from Schedule
10 III to Schedule II.

11 16. Hydromorphone (Dilaudid.) An opioid medication used to treat moderate to severe
12 pain. Side effects include respiratory depression. Hydromorphone is a Schedule II controlled
13 substance.

14 17. Levaquin. An antibiotic medication used to treat pneumonia.

15 18. Methadone. An opioid medication used to treat opioid dependence as well as for
16 treatment of chronic pain. Side effects include respiratory depression. Methadone is a Schedule
17 II controlled substance.

18 19. Metoclopramide (Reglan.) A medication used to treat nausea and vomiting, and is
19 also used to treat migraine headaches.

20 20. Morphine Sulphate. An opiate medication used to treat acute or chronic pain. Side
21 effects include respiratory depression. Morphine is a Schedule II controlled substance.

22 21. Oxycodone (Oxycontin, Percocet.) An opioid medication used to treat moderate to
23 severe pain. Side effects include addiction, respiratory depression, and low blood pressure.
24 Oxycodone is a Schedule II controlled substance.

25 22. Prednisone. A glucocorticoid medication used to suppress the immune system and
26 decrease inflammation. Side effects include cataracts, bone loss, easy bruising, muscle weakness,
27 and thrush. Adrenal suppression will begin to occur if prednisone is taken for longer than seven
28 days.

1 23. Promethazine (Phenergan.) An antihistamine medication used as a sedative.

2 24. Tapentadol (Nucynta.) An opioid medication used to treat moderate to severe pain.

3 Side effects include respiratory depression. Tapentadol is a Schedule II controlled substance.

4 25. Tylenol #3 with Codeine. Tylenol is the brand name of a medication containing
5 acetaminophen. Tylenol #3 also contains the opioid codeine, and is used to treat mild to
6 moderate pain. Side effects of codeine include addiction and respiratory depression. Tylenol #3
7 with codeine is a Schedule III controlled substance.

8 26. Zolpidem tartrate (Ambien.) A nonbenzodiazepine sedative and hypnotic used to
9 treat sleep problems. Zolpidem is a Schedule IV controlled substance.

10 **FACTUAL ALLEGATIONS**

11 **Circumstances Related to Patient A¹**

12 27. At all times relevant to this First Amended Accusation, Respondent saw Patient A at
13 his family practice clinic in Atwater, California. Respondent saw Patient A regularly over a
14 period of more than twenty years, related to a workplace injury. Patient A had previously seen a
15 number of specialists for his complaints of chronic neck and low back pain and migraine
16 headaches. Respondent documented the etiology of Patient A's pain and measures that had been
17 attempted to alleviate the pain. Respondent documented how the pain interfered with the
18 patient's quality of life. Respondent made appropriate referrals.

19 28. On or about October 8, 2012, another practitioner at Respondent's clinic documented
20 the patient's current medications as follows:

<u>Medication</u>	<u>Strength</u>	<u>Quantity</u>
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Amitriptyline HCl	100 mg	3 tablets at bedtime
Almotriptan	12.5 mg	1 to 2 tablets as needed
Lortab	7.5 mg/325 mg	1 tablet every 6 hours
Carisoprodol	350 mg	1 tablet 4 times per day

25 Another practitioner at the clinic refilled the patient's Actiq prescription, authorizing 210
26 lozenges with 4 refills.

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28 ¹ Patients are referred to by letter to protect their privacy.

1 29. On or about October 11, 2012, Respondent refilled the patient's Soma prescription,
2 but with the instruction that the patient take two tablets by mouth four times per day, rather than
3 one, with 240 tablets and two refills authorized. Respondent did not document a reason for this
4 apparent change. Respondent also prescribed Norco 10/325, 1-2 tablets every 4 hours as needed,
5 360 tablets with two refills authorized. Respondent did not document a reason for prescribing
6 Norco, either as a substitute or in addition to the patient's Lortab.

7 30. On or about October 23, 2012, another practitioner at Respondent's clinic saw the
8 patient, and documented "Requesting refill on actiq." The patient's Soma prescription was
9 refilled, but no other refills or medication changes were authorized.

10 31. On or about November 5, 2012, Respondent refilled the patient's Actiq prescription,
11 authorizing 210 lozenges with 4 refills.

12 32. On or about November 21, 2012, Respondent stopped the patient's Lortab and
13 ordered that the patient use Soma alone for neck pain and spasm. Respondent documented
14 "Having to use CVS and Walgreens on an alternating basis to obtain his Actiq." Respondent
15 refilled the patient's Actiq, amitriptyline HCl, and Almotriptan prescriptions.

16 33. On or about December 4, 2012, another practitioner at Respondent's clinic
17 documented the patient's current medications as follows:

Medication	Strength	Quantity
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Amitriptyline HCl	100 mg	3 tablets at bedtime
Almotriptan	12.5 mg	1 to 2 tablets as needed
Lortab	7.5 mg/325 mg	1 tablet every 6 hours
Carisoprodol	350 mg	2 tablets 4 times per day

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22 Respondent documented two prior hospitalizations for inadvertent overdose with
23 respiratory arrest, one of which also involved cardiopulmonary arrest. Respondent refilled the
24 patient's Actiq prescription, authorizing 210 lozenges with 4 refills.

25 34. On or about December 21, 2012, Respondent documented "Soma and Norco do give
26 some relief Having [sic] vivid dreams of being in pain and wakes up in pain. Soma and Lortab
27 are being used to relieve neck pain and give additional relief. Actiq is used to relieve
28

1 headache.... Vicodin together with Soma relieves neck pain whereas the Actiq relieves
2 migraine.” Respondent refilled the patient’s Actiq prescription, authorizing 210 lozenges with 4
3 refills; refilled the patient’s Soma prescription; and prescribed Vicodin ES 7.5 mg/750 mg, 1
4 tablet every 4 to 6 hours as needed, 120 tablets with two refills authorized.

5 35. On or about January 4, 2013, Respondent refilled the patient’s Actiq prescription,
6 authorizing 210 lozenges with 4 refills, and prescribed Reglan to treat the patient’s upset stomach.

7 36. On or about January 18, 2013, Respondent refilled the patient’s Actiq prescription,
8 authorizing 210 lozenges with 4 refills.

9 37. On or about January 29, 2013, Respondent documented “Was dispensed only 1 box
10 (30 suckers) rather than the usual 7 boxes.” Respondent refilled the patient’s Actiq prescription,
11 authorizing 210 lozenges with 4 refills.

12 38. On or about February 19, 2013, another practitioner at Respondent’s clinic
13 documented the patient’s current medications as follows:

Medication	Strength	Quantity
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Amitriptyline HCl	100 mg	3 tablets at bedtime
Almotriptan	12.5 mg	1 to 2 tablets as needed
Lortab	7.5 mg/325 mg	1 tablet every 6 hours
Carisoprodol	350 mg	2 tablets 4 times per day
Vicodin ES	7.5 mg/750 mg	1 tablet every 4 to 6 hours as needed
Reglan	5 mg	2 tablets before meals and at bedtime

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19 The patient was seen by another practitioner at Respondent’s clinic, and no refills or
20 medication changes were documented at this visit.

21 39. On or about March 4 and March 18, 2013, another practitioner at Respondent’s clinic
22 saw the patient, and documented “Patient requesting refill on the following medications Actiq
23 800 mg [sic] 2 Q 1 – 2 hours PRN #210” on both dates. No refills or medication changes were
24 documented at either visit.

25 40. On or about April 4, 2013, Respondent documented “Requesting to switch
26 medications from Vicodin ES to Lortab.” Respondent refilled the patient’s Actiq, Reglan, and
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1 Almotriptan prescriptions, and prescribed Norco 10mg/325mg 1 or 2 tablets every 6 hours as
2 needed, 240 tablets and 2 refills authorized.

3 41. On or about April 16, 2013, Respondent documented severe, persistent chest pain as a
4 result of a single cough. Another practitioner at Respondent's clinic documented the patient's
5 current medications as follows:

Medication	Strength	Quantity
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Amitriptyline HCl	100 mg	3 tablets at bedtime
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	1 or 2 tablets every 6 hours as needed
Reglan	5 mg	2 tablets before meals and at bedtime

11 Respondent ordered an appropriate workup of the patient's chest pain and made a diagnosis
12 of pneumonia. Respondent ordered antibiotics, but otherwise no refills or changes to the patient's
13 medications were made at this visit.

14 42. On or about April 23, 2013, another practitioner at Respondent's clinic documented
15 the patient's current medications as follows:

Medication	Strength	Quantity
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Amitriptyline HCl	100 mg	3 tablets at bedtime
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	1 or 2 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Levaquin	500mg	1 tablet daily for 10 days
Reglan	5 mg	2 tablets before meals and at bedtime

22 Respondent prescribed Ambien 10 mg, 1 tablet at bedtime, 15 tablets authorized with no
23 refills, and refilled the patient's Actiq prescription, authorizing 210 lozenges with 3 refills.

24 43. On or about May 3, 2013, another practitioner at Respondent's clinic documented the
25 patient's current medications as follows:

Medication	Strength	Quantity
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Amitriptyline HCl	100 mg	3 tablets at bedtime

Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	1 or 2 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Zolpidem tartrate	10 mg	1 tablet at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime

Respondent refilled the patient's Almotriptan and Actiq prescriptions, authorizing 210 lozenges with 4 refills.

44. On or about May 21, 2013, another practitioner at Respondent's clinic documented the patient's current medications as follows:

Medication	Strength	Quantity
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	1 or 2 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Zolpidem tartrate	10 mg	1 tablet at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime

Respondent continued to treat the patient's chest problems with antibiotics, and ordered appropriate workup. No other changes were made to the patient's medications and no refills were ordered at this visit.

45. On or about May 29, 2013, Respondent refilled the patient's amitriptyline and Actiq prescriptions, authorizing 210 lozenges with 3 refills. Another practitioner at Respondent's clinic documented the patient's current medications as follows:

Medication	Strength	Quantity
Actiq	800 mcg oral transmucosal	1 to 2 per hour
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	1 or 2 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Amitriptyline HCl	100 mg	3 tablets at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime

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1 46. On or about May 31, 2013, and June 6, 2013, Respondent continued to treat the
2 patient's acute medical issues, but no other changes were made to the patient's medications and
3 no refills were ordered at these visits.

4 47. On or about June 13, 2013, Respondent refilled the patient's Soma, Norco, and Actiq,
5 authorizing 210 lozenges with 3 refills.

6 48. On or about June 27, 2013, Respondent refilled the patient's Actiq prescription,
7 authorizing 210 lozenges with 3 refills.

8 49. On or about July 17, 2013, another practitioner at Respondent's clinic refilled the
9 patient's Actiq prescription, authorizing 210 lozenges with 3 refills, and documented "Losing
10 teeth secondary to Actiq."

11 50. On or about July 31, 2013, another practitioner at Respondent's clinic documented
12 the patient's current medications as follows:

Medication	Strength	Quantity
Actiq	800 mg oral transmucosal	1 to 2 per hour
Ferrous Sulphate	325 mg	1 tablet per day
Norco	10 mg/325 mg	1 or 2 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Amitriptyline HCl	100 mg	3 tablets at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime

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18 Respondent refilled the patient's Actiq prescription, authorizing 210 lozenges with 3 refills.

19 51. On or about August 14, 2013, Respondent refilled the patient's Norco, Soma, and
20 Actiq prescriptions, authorizing 210 lozenges with 3 refills.

21 52. On or about August 21, 2013, Respondent documented that the patient presented for
22 "Consult on Fentanyl medication." However, Respondent did not document any refills or
23 changes to the patient's medication at this visit.

24 53. On or about September 5, 2013, Respondent refilled the patient's Actiq prescription,
25 authorizing 210 lozenges with 2 refills. Respondent documented a referral to a pain management
26 specialist, in part for "Detox and inpatient pain management."

27 54. On or about September 16, 2013, another practitioner at Respondent's clinic refilled
28 the patient's Actiq prescription, authorizing 210 lozenges with 3 refills.

1 55. On or about September 26, 2013, Respondent refilled the patient's Actiq prescription,
2 authorizing 210 lozenges, but no refills. Regarding this prescription, Respondent noted "Fill this
3 first. Wait for Subsys approval." Respondent documented tooth decay "extending into pulp due
4 to chronic use of Actiq," and referred the patient to a maxillofacial surgeon "for dental care
5 including extraction and dental implants."

6 56. On or about October 3, 2013, Respondent refilled the patient's Actiq prescription,
7 authorizing 210 lozenges, but no refills. Respondent additionally prescribed Subsys 200 mcg, 1-2
8 sprays every hour as needed, with 210 doses authorized. Respondent noted "He will try to switch
9 over completely to Subsys over the weekend. Cautioned on the frequency of the dosing due to
10 the rapid absorption of the drug."

11 57. On or about October 7, 2013, Respondent documented that the patient was requesting
12 refills of Actiq, and that "He has obtained the Subsys. So far they have not been effective. He
13 used them several times and became dizzy the first time, but not subsequently. Subsys and Actiq
14 currently unavailable from the pharmacy he usually uses. Subsys effect is too short lived for it to
15 be useful. He has not had any pain medication since Saturday. [Two days prior.] No withdrawal
16 symptoms." Respondent prescribed Butorphanol Tartrate 10mg/1ml nasal spray, one spray in one
17 nostril, may repeat in 3 to 4 hours as needed, with 15 ml and 5 refills authorized. Respondent
18 noted "Stop using Subsys. Await arrival of Actiq."

19 58. On or about October 9, 2013, another practitioner at Respondent's clinic noted "no
20 refills today, cannot get his fentanyl lozenges due to manufacturer shortage, until next week may
21 be," and "takes Actiq 800 mcg lozenges x 40 per day = 32,000 mcg/day." Injections of morphine
22 sulphate, 15 mg, and Phenergan were documented.

23 59. On or about October 10, 2013, another practitioner at Respondent's clinic prescribed
24 MS Contin 60 mg tablets, extended release, 1 tablet every 12 hours, with 60 tablets and no refills
25 authorized. Additionally Morphine Sulphate 15 mg was prescribed, 1 tablet every 4 hours as
26 needed, with 60 tablets and no refills authorized.

27 60. On or about October 14, 2013, Respondent documented "Pain not controlled.
28 Morphine, Stadol and Demerol ineffective. He has not been able to work since the Actiq became

1 unavailable. Norco 10/325 iii q3h keeps his pain at an 8/10, along with Soma every 3 hours.”
 2 Respondent prescribed oxycodone HCl 30mg, 1-2 tablets every 4 hours as needed, with 60 tablets
 3 and no refills authorized. Additionally, Respondent prescribed Duragesic 25mcg/1 hour
 4 transdermal patch, 1 patch every 72 hours as needed, with 10 patches and no refills authorized.

5 61. On or about October 18, 2013, Respondent noted “Patient requesting refill on
 6 Duragesic patches and subsys 1-2 sprays every hour as needed. Not on med list. Patient will be
 7 going to pain specialist on monday.” Respondent further noted “He is using Duragesic 25mcg/hr
 8 2 every 48 hours with improved pain relief (not to the degree he had with Actiq.) Subsys was
 9 received by the pharmacy and is now available. He will be travelling ... for inpatient detox on
 10 Sunday.” Respondent refilled the patient’s Duragesic prescription, increasing the dosage to 50
 11 mcg per hour, with instructions to apply one patch every 48 hours, with five patches and no refills
 12 authorized.

13 62. On or about November 19, 2013, another practitioner at Respondent’s clinic
 14 documented the patient’s current medications as follows:

Medication	Strength	Quantity
Ferrous Sulphate	325 mg	1 tablet per day
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	1 or 2 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Amitriptyline HCl	100 mg	3 tablets at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime

20 Respondent refilled the patient’s Norco and Soma prescriptions.

21 63. On or about November 22, 2013, Respondent refilled the patient’s Norco and Soma
 22 prescriptions. In addition, Respondent prescribed Nucynta 75 mg extended release tablets, 1
 23 tablet every 12 hours, with 60 tablets authorized; Nucynta 50 mg tablets, 1 tablet every 4 to 6
 24 hours as needed, with 60 tablets authorized; and Butrans 20 mcg per hour transdermal patch, one
 25 per week, one patch authorized with no refills.

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1 64. On or about November 26, 2013, Respondent recommended increasing the Nucynta
2 extended release to one tablet every 8 hours, and noted "may increase to 2 every 12 hours after
3 three days."

4 65. On or about December 2, 2013, Respondent noted "He is currently taking 700 mg of
5 Nucynta a day and his pain is not controlled. Extensive chart review. Has not tried Dilaudid
6 tablets." Respondent prescribed Dilaudid 4 mg tablets, 1 to 2 tablets every 4 to 6 hours as
7 needed, 60 tablets and no refills authorized.

8 66. On or about December 5, 2013, Respondent noted "Dilaudid 8 mg every 4 hours
9 gives minimal relief." Respondent prescribed methadone HCl 10 mg tablets, two tablets every 6
10 hours, 100 tablets with no refills authorized.

11 67. On or about December 10, 2013, Respondent noted "Review Rx given last office visit
12 for methadone 10 mg 4 po q 6 hours" and "Will stop the Norco." Respondent refilled the
13 patient's Soma prescription, and prescribed methadone HCl 10 mg, 6 tablets every 6 hours, with
14 170 tablets and no refills authorized.

15 68. On or about December 16, 2013, Respondent noted "He was dispensed 170
16 methadone on Saturday. [Two days prior.] He has used 54 of the 170 dispensed. Increasing the
17 dose today to 8 tablets every 6 hours gives him a 3.6 day supply using the remaining 112 tablets.
18 I have prescribed him another 64 tablets of methadone to be taken 8 every 6 hours." Respondent
19 prescribed methadone HCl 10 mg tablets, 8 tablets every 6 hours, with 64 tablets and no refills
20 authorized.

21 69. On or about December 20, 2013, another practitioner at Respondent's clinic
22 documented the patient's current medications as follows:

Medication	Strength	Quantity
Ferrous Sulphate	325 mg	1 tablet per day
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	3 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Amitriptyline HCl	100 mg	3 tablets at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime
Actiq	800 mcg oral transmucosal	1 per hour as needed

1 Respondent noted "Pain continues at 8/10 severity. He needs it to be a 6/10 in severity in
2 order to function. He achieved this pain level on the Actiq." Respondent prescribed Actiq, 800
3 mcg oral transmucosal, one lozenge every hour as needed, with 210 lozenges and one refill
4 authorized.

5 70. On or about December 21, 2013, Respondent refilled the patient's Actiq prescription,
6 authorizing 210 lozenges and one refill.

7 71. On or about December 22, 2013, Respondent noted "Insurance requires prior
8 authorization for Actiq. he [sic] has no pain medication. He can at least partially function on
9 methadone. He has not had any pain medication since Friday. [Two days prior.]" Respondent
10 prescribed methadone HCl 10 mg, 8 tablets every 6 hours, 224 tablets and one refill authorized.

11 72. On or about January 4, 2014, another practitioner at Respondent's clinic documented
12 the patient's current medications as follows:

Medication	Strength	Quantity
Ferrous Sulphate	325 mg	1 tablet per day
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	3 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Amitriptyline HCl	100 mg	3 tablets at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime
Actiq	800 mcg oral transmucosal	1 per hour as needed
Methadone HCl	10 mg	8 tablets every 6 hours

19 Respondent noted "Actiq is the only medication that has given him any relief. He has tried
20 and failed morphine, Opana, Dilaudid, Duragesic, hydrocodone, oxycodone in its various forms.
21 He has been hospitalized for DHE 45 infusions both locally and at UCSF without benefit. He has
22 seen numerous pain management specialists over the years. The only therapies that have offered
23 any relief are ongoing intensive physical therapy and deep tissue massage. The Actiq makes the
24 pain manageable to a point where he can continue working and he has worked the entire time
25 since his injury. He has had numerous analgesic free periods. He does not get withdrawals. He
26 simply has an increase in his pain level to a 9-10/10. He currently takes methadone pending
27 approval of the Actiq. This keeps his pain level to a 8/10. He needs his pain to be 6/10 or lower
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1. for him to be able to work. Higher pain levels interfere with his memory and concentration to a
2. point where he can't work. At these pain levels the pain runs his life and he has no quality of life
3. at work or at home. ACTIQ WAS DENIED." Respondent refilled the patient's methadone and
4. amitriptyline prescriptions.

5. 73. On or about January 10, 2014, Respondent noted "He sees [pain management
6. specialist] on 1/9/14. [The pain management specialist] recommended proceeding with Botox
7. injections." No medication changes or refills were noted at this visit.

8. 74. On or about January 14, 2014, and January 28, 2014, Respondent refilled the patient's
9. methadone prescription.

10. 75. On or about February 5, 2014, Respondent noted "He currently takes methadone
11. pending approval of the Actiq." Respondent refilled the patient's methadone prescription, and
12. authorized 960 tablets, a 30 day supply at the prescribed rate of 8 tablets every 6 hours.

13. 76. On or about February 12, 2014, Respondent noted "The pharmacy refuses to fill his
14. methadone anymore." Respondent refilled the patient's methadone prescription, authorizing 336
15. tablets and 3 refills.

16. 77. On or about February 20, 2014, Respondent documented a follow-up visit, but no
17. medication changes or refills were documented.

18. 78. On or about February 27, 2014, another practitioner at Respondent's clinic
19. documented the patient's current medications as follows:

<u>Medication</u>	<u>Strength</u>	<u>Quantity</u>
Ferrous Sulphate	325 mg	1 tablet per day
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	3 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Amitriptyline HCl	100 mg	3 tablets at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime
Actiq	800 mcg oral transmucosal	1 per hour as needed
Methadone HCl	10 mg	8 tablets every 6 hours

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1 Respondent noted "Workers comp no longer covers visits, this is through the patients private
2 insureace [sic.]" Respondent further noted "Destroyed Rx for methadone written last visit."

3 Respondent refilled the patient's methadone, Soma, amitriptyline, and Axert prescriptions.

4 79. On or about March 25, 2014, another practitioner at Respondent's clinic documented
5 the patient's current medications as follows:

Medication	Strength	Quantity
Ferrous Sulphate	325 mg	1 tablet per day
Almotriptan	12.5 mg	1 tablet at the onset of headache, may repeat dose in 2 hours, but no more than 2 doses in 24 hours
Norco	10 mg/325 mg	3 tablets every 6 hours as needed
Carisoprodol	350 mg	2 tablets 4 times per day
Amitriptyline HCl	100 mg	3 tablets at bedtime
Reglan	5 mg	2 tablets before meals and at bedtime
Methadone HCl	10 mg	8 tablets every 6 hours

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12 Respondent refilled the patient's methadone and Norco prescriptions.

13 80. On or about April 21, 2014, Respondent refilled the patient's methadone, Soma, and
14 Norco prescriptions.

15 81. On or about April 24, 2014, Respondent documented "Can't swallow solids without
16 the aid of drink. Ba swallow and esophagram is normal." Respondent ordered followup testing
17 and radiology. No medication changes or refills were documented at this visit.

18 82. On or about May 5, 2014, Respondent documented "CT of the neck shows left
19 maxillary sinus polyp. Otherwise normal findings. Still having dysphagia." Respondent refilled
20 the patient's Almotriptan.

21 83. On or about May 23, 2014, Respondent documented "Headaches seem to be
22 improved based simply on the fact that he has been able to somewhat extend the time period
23 between methadone doses." Respondent refilled the patient's methadone prescription.

24 84. On or about June 20, 2014, Respondent documented "Will proceed with an
25 ECG/EKG to be performed/scheduled now. Shows long QT interval (previously QT/QTc
26 370/411, now 416/456.)" Respondent refilled the patient's methadone prescription.

27 85. On or about July 18, 2014, and August 28, 2014, Respondent refilled the patient's
28 methadone, Soma, and Norco prescriptions.

1 **Circumstances Related to Patient B**

2 86. At all times relevant to this First Amended Accusation, Respondent saw Patient B at
3 his family practice clinic in Atwater, California. Respondent saw Patient B regularly over a
4 period of several years, and treated her for a number of conditions including chronic pain related
5 to lupus, as well as chronic back pain. In an investigative interview, Respondent explained that
6 he took over care of Patient B from a colleague who passed away, and was unaware of what
7 conservative treatments had been tried before.

8 87. On or about June 8, 2016, another practitioner at Respondent's clinic documented the
9 patient's current medications, including the following:

Medication	Strength	Quantity
Oxycontin	40mg controlled release	1 tablet 3 times per day
Tylenol with Codeine #3	300mg/30mg	1 tablet every 6 hours as needed
Dalmane	30mg	1 capsule at bedtime
Soma	350mg	1 tablet 4 times per day
Prednisone	5mg	1-2 tablets each morning

14 88. Respondent saw Patient B on or about July 21, 2016. Under "CC", Respondent
15 documented "This is a follow-up visit. Established Patient She presents with cough. Patient is
16 requesting Rx refills of oxycodone , soma, dalmane and Tylenol #3 today (written)[.]"
17 Respondent ordered refills of oxycodone (90 tablets), Soma (120 tablets with 5 refills),
18 flurazepam (30 tablets with 5 refills), and Tylenol #3 (120 tablets with 2 refills.)

19 89. Respondent next saw Patient B again on or about October 18, 2016. Under "CC",
20 Respondent documented "This is a follow-up visit. Established Patient Medical problems to be
21 addressed today include Lupus. Nutritional and Body Mass Index Assessment Form[.]"
22 Respondent ordered refills of oxycodone (90 tablets), and Soma (120 tablets).

23 90. Respondent next saw Patient B again on or about December 17, 2016. Under "CC",
24 Respondent documented "Established Patient Medical problems to be addressed today include
25 Lupus. She returns today for follow-up lab work. She is here for Prolia injection. Pt requesting
26 medication refill on Soma, Oxycontin, Tylenol #3, fluiazepam [sic] (written) sumatriptan,

1 ketoconazole (sent).” Respondent ordered refills of oxycodone (90 tablets), Soma (120 tablets
2 with 5 refills), flurazepam (30 tablets with 5 refills), and Tylenol #3 (120 tablets with 2 refills).

3 91. Respondent next saw Patient B again on or about February 18, 2017. Under “CC”,
4 Respondent documented “Established Patient She presents with acute cough and headache.
5 Patient requesting a refill on soma, tylenol #3, oxycontin (written) and prednisone[.]”
6 Respondent ordered refills of oxycodone (90 tablets), Soma (120 tablets with 5 refills),
7 Prednisone (60 tablets), and Tylenol #3 (120 tablets with 2 refills).

8 92. Respondent next saw Patient B again on or about June 6, 2017. Under “CC”,
9 Respondent documented “This is a follow-up visit. Established Patient Medical problems to be
10 addressed today include anxiety. Patient has not had UDS since 2/2017, due today. Requesting
11 refills on Soma, Oxycontin, Tylenol w/Codeine #3, Flurazepam (written rx) Benadryl and
12 Prednisone (sent)[.]” Under “HPI,” Respondent documented “Follow up of Follow up of. [sic] It
13 began years ago. It is of severe intensity. This is the first episode. There are no obvious
14 aggravating factors. Nothing relieves the symptoms. Associated symptoms include hair loss and
15 right arm pain. Patient states pain in right arm and hair loss is getting worse since last office visit.
16 Pain level today is 06/10 per patient (6/6/17).” Respondent then documented the patient’s
17 anxiety, which he treated with flurazepam. Respondent ordered refills of oxycodone (90 tablets),
18 Soma (120 tablets with 5 refills), flurazepam (30 tablets with 5 refills), and Tylenol #3 (120
19 tablets with 2 refills.)

20 93. Respondent next saw Patient B again on or about August 17, 2017. Under “CC”,
21 Respondent documented “This is a follow-up visit. Established Patient She is here for the
22 following lab work: 6/10/17. tylenol; flurazepam, tylenol with codeine #3, oxycontin, soma
23 (written), sumatriptan and prednisone (sent)[.]” Under “HPI,” Respondent again documented
24 “Follow up of Follow up of. [sic] It began years ago. It is of severe intensity. This is the first
25 episode. There are no obvious aggravating factors. Nothing relieves the symptoms.”
26 Respondent then documented “Associated symptoms include headache, hair loss, and black spots
27 and pain on right leg. Patient states pain in right arm and hair loss is getting worse since last
28 office visit. Pain level today is 06/10 per patient (06/06/17). ESR 39[.]” Respondent ordered

1 refills of oxycodone (90 tablets), Soma (120 tablets with 5 refills), flurazepam (60 15mg tablets, 2
2 tablets at bedtime, with 5 refills), and Tylenol #3 (120 tablets with 2 refills).

3 94. Patient B was subsequently seen by other providers at Respondent's clinic, but not by
4 Respondent. Patient B was discharged from Respondent's clinic on or about June 1, 2018, based
5 on her apparent failure to comply with her pain contract and an inconsistent urine drug screen.

6 **Circumstances Related to Patient C**

7 95. At all times relevant to this First Amended Accusation, Respondent saw Patient C at
8 his family practice clinic in Atwater, California. Respondent saw Patient C regularly over a
9 period of several years, and treated him for a number of conditions including chronic pain related
10 to lupus. In an investigative interview, Respondent stated that the patient had previously been
11 treated with disease-modifying antirheumatic agents, and had been followed by a rheumatologist.

12 96. On or about June 11, 2016, another practitioner at Respondent's clinic documented
13 the patient's current medications, including the following:

Medication	Strength	Quantity
Ambien	10mg	1 tablet at bedtime as needed
Soma	350mg	1 tablet 3 times per day
Cannabis		Card issued
Methadone	10mg	2 tablets every 6 hours
Norco	10mg/325mg	½ to 2 tablets every 4 hours as needed
Testosterone Cypionate	200mg/1mL injection	1 mL per week

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18 97. Respondent saw Patient C on or about July 7, 2016. Respondent documented that the
19 visit was for follow-up regarding lupus. Respondent documented that the patient was taking 10
20 tablets of methadone per day. Respondent ordered refills of Norco (180 tablets), and methadone
21 (360 tablets).

22 98. Respondent next saw Patient C again on or about August 8, 2016. Respondent again
23 documented that the visit was for follow-up regarding lupus. Respondent again ordered refills of
24 Norco (180 tablets), and methadone (360 tablets).

25 99. Respondent next saw Patient C again on or about September 27, 2016. Respondent
26 again documented that the visit was for follow-up regarding lupus. Respondent ordered refills of
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1 Norco (180 tablets), methadone (360 tablets), Ambien (30 tablets with 5 refills), and Soma (90
2 tablets with 5 refills).

3 100. Respondent next saw Patient C again on or about November 30, 2016. Respondent
4 again documented that the visit was for follow-up regarding lupus, and documented that the
5 patient was requesting a consultation regarding a possible change from Norco to Percocet.
6 Respondent did not document a reason for this change. Respondent ordered a refill of methadone
7 (360 tablets), and prescribed Percocet (180 tablets, 1 to 2 tablets every 6 hours as needed).

8 101. Respondent next saw Patient C again on or about February 14, 2017. Respondent
9 again documented that the visit was for follow-up regarding lupus. Respondent ordered refills of
10 Ambien (30 tablets with 5 refills), methadone (360 tablets), Percocet (180 tablets), and Soma (90
11 tablets with 5 refills). The patient provided a urine drug screen on this date, which tested negative
12 for carisoprodol, oxycodone, and zolpidem, despite his receiving Soma, Percocet, and Ambien.
13 Respondent did not document any review of these results or any action he took as a result of
14 them.

15 102. Respondent next saw Patient C again on or about April 27, 2017. Respondent
16 documented that the visit was for follow-up, but did not document a chief complaint. Respondent
17 documented that the patient presented with generalized anxiety, but "does not currently carry an
18 official diagnosis of anxiety disorder." Respondent ordered refills of methadone (360 tablets),
19 and Percocet (180 tablets), and prescribed Xanax (0.25mg, 1 tablet 3 times per day, 30 tablets).

20 103. Respondent next saw Patient C again on or about July 15, 2017. Respondent
21 documented that the visit was for follow-up, but did not document a chief complaint. Respondent
22 again documented that the patient presented with generalized anxiety, but "does not currently
23 carry an official diagnosis of anxiety disorder." Respondent ordered refills of Ambien (30 tablets
24 with 5 refills), methadone (360 tablets), Percocet (180 tablets), Soma (90 tablets with 5 refills),
25 and Xanax (90 tablets with 5 refills).

26 104. Respondent next saw Patient C again on or about October 24, 2017. Respondent
27 documented that the visit was for follow-up, but did not document a chief complaint. Respondent
28 documented that the patient was "to be evaluated for anxiety, generalized. He has suggestive

1 symptoms but does not currently carry an official diagnosis of anxiety disorder.” Respondent
2 ordered refills of Ambien (30 tablets with 5 refills), methadone (360 tablets), Percocet (180
3 tablets), Soma (90 tablets with 5 refills), and Xanax (90 tablets with 5 refills).

4 105. Respondent next saw Patient C again on or about February 26, 2018. Respondent
5 documented that the patient was to be seen for lupus and testosterone injection. Respondent
6 again documented that the patient “has suggestive symptoms but does not currently carry an
7 official diagnosis of anxiety disorder.” Respondent ordered refills of methadone (360 tablets),
8 Percocet (180 tablets), and Xanax (90 tablets with 5 refills).

9 106. Respondent next saw Patient C again on or about March 14, 2018. Respondent again
10 documented that the patient was to be seen for lupus and testosterone injection. Respondent
11 administered a testosterone injection but did not refill any medication prescriptions.

12 107. Respondent next saw Patient C again on or about May 8, 2018. Respondent
13 documented that the patient was to be seen for lupus. Respondent did not document anxiety and
14 did not refill the patient’s Xanax. Respondent ordered refills of Ambien (30 tablets with 5
15 refills), methadone (360 tablets), Percocet (180 tablets), and Soma (90 tablets with 5 refills).

16 108. Respondent next saw Patient C again on or about June 26, 2018. Respondent
17 documented that the patient was to be seen for lupus. Respondent did not refill any medication
18 prescriptions at this visit.

19 109. Respondent next saw Patient C again on or about July 17, 2018. Respondent
20 documented that the patient was to be seen for lupus and had transitioned care from a specialist.
21 Respondent ordered a testosterone injection but did not refill any medication prescriptions at this
22 visit.

23 110. Respondent next saw Patient C again on or about August 16, 2018. Respondent
24 documented that the patient was to be seen for lupus. Respondent did not refill any medication
25 prescriptions at this visit.

26 111. Respondent next saw Patient C again on or about September 18, 2018. Respondent
27 documented that the “problems to be addressed today include hypertension,” but did not mention
28 lupus or anxiety. Respondent noted that the patient was requesting refills on Ambien, Xanax,

1 methadone, Percocet, and Soma. Respondent ordered refills of Ambien (30 tablets with 5 refills),
2 methadone (360 tablets), Percocet (180 tablets), Soma (90 tablets with 5 refills), and Xanax (90
3 tablets with 5 refills).

4 112. Respondent next saw Patient C again on or about October 17, 2018. Respondent
5 again documented that the problems to be addressed "include hypertension" but did not mention
6 lupus or anxiety. Respondent discussed the patient's history of lupus, and noted "today he
7 returned 4 unfilled prescriptions for methadone.... He takes oxycodone 90mg a day for
8 breakthrough pain (90mg morphine equivalent). Total daily morphine equivalent 765mg. He has
9 been tapering down from 1575mg morphine equivalent." Respondent ordered refills of
10 methadone (180 tablets, 10mg 2 tablets twice per day), and Percocet (180 tablets.) The patient
11 submitted a urine drug screen on this date which tested negative for zolpidem, despite the patient
12 receiving Ambien. Respondent did not document a review of these results or any action he took
13 as a result of them.

14 113. Respondent next saw Patient C again on or about November 15, 2018. Respondent
15 again documented that the problems to be addressed "include hypertension" but did not mention
16 lupus or anxiety. Respondent again documented that "today he returned 4 unfilled prescriptions
17 for methadone," and listed the same four prescription numbers as he had at the prior visit.
18 Respondent noted that "Percocet makes him irritable. Will try Norco." Respondent documented
19 a prescription for ten tablets of Norco, 10mg/325mg, one tablet every four hours as needed.

20 114. Respondent next saw Patient C again on or about November 17, 2018. Respondent
21 documented that the patient found Norco to be effective without the side effects of Percocet, and
22 that the patient turned in his prior script for Percocet. Respondent refilled the patient's Norco
23 prescription (170 tablets).

24 115. Respondent next saw Patient C again on or about November 29, 2018. Respondent
25 documented that the problems to be addressed included hypertension and lupus, and that the
26 patient was presenting for a testosterone injection. Respondent refilled the patient's Norco (180
27 tablets) and methadone (180 tablets).

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1 116. Respondent next saw Patient C again on or about December 31, 2018. Respondent
2 documented that the problems to be addressed included hypertension and lupus. Respondent
3 documented that the patient had increased his physical activity, and thus had increased his
4 methadone intake to 975 morphine equivalent per day. Respondent refilled the patient's
5 methadone, prescribing 240 tablets, 8 tablets per day.

6 117. Respondent next saw Patient C again on or about January 29, 2019. Respondent
7 documented that the problems to be addressed included lupus, but did not mention anxiety
8 anywhere in the note. Respondent documented that the patient had tapered to 7 methadone
9 tablets per day, and 6 tablets of Norco per day. Respondent ordered refills of Ambien (30 tablets
10 with 5 refills), methadone (210 tablets), Norco (180 tablets), Soma (90 tablets with 5 refills), and
11 Xanax (90 tablets with 5 refills).

12 118. Respondent next saw Patient C again on or about February 28, 2019. Respondent
13 documented that the problems to be addressed included lupus. Respondent ordered refills of
14 Norco (180 tablets) and methadone (210 tablets.) The patient submitted a urine drug screen on
15 this date which tested positive for phentermine, despite the patient not being prescribed this
16 medication. The patient also tested negative for hydrocodone, despite being prescribed Norco.
17 Respondent did not document a review of these results or any action he took as a result of them.

18 119. Respondent next saw Patient C again on or about March 26, 2019. Respondent
19 documented that the problems to be addressed included lupus. Respondent ordered refills of
20 Norco (180 tablets) and methadone (210 tablets.) The patient submitted a urine drug screen on
21 this date which tested negative for zolpidem, despite the patient receiving Ambien. Respondent
22 did not document a review of these results or any action he took as a result of them.

23 120. Respondent next saw Patient C again on or about May 16, 2019. Respondent
24 documented that the problems to be addressed included lupus. Respondent ordered refills of
25 Norco (180 tablets) and methadone (210 tablets).

26 121. Respondent next saw Patient C again on or about June 18, 2019. Respondent
27 documented that the problems to be addressed included lupus, and that the patient was presenting
28 for a testosterone injection, but did not mention anxiety anywhere in the note. Respondent

1 ordered refills of Norco (180 tablets), methadone (210 tablets), Soma (90 tablets with 3 refills),
2 and Xanax (90 tablets with 3 refills).

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 122. Respondent is subject to disciplinary action under section 2234, subdivision (b), in
6 that he engaged in act(s) or omission(s) amounting to gross negligence. The circumstances are
7 set forth in paragraphs 27 through 121, above, which are incorporated by reference as if fully set
8 forth. Additional circumstances are as follows:

9 123. It is the standard of care to avoid excessive sedation when prescribing opioids. Safe
10 use requires using the lowest dose possible and avoiding concomitant benzodiazepines, muscle
11 relaxers, sleeping pills, and other sedating medications. In his treatment of Patient A, Respondent
12 prescribed extremely high doses of opioids concomitantly with the muscle relaxant Soma, and the
13 sleeping pill Ambien, as well as amitriptyline. In his treatment of Patient B, Respondent
14 prescribed opioids concurrently with flurazepam and Soma. In his treatment of Patient C,
15 Respondent prescribed large quantities of opioids concurrently with Soma, zolpidem, and
16 alprazolam. Respondent's prescribing of large doses of multiple concomitant sedating
17 medications constitutes gross negligence.

18 124. Respondent made dramatic changes in the quantity and potency of the opioid
19 medications he prescribed to Patient A. Respondent failed to adequately document the reasons
20 for these changes and the patient's response to the changes. Respondent's failure to evaluate the
21 patient's response to the various opioid medications and to justify switches in therapy constitutes
22 gross negligence.

23 125. Respondent copied information from note to note in Patient C's chart that did not
24 accurately reflect the patient's current condition. Respondent repeatedly stated that the patient
25 did not have an "official diagnosis" of anxiety, but failed to explain why not. Respondent's
26 failure to accurately document the care he provided to Patient C constitutes gross negligence.

27 126. Respondent failed to note or take any action as a result of inconsistent toxicology
28 screens in Patient C's chart, including both positive results for medications the patient was not

1 prescribed, and negative results for medications that were prescribed. Toxicology screens are
2 intended to determine whether a patient is compliant with a treatment plan. The standard of care
3 requires that all testing be addressed and that warnings and adjustments to treatment to occur
4 when inconsistencies are found. Respondent's failure to note or take action based on Patient C's
5 inconsistent toxicology screens constitutes gross negligence.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Repeated Negligent Acts)**

8 127. Respondent Joerg Schuller, M.D. is subject to disciplinary action under section 2234,
9 subdivision (c), in that he engaged in repeated acts of negligence. The circumstances are set forth
10 in paragraphs 27 through 126, above, which are incorporated by reference as if fully set forth.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Recordkeeping)**

13 128. Respondent Joerg Schuller, M.D. is subject to disciplinary action under section 2266
14 in that he failed to maintain adequate and accurate records related to his care and treatment of
15 Patients A, B, and C. The circumstances are set forth in paragraphs 27 through 126, above, which
16 are incorporated by reference as if fully set forth.

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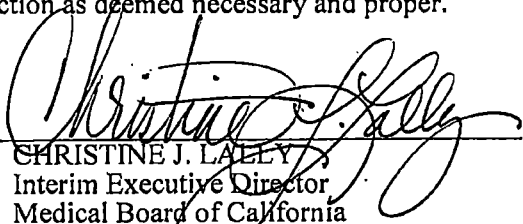
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PRAYER

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 A 60661, issued to Joerg Schuller, M.D.;
2. Revoking, suspending or denying approval of Joerg Schuller, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Joerg Schuller, 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 20 2020


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

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