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

In the Matter of the First Amended Accusation Against: Allen George Gruber, M.D. Physician's & Surgeon's Certificate No. G 55246 Respondent.	Case No. 800-2016-022609

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 October 1, 2021.

IT IS SO ORDERED: September 1, 2021.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **ALLEN GEORGE GRUBER, M.D.** **4720 Hoen Avenue** **Santa Rosa, CA 95405** **Physician's and Surgeon's Certificate No.** **G 55246** Respondent.	Case No. 800-2016-022609 OAH No. 2021020930 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Carolyne Evans and Ana Gonzalez, Deputy Attorneys General.

2. Respondent Allen George Gruber, M.D. (Respondent) is represented in this proceeding by attorney Marvin H. Firestone, whose address is: 1700 South El Camino Real, Suite 408, San Mateo, CA, 94402. On or about July 8, 1985, the Board issued Physician's and Surgeon's Certificate No. G 55246 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2016-022609, and will expire on October 31, 2022, unless renewed.

JURISDICTION

3. First Amended Accusation No. 800-2016-022609 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on March 16, 2018. Respondent timely filed his Notice of Defense contesting the First Amended Accusation.

4. A copy of First Amended Accusation No. 800-2016-022609 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2016-022609. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision;

and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in First Amended Accusation No. 800-2016-022609, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a factual basis with respect to the charges and allegations in First Amended Accusation No. 800-2016-022609, a true and correct copy of which is attached hereto as Exhibit A.

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

11. ACKNOWLEDGMENT. Respondent acknowledges the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.1, serves to protect the public interest.

CONTINGENCY

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

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in First Amended Accusation No. 800-2016-022609 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final, and exclusive embodiment of the agreements of the parties in the above-entitled matter.

15. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 55246 issued to Respondent Allen George Gruber, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 25 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 40 hours of CME of which 25 hours were in satisfaction of this condition.

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

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

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

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

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

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

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

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

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

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

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

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

Within 60 calendar days of the effective date of this Decision, and continuing throughout

probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

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

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

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the

Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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

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

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

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

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine. Respondent's period of non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply to the reduction of the probationary term. Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

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

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

15. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy

the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in First Amended Accusation No. 800-2016-022609 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

18. PATIENT DISCLOSURE. Before a patient's first visit following the effective date of this order and while the respondent is on probation, the respondent must provide all patients, or patient's guardian or health care surrogate, with a separate disclosure that includes the respondent's probation status, the length of the probation, the probation end date, all practice restrictions placed on the respondent by the board, the board's telephone number, and an explanation of how the patient can find further information on the respondent's probation on the respondent's profile page on the board's website. Respondent shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure. Respondent shall not be required to provide a disclosure if any of the following applies: (1) The patient is

unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy. (2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities; (3) Respondent is not known to the patient until immediately prior to the start of the visit; (4) Respondent does not have a direct treatment relationship with the patient.

19. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

ACCEPTANCE

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

DATED: 6-29-21

ALLEN GEORGE GRUBER, M.D.
Respondent

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

DATED: 6/30/21

MARVIN H. FIRESTONE
Attorney for Respondent

ENDORSEMENT

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

DATED: June 30, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

Carolyne Evans

CAROLYNE EVANS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation No. 800-2016-022609

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

In the Matter of the First Amended Accusation Against: **Allen George Gruber, M.D.** **4720 Hoen Avenue** **Santa Rosa, CA 95405** **Physician's and Surgeon's Certificate No. G55246,** Respondent.	Case No. 800-2016-022609 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On July 8, 1985, the Medical Board issued Physician's and Surgeon's Certificate Number G55246 to Allen George Gruber, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2018, unless renewed.

JURISDICTION

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

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

5. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

". . . ."

FACTS

6. At all times relevant to this matter, Respondent was licensed and practicing medicine in California.

PATIENT P-1[1]

7. Patient P-1, then a 51 year old woman, was referred to Respondent by her primary care physician (PCP) for chronic pain management. Her PCP had stopped prescribing opioid analgesic medications for P-1 after a toxicology screen returned a positive finding for

[1] The patients are designated in this document as Patients P-1 through P-4 to protect their privacy. Respondent knows the names of the patients and can confirm Patient P-1's identity through discovery. The Board does not know the names of Patients P-2 through P-4.

methamphetamine. P-1 had at least 21 visits with Respondent between February 3, 2015 and March 10, 2016, including one in the hospital.

8. P-1 first saw Respondent on February 3, 2015. Respondent undertook a full evaluation of her pain complaints and had a urine toxicology screen done which was positive for methamphetamine and marijuana. He noted that P-1 told him that this was her second ever use of methamphetamine, that it had relieved her pain for a few hours the first time, and that it hadn't provided any pain relief this time so she had no incentive to ever use it again. He documented that he discussed his medication use contract with P-1 and that she signed it. There is another signed copy of a medication use contract in P-1's medical records dated May 18, 2015. The medication use contract requires P-1 to take her medications exactly as prescribed, to be accountable for her medications, to be seen in person by the doctor in the office at least once a month, and to keep her medical appointments.

9. On February 5, 2015, Respondent performed a lumbar epidural injection on P-1 at an ambulatory surgery center. He attempted the injection at level L3-4 and punctured the dura. Instead of terminating the procedure and performing an epidural blood patch to seal the hole, he continued the procedure one level lower. Four days later, on February 9, 2015, P-1 presented to the Emergency Department of the hospital with a severe post-dural puncture headache and was admitted to the hospital where she remained until February 12th.

10. On February 20, 2015, Respondent performed an occipital nerve block and ten trigger point injections[2] (TPI) using bupivacaine, a local anesthetic, on P-1. He prescribed twelve tablets of 2 mg Dilaudid[3] for her.

11. Respondent performed six TPIs on P-1 on March 17, six on March 24, eight on April 1, three on April 28, and eight on November 9, 2015. There is no documentation of sustained benefit from these treatments.

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[2] Myofascial trigger points, also known as trigger points, are described as hyperirritable spots in the fascia surrounding skeletal muscle. The goal of a trigger point injection is to make the trigger point inactive and alleviate the pain.

[3] Dilaudid (a trade name for hydromorphone) is an opioid analgesic used to treat moderate to severe pain. It is a Schedule II controlled substance and narcotic and a dangerous drug as defined in section 4022. Dilaudid has a central nervous system depressant effect. It can produce drug dependence and, therefore, has the potential for being abused.

12. Respondent increased the amount of opioid medication he was prescribing for P-1 over the time he saw her. On March 24, 2016, Respondent prescribed 30 tablets of 4 mg Dilaudid for P-1. On April 8, 2015, P-1 advised Respondent that she had forgotten her medications in Texas and had not been taking the Dilaudid for a day and a half. She said she did not like the mental symptoms from Dilaudid and he prescribed 90 tablets of Norco 10/325[4] for her.

13. On April 28, 2015, Respondent's notes contained an entry identical to one in his February 3, 2015 notes documenting a urine toxicology screen positive for methamphetamine and marijuana and P-1's explanation that it was her second ever use of methamphetamine, that it had relieved her pain for a few hours the first time, and that it hadn't provided any pain relief this time so she had no incentive to ever use it again. It appears, and Respondent contends, that this was an artifact of the electronic recordkeeping system rather than a reference to another positive toxicology screen. Respondent performed three TPIs on P-1 on this visit and prescribed 30 tablets of 4 mg Dilaudid and 120 tablets of Norco 10/325 for her. There was no discussion of P-1's earlier aversion to Dilaudid. There was confusion at the pharmacy and P-1 was unable to fill her prescriptions. The following day, she returned to see Respondent on an urgent basis with severe pain measuring 9+ on a scale of 1 to 10 from the TPIs Respondent performed on her the day before. Respondent treated her with an injection of intramuscular Toradol[5] 60 mg, magnesium sulfate[6] 3000 mg, Vistaril[7] 50 mg, Demerol[8] 100 mg, and Versed[9] 5 mg.

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[4] Norco, a trade name for hydrocodone bitartrate with acetaminophen or hydrocodone/APAP, is an opioid analgesic. It is a Schedule II controlled substance and narcotic and is a dangerous drug as defined in section 4022. Hydrocodone can produce drug dependence and, therefore, has the potential for being abused. It has a CNS depressant effect. The strength of a tablet is indicated by mg of hydrocodone/mg of acetaminophen, in this case 10 mg of hydrocodone and 325 mg of acetaminophen.

[5] Toradol, a trade name for ketorolac, is a nonsteroidal anti-inflammatory drug (NSAID) used on a short term basis to treat moderate to severe pain. It is a dangerous drug as defined in section 4022.

[6] Injectable magnesium sulfate is used for seizures (convulsions) in pre-eclampsia and eclampsia in pregnancy and for magnesium replacement therapy or deficiency.

[7] Vistaril, a trade name for hydroxyzine pamoate, is an antihistamine with anticholinergic and sedative properties used as a sedative to treat anxiety and tension. It is a dangerous drug as defined in section 4022.

[8] Demerol, a trade name for meperidine, is an opioid pain medication used to treat moderate to severe pain. It is a Schedule II controlled substance and narcotic and a dangerous drug as defined in section 4022. Demerol has a central nervous system depressant effect.

[9] Versed, a trade name for midazolam, is a benzodiazepine. It is a psychotropic drug used

14. P-1's next visit was on May 15, 2015. Respondent noted that P-1 told him again that she did not like the way Dilaudid made her feel and that he was beginning a taper. He prescribed 20 tablets of 4 mg Dilaudid and 120 tablets of Norco 10/325. On June 16, 2015, Respondent again prescribed 30 tablets of 4 mg Dilaudid for severe pain attacks as well as 120 tablets of Norco 10/325.

15. P-1 failed to make appointments in July and August and returned to see Respondent on September 2, 2015. She told Respondent that she had "stretched" her medications and had run out just 5 to 6 days before. She was suffering moderate symptoms of withdrawal and described being in very, very severe pain. She returned a nearly full container of Dilaudid and asked to remain off of it because of the unpleasant side effects. Respondent prescribed 120 tablets of Norco 10/325.

16. On September 25, 2015 Respondent refilled P-1's Norco prescription early because she said she would be travelling. He prescribed 240 tablets of Norco 10/325. When she returned just short of a month later on October 21, 2015, he once again prescribed 240 tablets of Norco 10/325.

17. After obtaining a prescription from Respondent for another 240 tablets of Norco 10/325 on November 20, 2015, P-1 did not return for another visit until January 22, 2016. At that time, she said she had found a lost bottle of Norco and had run out only a week before. Respondent refilled P-1's prescription for 240 tablets of Norco 10/325.

18. P-1 failed to show up for her February visit. Her next visit was March 10, 2016 at which time she presented in severe pain, particularly in the left knee. She said that she had run out of her last prescription for Norco 3 to 4 days before and Respondent described her as in acute mild withdrawal. Respondent twice attempted a steroid injection in P-1's left knee but was unable to complete it because of patient movement. He advised her to seek orthopedic care as soon as possible and refilled her prescription for 240 tablets of Norco 10/325. This was P-1's last visit with Respondent.

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to sedate a person who is having a minor surgery, dental work, or other medical procedure. It is a dangerous drug as defined in section 4022, and a schedule IV controlled substance.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

19. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivisions (a) (violating the Medical Practice Act) and (c) (repeated negligent acts), of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent continued to prescribe the same or increasing amounts of controlled substances to P-1 despite her misuse of the medications and violation of the medication use contract such as starting and stopping Dilaudid several times, obtaining medications early, missing appointments, and permitting herself to go into withdrawal.

B. Respondent failed to terminate the lumbar epidural injection he performed on P-1 on February 5, 2015 after puncturing the dura and did not consider doing a blood patch epidural to close the puncture hole.

C. Respondent injected P-1 with a combination of Toradol, magnesium sulfate, Vistaril, Demerol, and Versed on April 29, 2015 to treat severe pain which P-1 attributed to trigger point injections Respondent had performed on her the day before.

PATIENT P-2

20. Respondent's records reflect that he performed a total of twenty-two epidural steroid injections on Patient P-2 between January 9, 2012 and January 15, 2015, eleven cervical and eleven lumbar, without adequately documenting sustained benefit such as her ability to work and perform specific activities of daily living. Each type of injection was provided approximately every three months without documentation of a clear rationale for such frequent treatments.

21. Respondent's first record of an epidural injection for P-2 is for a cervical epidural steroid injection (CESI) on January 26, 2012 when P-2 was 42 years old. There is no evidence in the records that P-2 had the type of pain—pain into her upper extremities—that would indicate this procedure. About a week and a half after the injection, P-2 telephoned Respondent's office with concerns about side effects of the procedure including numbness in her lower back to her heels associated with moving her head forward.

22. On February 9, 2012, two weeks after P-2's telephone call, Respondent performed a lumbar epidural steroid injection (LESI) on P-2. Approximately a week after that, P-2 telephoned Respondent's office with concerns about side effects of the procedure including weakness, tingling, and aching in her legs and at times, complete numbness in both legs lasting several minutes.

23. Several epidural procedures later, on April 26, 2012, Respondent performed a LESI during which he did a second injection in an attempt to get dye flow to the right side of the epidural space. Later the same day, P-2 telephoned Respondent's office to advise Respondent that she was throwing up, her left leg was numb, and she had a bad headache. Respondent treated her for a dural puncture headache, advising her to lie flat in bed and push fluids for 1-3 days.

24. On January 15, 2015, Respondent performed the last of the cervical epidural steroid injections on Patient P-2 documented in his records. During this procedure, Respondent improperly penetrated the dural space, withdrew the needle, repositioned it at a higher level—C5-C6—and, despite a dye pattern reflecting that the dye had advanced into the subarachnoid space, injected a large volume of anesthetic solution—15 cc—causing P-2 to develop anesthesia from her neck to her mid thoracic region with weakness in both her extremities.

25. Respondent also over-medicated P-2 with fentanyl and Versed prior to the January 15, 2015 CESI procedure to such an extent that her oxygen saturation decreased to 85%, she was apneic, and she required assisted ventilation. While Respondent treated P-2 with Narcan[10] for possible over-sedation from the exceptionally high dose of fentanyl, he failed to give her flumazenil, a specific antagonist for benzodiazepines, to reverse the high dose of Versed.

26. In addition to epidural steroid injections, Respondent performed occipital nerve blocks, lumbar facet injections, and trigger point injections (TPIs) on P-2 without documenting having obtained informed consent and without documenting clinically significant benefits.

27. Between March 8, 2012 and September 24, 2014, Respondent performed twenty separate sets of TPIs, each with multiple muscles injected, using high amounts of local anesthetic.

[10] Narcan, a trade name for naloxone hydrochloride, is an opioid antagonist used to block or reverse the effects of opioids.

On a number of occasions, he performed them as frequently as every two weeks (i.e., 4/2/2012, 4/16/2012, 6/6/2012, 6/20/2012, 7/11/2012, 7/25/2012, 6/27/2014, and 7/13/2014).

28. Respondent performed occipital nerve blocks on P-2 on three occasions, two of them at the same time as TPIs making it impossible to determine which might be the source of any potential benefit.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts)

29. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivisions (a) (violating the Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts), of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent performed multiple cervical epidural steroid injections on Patient P-2 without clear indication for the procedure.

B. Respondent injected 15 cc of anesthetic solution into P-2's cervical spine during a cervical epidural steroid injection on January 15, 2015 when the standard is only up to 4 or 5 cc of solution.

C. On January 15, 2015, after penetrating the dura when attempting a cervical epidural steroid injection on P-2, Respondent placed a needle at a higher level and injected the anesthetic solution despite the puncture.

D. After puncturing the dura at the C6-C7 level when attempting the cervical epidural steroid injection on P-2 on January 15, 2015, he completed the injection at the C5-C6 level which is above the level where it is safe to do such injections.

E. Respondent over-medicated P-2 with fentanyl and Versed prior to the January 15, 2015 cervical epidural steroid injection to such an extent that her oxygen saturation decreased to 85%, she was apneic, and she required assisted ventilation

F. Respondent failed to give P-2 flumazenil to reverse the high dose of Versed he administered prior to the January 15, 2015 cervical epidural steroid injection.

G. Respondent performed a total of twenty-two epidural injections on P-2 over a three-year time frame with a high complication rate (two and possibly four instances of the dura being pierced) and inadequate documented clinical benefit.

H. Respondent performed an excessive number of injections including lumbar epidural injections, cervical epidural injections, trigger point injections, and occipital nerve blocks over a thirty-one month period.

I. Respondent treated P-2 with multiple excessive trigger point injections with high doses of bupivacaine without informed consent.

J. Respondent treated P-2 with occipital nerve blocks on three occasions without informed consent.

PATIENT P-3

30. Respondent saw Patient P-3, then a 51-year old man, for a pain management consultation on March 27, 2012 after a ten-plus year hiatus, having treated him previously in the 1990s, and continued treating him through October 6, 2016.

31. P-3 was in a work-related motor vehicle accident (MVA) on February 14, 2012 and was seen by Respondent through the Worker's Compensation system. The MVA caused a flare of previous symptoms. Respondent diagnosed P-3 with total body complex regional pain syndrome (CRPS).

32. Between April 5, 2012 and April 9, 2015, Respondent performed at least eighteen sets of right and left stellate sympathetic ganglion blocks, a risky procedure, on P-3 without waiting a reasonable period of time between the left and right injections to assess for possible complications and without adequately documenting sustained benefit such as the ability to work and perform specific activities of daily living.

33. Respondent performed an exceptionally high number of injections of various types on P-3 between April 5, 2012 and October 6, 2016 including stellate ganglion blocks, lumbar sympathetic blocks, lumbar and caudal epidural injections, occipital nerve blocks, facet injections, a cervical epidural steroid injection, bilateral knee injections, hip injections, ligament

injections, and, most prominently, repeated trigger point injections and intramuscular injections (IMs) of various combinations of medications.

34. Other than for the procedures performed in the surgery center—the stellate sympathetic ganglion blocks, lumbar sympathetic ganglion blocks, cervical epidural steroid injection, caudal epidural injections, and lumbar epidural steroid injections—Respondent did not document having obtained informed consent from P-3 for the multiple injections he performed on him. Respondent did not document that P-3 had received sustained clinically significant benefits from the multiple varied injections.

35. Respondent regularly performed TPIs on P-3 every two weeks or so and frequently more often than that, sometimes only days apart. He routinely injected between 8 and 28 muscles at a session, often with high dose anesthetic which can result in serious side effects and complications. On April 1, 2014, for example, he performed occipital nerve blocks bilaterally and ten trigger point injections using a total of 35 ml of 0.25% anesthetic, an extremely high dose. He performed TPIs on P-3 on 63 separate occasions between January 8, 2013 and August 25, 2016. Between April 26, 2016 and August 25, 2016, a four-month period, he performed 19 sets of TPIs on P-3.

36. Respondent performed IMs on P-3 on most office visits without documenting a rationale. According to Respondent's records, P-3 was taking up to 22 current oral medications including the psychoactive drugs Ativan (a benzodiazepine), promethazine (an antihistamine often used as a sedative), Klonopin (a benzodiazepine), Lyrica (a nerve pain medication), Seroquel (an antipsychotic), tramadol (an opioid and Schedule IV controlled substance), and Benadryl (an antihistamine). The IMs included a variety of drugs including Versed (a benzodiazepine), Vistaril (an antihistamine and sedative), Toradol (a non-steroidal anti-inflammatory), magnesium sulfate, Norflex (for muscle spasm and pain), Dilaudid (an opioid and Schedule II controlled substance), and droperidol (an antipsychotic). The addition of these IM medications to P-3's multiple oral psychoactive drugs could result in over-sedation or respiratory arrest. On August 25, 2016, for example, P-3 received IM Versed 2 mg, magnesium sulfate 3000 mg, Dilaudid 4 mg, and droperidol 1.25 mg in addition to TPIs including 29 ml of 0.25%

anesthetic. Respondent has provided no justification for using any of these drugs including magnesium sulfate, a drug used to treat low levels of magnesium and to prevent seizures in pregnant women with certain conditions, and droperidol, an antipsychotic used to prevent surgical nausea and has a black box warning that it poses a risk of serious heart arrhythmias and death. In addition, Respondent was treating P-3 for chronic pain and the effects of these injections lasts at most two to three hours.

37. On July 12, 2012, Respondent performed a lumbar epidural steroid injection on P-3. During this procedure, Respondent improperly penetrated the dural space at L4-L5, withdrew the needle and reinserted it at the same level but approximately 1 cm more caudal. The myelogram showed that dye was flowing through some passage into the cerebral spinal fluid so Respondent removed the needle again and replaced it at the next lower level, L5-S1, and, despite the documented penetration of the dural space, injected 10 cc of 0.125% anesthetic and a steroid.

38. On July 18, 2013, Respondent performed bilateral stellate ganglion blocks on P-3. P-3 received 4 mg Versed in the pre-op area and an additional 4 mg of Versed and 200 mg of fentanyl immediately prior to the procedure. P-3 became over sedated, his respiratory rate dropped to four to five per minute, and his oxygen saturation was in the 40th percentile requiring resuscitation with a mask and assisted ventilation. After P-3 was administered Narcan, Respondent completed the procedure. Flumazenil was not used to reverse the action of the Versed. Respondent regularly used excessive amounts of Versed and fentanyl when performing stellate ganglion blocks and lumbar sympathetic ganglion blocks on P-3.

39. Respondent performed a cervical epidural steroid injection on P-3 on October 2, 2014. He did not indicate a rationale for the treatment. P-3 received pre-op sedation of 4 mg Versed and 4 mg Zofran[11] and the procedure was performed with P-3 sedated with propofol.[12] Respondent injected 17 ccs of anesthetic and corticosteroid solution, an exceptionally high dose of medication. After P-3 came to the recovery room, he received an IM injection of Demerol and

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[11] Zofran, a trade name for ondansetron hydrochloride, is used to prevent nausea and vomiting.

[12] Propofol is an intravenous anesthetic used for induction and maintenance of general anesthesia and for procedural anesthesia.

Phenergan. After receiving the Demerol, he became unresponsive to verbal stimuli and remained so for more than two and a half hours.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts)

40. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivisions (a) (violating the Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts), of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent performed an exceptionally high number of injections on P-3 without documenting sustained benefit over the four plus years he treated him.

B. Respondent used exceptionally high doses of premedication when performing bilateral stellate ganglion blocks and bilateral lumbar sympathetic ganglion blocks.

C. Respondent repeatedly performed concurrent bilateral stellate ganglion blocks with inadequate time between the injections and with no or minimal documented sustained benefit.

D. Respondent performed a cervical epidural steroid injection on P-3 on October 2, 2014 without documented medical indication, used propofol as anesthesia inhibiting P-3's ability to provide feed-back, over sedated P-3, and used an excessive volume of injectate which can increase pressure or irritate the cervical spinal area.

E. Respondent performed an extraordinarily large number of IM injections on P-3 without rationale, injecting potentially dangerous medications and medications that could negatively potentiate P-3's oral medications.

F. On July 12, 2012, after penetrating the dura when attempting a lumbar epidural steroid injection on P-3, Respondent twice re-placed the needle and ultimately injected the anesthetic solution at a different level despite the puncture.

G. Respondent failed to document having obtained informed consent from P-3 for the multiple trigger point injections, IM injections, and other office based injections he performed on P-3.

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PATIENT P-4

41. Respondent first saw Patient P-4, a 54 year old woman, on January 27, 2015 on referral from her primary care physician for evaluation and consideration of lumbar epidural steroid injections. He treated P-4 from that date through July 15, 2015. She had an appointment scheduled for August 12, 2015 but failed to appear.

42. On June 4, 2015, Respondent performed a lumbar epidural steroid injection on P-4, the third such procedure he had performed on her. He administered a total of 2 mg of Versed and 100 mcg of fentanyl to P-4 prior to the injection and, just as he completed the injection, P-4 became sedated, unresponsive, and apneic. Her oxygen saturation dipped to 71% and her blood pressure dropped as low as 51/31. She was given Narcan and ventilated by bag mask and her oxygen saturation and blood pressure returned to normal. She remained in the recovery room for three hours for observation before being released.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

43. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivisions (a) (violating the Medical Practice Act) and (c) (repeated negligent acts), of the Code in that Respondent engaged in the conduct described above including, but not limited to, over-sedating Patient P-4 requiring resuscitation by Narcan and bag mask ventilation.

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 G55246, issued to Allen George Gruber, M.D.;

2. Revoking, suspending, or denying approval of Allen George Gruber, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Allen George Gruber, 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: March 16, 2018

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

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accusation - mbc.rtf