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

In the Matter of the Accusation and Petition to Revoke Probation Against: Zan Benjamin, M.D. Physician's and Surgeon's Certificate No. A 54540 Respondent.	Case No. 800-2020-070278

DECISION

The attached Stipulated Surrender of License 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 4, 2021.

IT IS SO ORDERED September 27, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

ROB BONTA
Attorney General of California
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Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **ZAN BENJAMIN, M.D.** **249 S. Leandro Street** **Anaheim Hills, CA 92807** **Physician's and Surgeon's Certificate No. A 54540** Respondent.	Case No. 800-2020-070278 OAH No. 2021030641 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER**

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

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 Tessa L. Heunis, Deputy Attorney General.

2. Zan Benjamin, M.D. (Respondent) is represented in this proceeding by attorney Courtney E. Pilchman, Esq., whose address is: 2030 Main Street, Suite 1300, Irvine, CA 92614.

3. On or about September 1, 1995, the Board issued Physician's and Surgeon's Certificate No. A 54540 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought in Accusation and Petition to Revoke Probation No. 800-2020-070278, and will expire on May 31, 2023, unless renewed.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. 800-2020-070278 was filed before the Board and is currently pending against Respondent. A true and correct copy of the Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on February 19, 2021. Respondent timely filed her Notice of Defense contesting the Accusation and Petition to Revoke Probation. A copy of Accusation and Petition to Revoke Probation No. 800-2020-070278 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation and Petition to Revoke Probation No. 800-2020-070278. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Having the benefit of counsel, Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation and Petition to Revoke Probation No. 800-2020-070278, agrees that cause exists for discipline and hereby surrenders her Physician's and Surgeon's Certificate No. A 54540 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Physician's and Surgeon's Certificate No. A 54540 without further process.

10. With Respondent's early acknowledgement that cause exists for the Board's action and with the applicability of section 823 to any petition for reinstatement, as more fully described below, Complainant finds good cause under Business and Professions Code section 2307, subdivision (b)(1), and thereby agrees that Respondent may file a petition for reinstatement two years after the effective date of the Board's Decision.

CONTINGENCY

11. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Board "shall delegate to its executive director the authority to adopt a ... stipulation for surrender of a license."

12. Respondent understands that, by signing this stipulation, she enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of her Physician's and Surgeon's Certificate No. A 54540 without further notice to, or opportunity to be heard by, Respondent.

13. This Stipulated Surrender of License and Disciplinary Order shall be subject to the approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for his consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands

and agrees that she may not withdraw her agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

14. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

15. This Stipulated Surrender of License 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.

16. The parties agree that copies of this Stipulated Surrender of License 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.

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 54540, issued to Respondent Zan Benjamin, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate A 54540 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.

4. Reinstatement of respondent's Physician's and Surgeon's Certificate No. A 54540 shall be governed by section 823 and the procedures in Article 12.5 of Chapter 1 of Division 2 of the Business and Professions Code.

5. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2020-070278 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

6. 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 agency in the State of California, all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2020-070278 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 licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney Courtney E. Pilchman, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate A 54540. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 8.27.21

Zan Benjamin M.D.

ZAN BENJAMIN, M.D.
Respondent

I have read and fully discussed with Respondent Zan Benjamin, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 8/27/21

Courtney Pilchman

COURTNEY E. PILCHMAN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 8/27/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation and Petition to Revoke Probation No. 800-2020-070278

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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **ZAN BENJAMIN, M.D.** **249 S. Leandro Street** **Anaheim Hills, CA 92807** **Physician's and Surgeon's Certificate No. A 54540** Respondent.	Case No. 800-2020-070278 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. William Prasifka (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about September 1, 1995, the Board issued Physician's and Surgeon's Certificate No. A 54540 to Zan Benjamin, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on May 31, 2021, unless renewed.

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3. In a disciplinary action titled *In the Matter of the First Amended Accusation Against Zan Benjamin, M.D.*, Case No. 09-2011-213167, the Board issued a decision and order, effective February 6, 2015, in which Respondent's Physician's and Surgeon's Certificate No. A 54540 was revoked. The revocation was stayed, however, and Respondent's Physician's and Surgeon's Certificate No. A 54540 was placed on probation for a period of seven (7) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by this reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 2004 of the Code states:

> The board shall have the responsibility for the following:
>
> (a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
>
> (b) The administration and hearing of disciplinary actions.
>
> (c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
>
> (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
>
> ...

6. Section 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine ... and the board shall have all the powers granted in this chapter for these purposes ...

7. 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.

...

8. 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.

...

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

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

...

9. California Code of Regulations, title 16, section 1358, states:

Each physician and surgeon who has been placed on probation by the Board shall be subject to the Board's Probation Program and shall be required to fully cooperate with representatives of the Board and its personnel. Such cooperation shall include, but is not necessarily limited to, compliance with each term and condition in the order placing the physician and surgeon on probation ... Any monetary fees incurred as a result of a term or condition of probation ... shall be borne by the physician-probationer.

10. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member of good standing of the medical profession, and which demonstrates an

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unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

FACTUAL ALLEGATIONS

11. The Decision and Order in Case No. 09-2011-213167, placing Respondent's Physician's and Surgeon's Certificate No. A 54540 on probation for a period of seven (7) years, became effective February 6, 2015.

12. On or about February 18, 2015, an intake interview with Respondent was conducted by an inspector of the Board's Probation Unit. At this interview, all the terms and conditions of the Decision and Order in Case No. 09-2011-213167, and their respective time-frames and deadlines, were explained to Respondent. At the conclusion of the interview, Respondent signed both an "Acknowledgment of Decision" and a document setting out the due dates for the Quarterly Declarations required pursuant to the Decision and Order.

13. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 10 stated:

MONITORING – PRACTICE AND BILLING

> 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 and billing monitor(s), 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 and billing 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(s) 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 standard of practice of medicine and billing, and whether respondent is practicing medicine safely, billing appropriately or both. 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 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 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

14. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 11 stated:

SOLO PRACTICE PROHIBITION

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another

physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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 practice until an appropriate practice setting is established.

15. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 12 stated:

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.

16. On or about February 23, 2017, Respondent entered into a Provider Agreement with a locum hiring company ("the locum company"), whereby she agreed to provide medical services to the clients of the locum company. This agreement remained in effect until at least November 2020.

17. Through her employment with the locum company, Respondent provided medical services for several clients at different locations from February 2017 through at least December 2017.

18. During (and for) the calendar year 2017, Respondent submitted the required Quarterly Reports to Probation on or about April 6, July 10, and October 11, and on or about January 10, 2018. On each of these reports, Respondent indicated, under penalty of perjury, that she had not practiced medicine during the prior quarter.

19. Respondent worked at an Urgent Care center in January 2018 without informing Probation. Probation found out about this employment from someone other than Respondent on or about February 1, 2018. This position terminated on or about April 23, 2018.

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20. On or about April 24, 2018, Probation officially changed Respondent's status to one of non-practice.

21. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 18 stated:

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 in California 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. ...
>
> ...
>
> Periods of non-practice 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; and General Probation Requirements.

22. Respondent remained in non-practice status from April 24, 2018, until September 19, 2019 ("the period of non-practice").

23. Both before and during the period of non-practice, Respondent was reminded of the need for her to inform the Board's Probation Unit as soon as she secured new employment as a physician.

24. Respondent worked as a locum at several places throughout the period of non-practice.

25. In each of Respondent's quarterly reports to Probation, signed under penalty of perjury and covering the period April 1, 2018 through June 30, 2019, Respondent indicated that she had not practiced as a physician during the preceding quarter.

26. During the periods that Respondent practiced medicine without Probation's knowledge and/or at locations of which Probation was unaware, Probation was unable to monitor and/or enforce Respondent's compliance with terms and conditions of Respondent's probation related to public safety.

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27. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 22 stated:

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.

28. The Board's probation monitoring costs for 2017 were $4,537.00, for 2018 they were $4,749.00, and for 2019 they were $4,969.00. Based on Respondent's reported non-practice of medicine, Probation prorated the amount owed by Respondent for each of these years.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply With Required Psychotherapy)

29. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 9 stated:

PSYCHOTHERAPY

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

...

30. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 9, referenced above. The facts and circumstances regarding this violation are as follows:

A. Paragraphs 11, 12, and 16 through 26, above, are hereby incorporated by reference and realleged as if fully set forth herein.

B. Respondent practiced medicine from approximately April 24, 2018, through September 18, 2019, without attending regular psychotherapy visits.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Comply with Required Monitoring)

31. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 10, requiring her practice and billing to be monitored by a Board-approved physician. The facts and circumstances regarding this violation are as follows:

A. Paragraphs 11 through 13, and 16 through 26, above, are hereby incorporated by reference and realleged as if fully set forth herein.

B. Respondent practiced medicine during 2017, 2018 and 2019 at various locations without submitting the name(s) and *curriculum vitae* of a potential monitoring physician for prior approval, and without having the required monitor(s) in place.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Submit Proof of Notification)

32. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 12, relating to notification of the details of her probation to employers and others. The facts and circumstances regarding this violation are as follows:

A. Paragraphs 11, 12, and 15 through 26, above, are hereby incorporated by reference and realleged as if fully set forth herein.

B. Respondent practiced medicine during 2017, 2018 and 2019 at various locations without submitting proof of compliance with Probation Condition 12 to Probation within 15 calendar days of starting at each new location.

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FOURTH CAUSE TO REVOKE PROBATION

(Failure to Submit Quarterly Declarations As Required)

33. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 15 stated:

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.

34. The quarterly declarations referred to in paragraphs 12 and 33, above, and submitted to Probation by Respondent pursuant to probation Condition No. 15 in Case No. 09-2011-213167, were signed under the following admonition:

> "I hereby submit this Quarterly Declaration as required by the Medical Board of California and its Order of probation thereof and declare under penalty of perjury under the laws of the State of California that I have read the foregoing declaration and any attachments in their entirety and know their contents and that all statements made are true in every respect and I understand and acknowledge that any misstatements, misrepresentations, or omissions of material fact may be cause for further disciplinary action."

35. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 15, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent submitted multiple quarterly reports to Probation containing false information, including regarding the number of hours and/or locations at which she had practiced medicine, and stating that she had complied with all the terms and conditions of her probation, during the preceding quarter. Paragraphs 11 through 28, above, are hereby incorporated by reference and realleged as if fully set forth herein.

B. Respondent's quarterly report for the fourth quarter of 2019, submitted to Probation, should have been postmarked no later than January 10, 2020; instead, it was postmarked January 20, 2020.

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C. Respondent submitted multiple quarterly reports on outdated forms, including for the second quarter of 2019, and the first, second, and third quarters of 2020.

FIFTH CAUSE TO REVOKE PROBATION

(Violation of Probation)

36. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 20 stated:

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.

37. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 20, referenced above, as read with California Code of Regulations, title 16, section 1358. Paragraphs 11 through 35, above, are hereby incorporated by reference and realleged as if fully set forth herein.

SIXTH CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

38. At all times after the effective date of Respondent's probation in Case No. 09-2011-213167, Condition No. 14 stated:

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.

39. Respondent's probation is subject to revocation because she failed to remain in compliance with Probation Condition 14, referenced above, as read with California Code of Regulations, title 16, section 1358. Paragraphs 11 through 37, above, and paragraphs 40 through 43, below, are hereby incorporated by reference and realleged as if fully set forth herein.

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FIRST CAUSE FOR DISCIPLINE

(Dishonesty)

40. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (e), of the Code, in that she committed an act or acts of dishonesty or corruption, as more particularly alleged hereinafter.

41. Paragraphs 16 through 28, and 35A, above, are hereby incorporated by reference and realleged as if fully set forth herein.

42. In each of the quarterly declarations mentioned in paragraphs 18, 25, and 35, above, Respondent submitted false information to the Board under penalty of perjury, including, but not limited to, that she had not worked as a physician and had complied with all the terms and conditions of her probation during the preceding quarter.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

43. Respondent is further subject to disciplinary action in that she has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct that is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 11 through 42, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

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 the probation that was granted by the Medical Board of California in Case No. 09-2011-213167 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's Certificate No. A 54540 issued to Respondent ZAN BENJAMIN, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 54540, issued to Respondent ZAN BENJAMIN, M.D.;

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3. Revoking, suspending or denying approval of Respondent ZAN BENJAMIN, M.D.'s authority to supervise physician assistants and advanced practice nurses;

4. Ordering Respondent ZAN BENJAMIN, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

5. Taking such other and further action as deemed necessary and proper.

DATED: FEB 19 2021

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order

Medical Board of California Case No. 09-2011-213167

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

In the Matter of the First Amended Accusation Against:	)	
ZAN BENJAMIN, M.D.	)	Case No. 09-2011-213167
Physician's and Surgeon's Certificate No. A 54540	)	
Respondent	)	

DECISION AND ORDER

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 February 6, 2015.

IT IS SO ORDERED: January 8, 2015.

MEDICAL BOARD OF CALIFORNIA

By: _____
Jamie Wright, J.D., Chairperson
Panel A

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
MICHAEL S. COCHRANE
Deputy Attorney General
State Bar No. 185730
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2092
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: ZAN BENJAMIN, M.D. 249 S. Leandro Street Anaheim Hills, CA 92807 Physician's and Surgeon's Certificate No. A 54540, Respondent.	Case No. 09-2011-213167 OAH No. 2014030774 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity as the then-Interim Executive Director of the Board, and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Michael S. Cochrane, Deputy Attorney General.

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2. Respondent Zan Benjamin, M.D. (respondent) is represented in this proceeding by Mark V. Franzen, Esq., of the law firm Carroll, Kelly, Trotter, Franzen, McKenna & Peabody, whose address is: 111 West Ocean Blvd, 14th Floor, Long Beach, CA 90801-5636.

3. On or about September 1, 1995, the Medical Board of California issued Physician's and Surgeon's Certificate No. A54540 to respondent. The Physician's and Surgeon's Certificate No. A54540 was in full force and effect at all times relevant to the charges and allegations brought in First Amended Accusation No. 09-2011-213167, and will expire on May 31, 2015, unless renewed.

JURISDICTION

4. On February 13, 2014, Accusation No. 09-2011-213167 was filed before the Medical Board of California (Board), Department of Consumer Affairs. A true and correct copy of Accusation No. 09-2011-213167, and true and correct copies of all other statutorily required documents were properly served on respondent on February 13, 2014. Respondent filed a timely Notice of Defense contesting the Accusation.

5. On October 29, 2014, First Amended Accusation No. 09-2011-213167 was filed before the Board, and is currently pending against respondent. A true and correct copy of First Amended Accusation and a true and correct copy of the Statement to Respondent were properly served on respondent on October 29, 2014. A true and correct copy of First Amended Accusation No. 09-2011-213167 is attached hereto as Exhibit A and is incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in First Amended Accusation No. 09-2011-213167. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

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7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation No. 09-2011-213167; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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.

8. Having the benefit of counsel, respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the complete truth and accuracy to all of the charges and allegations in the First Cause for Discipline and Second Cause for Discipline in First Amended Accusation No. 09-2011-213167, a true and correct copy of which is attached hereto and incorporated by reference as if fully set forth herein, and that she has thereby subjected her Physician's and Surgeon's Certificate No. A54540 to disciplinary action. In addition, respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to all of the remaining charges and allegations contained in First Amended Accusation No. 09-2011-213167 and that she has thereby further subjected her Physician's and Surgeon's Certificate No. A54540 to disciplinary action.

10. Respondent agrees that if she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the Medical Board of California, all of the charges and allegations contained in First Amended Accusation No. 09-2011-213167 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.

11. Respondent agrees that her Physician's and Surgeon's Certificate No. A54540 is subject to discipline, and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, respondent understands and agrees that she may not withdraw her agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

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.

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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 the Board may, without further notice to or opportunity to be heard by respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A54540 issued to respondent Zan Benjamin, M.D. (respondent), is revoked. However, the revocation is stayed and respondent is placed on probation for seven (7) years from the effective date of this Decision and on the following terms and conditions:

1. ACTUAL SUSPENSION

As part of probation, respondent is suspended from the practice of medicine for 60 days, beginning the sixteenth (16th) day after the effective date of this Decision.

2. CONTROLLED SUBSTANCES -TOTAL RESTRICTION

For five (5) years from the effective date of this Decision, respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act, or issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If respondent forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the patient or the patient's primary

caregiver that respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

3. **CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT**

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

4. **PRESCRIBING PRACTICES COURSE**

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program 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.

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A prescribing practices course taken after the acts that gave rise to the charges in the First Amended 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

5. 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 equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program 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 First Amended 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.

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6. PROFESSIONALISM PROGRAM (ETHICS COURSE)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the First Amended 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 program would have been approved by the Board or its designee had the program 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 program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

7. CLINICAL TRAINING PROGRAM

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). 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 program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication

skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice in which respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, 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, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. Determination as to whether respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

If respondent fails to enroll, participate in, or successfully complete the clinical training 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 training program have been completed. If the respondent did not successfully complete the clinical training 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.

8. PSYCHIATRIC EVALUATION

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo and

complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

9. **PSYCHOTHERAPY**

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

10. MONITORING – PRACTICE AND BILLING

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 and billing monitor(s), 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 and billing 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.

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The monitor(s) 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 standard of practice of medicine and billing, and whether respondent is practicing medicine safely, billing appropriately or both. 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 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 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

11. SOLO PRACTICE PROHIBITION

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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 practice until an appropriate practice setting is established.

12. 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.

13. SUPERVISION OF PHYSICIAN ASSISTANTS

During probation, respondent is prohibited from supervising physician assistants.

14. 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.

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15. 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.

16. GENERAL PROBATION REQUIREMENTS

A. Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

B. 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(b).

C. 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.

D. License Renewal

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

E. 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 thirty (30) calendar days.

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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.

17. 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.

18. 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 in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered nonpractice.

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 a clinical training 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 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: and General Probation Requirements.

19. 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.

20. 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.

21. 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.

22. 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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark V. Franzen, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A54540. 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: 11.7.14.

ZAN BENJAMIN, M.D.
Respondent

I have read and fully discussed with respondent Zan Benjamin, 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: 11/7/14

MARK V. FRANZEN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 11/07/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

MICHAEL S. COCHRANE
Deputy Attorney General
Attorneys for Complainant

SD201470676

Exhibit A

First Amended Accusation No. 09-2011-213167

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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: ZAN BENJAMIN, M.D. 249 S. Leandro Street Anaheim Hills, CA 92807 Physician's and Surgeon's Certificate No. A 54540, Respondent.	Case No. 09-2011-213167 OAH No. 2014030774 **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.

2. On or about September 1, 1995, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 54540 to Zan Benjamin, M.D. (Respondent). The Physician's and Surgeon's Certificate No. A 54540 was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

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JURISDICTION

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

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."

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5. Section 2234 of the Code, states, in pertinent part:

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

"(d) Incompetence.

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

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

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6. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

7. Section 2236 of the Code states, in pertinent part:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"...

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

8. Section 2242 of the Code states:

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

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

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

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

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

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

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

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

9. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

10. Section 802.1 of the Code states, in pertinent part:

"(a)(1) A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall report either of the following to the entity that issued his or her license:

". . .

"(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

"(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

"(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000)."

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to the Qualifications, Functions and Duties of a Physician and Surgeon)

11. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, in that she has been convicted of a crime substantially related to the qualifications, functions, and duties of a physician and surgeon, as more particularly alleged hereinafter:

(a) On or about June 19, 2012, the District Attorney for the County of Riverside filed a misdemeanor complaint against respondent in the case entitled *The People of the State of California v. Zan Benjamin*, Superior Court Case No. RIM1208168. The complaint charged respondent with stealing merchandise on or about November 17, 2011, from a Nordstrom department store, in violation of Penal Code section 490.5, a misdemeanor. The complaint further charged respondent with committing burglary on or about November 17, 2011, in violation of Penal Code section 602, subdivision (k).

(b) On or about July 26, 2012, respondent plead guilty to theft, in violation of Penal Code section 490.5, in Superior Court Case No. RIM1208168. On or about July 26, 2012, respondent was sentenced to 10 days custody, with 9 of those days to be served in the Work Release Program, assessed a fine and penalty of $600.00, ordered to pay restitution of $120.00, and placed on 36 months summary probation.

(c) On or about May 20, 2010, the District Attorney for the County of Riverside filed a misdemeanor complaint against respondent in the case entitled *The People of the State of California v. Zan Benjamin*, Case No. RIM1007895, charging respondent with stealing merchandise on or about May 3, 2010, from a Target store, in violation of Penal Code section 490.5.

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(d) On or about February 22, 2011, respondent pled guilty to theft, in violation of Penal Code section 490.5, in Case No. RIM 1007895. On or about February 22, 2011, respondent was sentenced to one day custody, assessed a fine of $190, ordered to pay $100 in restitution, and placed on 36 months summary probation.

SECOND CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

12. Respondent is further subjected to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), in that she has engaged in an act or acts of dishonesty or corruption, as more particularly alleged hereinafter:

(a) Paragraph 11, above, is hereby incorporated by reference and realleged as if fully set forth herein.

(b) On or about April 25, 2012, respondent was interviewed as part of the Medical Board's investigation of this case. During that interview, respondent was asked, "Have you ever been arrested or convicted of a crime?," to which respondent falsely answered, "No." In truth and fact, at the time she falsely answered "No" to this question, respondent had been convicted of theft as more particularly alleged in paragraphs 11(c) and 11(d), above, which are hereby incorporated by reference and realleged as if full set forth herein.

(c) On or about June 5, 2013, respondent completed an online license renewal report with the Board. In this license renewal report, respondent was asked, "Since You Last Renewed your License, Have You Had Any License Disciplined By A Government Agency Or Other Disciplinary Body; Or Have You Been Convicted Of Any Crime In Any State, The USA And Its Territories, Military Court Or a Foreign Country?," to which respondent falsely answered, "NO." In truth and fact, at the time she falsely answered "NO" to this question on her online license renewal report, respondent had been convicted of the crime of theft, in two separate criminal cases, as more particularly alleged in paragraphs 11(a), 11(b), 11(c), and 11(d), above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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THIRD CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that she committed gross negligence in her care and treatment of patient A.S., as more particularly alleged hereinafter:

(a) Patient A.S.

(1) Respondent treated patient A.S. from at least November 3, 2008, to on or about January 23, 2012.

(2) At patient's initial documented appointment with respondent on or about November 3, 2008, respondent noted that there was "no chart" for the patient. The patient said she was depressed. The patient further said that she was out of medications and had stopped taking her medications one week ago. There is no past medical history, social history, or review of systems documented. The only current medication listed is Effexor for Obsessive Compulsive Disorder. The physical examination includes vital signs plus, normal lungs and heart, and a notation that the patient was crying. The assessment includes diagnoses of Obsessive Compulsive Discover and depression. The treatment plan stated (1) blood pressure check in one week, (2) samples of Prestiq 1 tab per day, and (3) follow-up in four weeks.

(3) Patient A.S. was next seen by respondent on or about April 9, 2009, with a chief complaint of possible Irritable Bowel Syndrome. The history of present illness states: no blood. The physical examination consisted of vital signs and general appearance – normal; abdomen – normal. Current medications are listed as none. The assessment notes that the patient's diarrhea is likely secondary to bypass surgery, and Donnatal was prescribed and a sample of Wellchol was dispensed. Respondent noted that blood work needed to wait until the patient had insurance, and that a gastrointestinal referral would be made when the patient obtains insurance.

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(4) Patient A.S. was next seen by respondent on or about August 5, 2009, with a chief complaint of Irritable Bowel Syndrome and diarrhea. The history of present illness states that the patient took her mother's Vicodin and claimed that it worked well, and that the patient wanted to try taking 1-3 per day. Vital signs were recorded, but no other physical examination was performed or documented. There was no review of symptoms, social history, or past medical history recorded. The assessment states Irritable Bowel Syndrome. The treatment plan is Vicodin 1 tab, t.i.d., #90. Respondent documented a "long discussion re: inappropriateness of this Tx. Pt has tried multiple meds + will try. Pt has never exhibited addictive behaviors." The "multiple meds" the patient had purportedly attempted were not documented.

(5) Patient A.S. was next seen by respondent on or about December 21, 2009, with a chief complaint of possible internal hemorrhoid for more than three years which was getting bigger. The history of present illness notes that diarrhea was better and that the patient had lost weight. Current medications were listed as Paxil and Vicodin 500 mg 1 tablet in the morning and 3 tablets at night. A physical examination noted normal general appearance, lungs, and heart, and a rectal exam with negative guiac but "soft tissue felt inside." Assessment was (1) chronic diarrhea, (2) dysphoria, and (3) hemorrhoids ?. The plan reads (1) No change → surgery consult, (2) Concerned with chronic narcotic use. Not an additive person and patient's amount has not changed, (3) Refill with caution Norco 7.5 mg, #90, 2-3 per day, no more, (4) Anusol suppositories.

(6) Patient A.S. was next seen by respondent on or about February 23, 2010, during a hospitalization for an abscess. Respondent assessed chronic diarrhea, and she wanted to rule out microscopic colitis celiac. No opiate was prescribed at this visit in the hospital.

(7) Patient A.S. was next seen by respondent on or about March 2, 2010, with a chief complaint of increased pain in the right leg, edema, and a request for a new prescription for pain. The history of present illness states the pain is very bad, but the swelling is much better. Respondent prescribed Vicodin, 1-2 tablets every 4 to six hours prn, #60. Under medications, in handwriting written by someone other than respondent, a note is made to discontinue Norco

due to vomiting and the patient having taken her mother's medications. During the Medical Board's investigative interview, respondent stated that the Vicodin she prescribed was for the patient's chronic diarrhea and chronic abdominal pain, and was not for the patient's leg pain.

(8) Patient A.S. was next seen by respondent on or about March 9, 2010, after having fallen a week earlier. The physical examination stated the patient had some pain in the left rib at around 9 or 10 with no obvious deformity. Over-the-counter Advil was prescribed with no opiates prescribed at this visit.

(9) On or about March 10, 2010, respondent authorized an early refill of hydrocodone 7.5 mg / acetaminophen 325 mg, #90, to the Costco Pharmacy.

(10) Patient A.S. was next seen by respondent on or about March 29, 2010, for a follow-up. No examination or history was performed or documented. The assessment stated depression, and the plan was for Paxil; hydrocodone 7.5 mg / acetaminophen 325 mg, t.i.d., #90; and Provera.

(11) Patient A.S. was next seen by respondent on or about July 7, 2010. The chief complaint is listed as possible hemorrhoid, and the history of present illness is "bleeding." No examination or review of symptoms was performed or documented. Except for documentation of vital signs, no physical examination was performed or documented. No assessment or plan was documented.

(12) On or about August 3, 2010, respondent wrote a handwritten prescription to patient A.S. for hydrocodone 5 mg / acetaminophen 325 mg, #30. There was no office visit for this date, and respondent did not maintain any documentation regarding this prescription.

(13) On or about August 18, 2010, respondent issued a handwritten prescription to patient A.S. for hydrocodone 7.5 mg / acetaminophen 325 mg. There was no documentation of an office visit corresponding with this prescription.

(14) Patient A.S. was next seen by respondent on or about September 2, 2010, for a follow-up. The history of present illness states, "internal bleeding." The assessment was chronic diarrhea. The current medications were listed as Paxil and hydrocodone 7.5 mg /

acetaminophen 325 mg. The chart notes, in handwriting written by someone other than respondent, note that the patient's "husband controls" the Norco medication.

(15) On or about September 7, 2010, respondent wrote a prescription for hydrocodone 7.5 mg / acetaminophen 325 mg, #90. There was no documented visit on this date, and this prescription was not documented in the patient's chart.

(16) A note by Medical Assistant K. Vanderma dated September 13, 2010, states "informed Dr. Benjamin of patient's Norco + Paxil concerns." A note from the same medical assistant, dated September 20, 2010, states, "Norco #120 called in by Jessica after verbal by Dr. Benjamin and called pt informed to see Dr. Benjamin, and I am aware of her medication Norco and how she is calling everyone in the office to get it. Informed her of need [for] follow-up appt to discuss narcotics."

(17) On or about September 30, 2010, respondent issued a handwritten prescription for hydrocodone 7.5 mg / acetaminophen 325 mg, #120, to patient A.S. There was no documented visit on this date, and this prescription was not documented in the patient's chart.

(18) Patient A.S. was next seen by respondent on or about October 4, 2010, for a follow-up. The patient's current medications were erroneously listed as none, and there is no documented history of present illness. Respondent increased the dosage and quantity of the Norco prescription to hydrocodone 10 mg / acetaminophen 325 mg, #120. No explanation was provided to explain the change in dosage. There is no documentation of a discussion with the patient regarding her narcotics use.

(19) On or about October 18, 2010, respondent authorized a prescription called in to the Target Pharmacy for hydrocodone 7.5 mg / acetaminophen 325 mg, #120. This prescription was not documented in the patient's chart.

(20) On or about October 26, 2010, respondent issued a handwritten prescription for hydrocodone 7.5 mg / acetaminophen 325 mg, #120. No office visit was document corresponding to the date of this prescription, which was not documented in the patient's chart.

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(21) A nurse's note dated November 8, 2010, states that patient A.S. has "failed all OTC meds" and "needs to see GI." Prescriptions for tramadol 50 mg, 1-2 tablets t.i.d., #120, and hydrocodone 10 mg / acetaminophen 325, q.i.d., #120, were faxed to the Sav-on Pharmacy. The note states, "Has to start weening yourself. Try 3x / D." It is not apparent whether there was an office visit on this date. There is no explanation for the reason for the additional prescription of tramadol.

(22) Patient A.S. was next seen by respondent on or about November 16, 2010, for a follow-up. The history of present illness states that both nostrils drip with clear liquid. The physical examination documents normal general appearance, neck, lungs, and heart. No prior medical history is documented. Respondent documented an assessment of (1) anxiety, (2) depression, (3) malabsorption, and (4) addiction. There is no documentation regarding the bases for the new diagnoses of malabsorption and addiction. During the investigative interview, respondent stated, "I don't think I diagnosed her [with addiction]; I'm not an addictionologist." The treatment plan was to refer for a gastrointestinal consult and hydrocodone 10 mg / acetaminophen 325 mg, one month's supply at 4 per day. The current medications were listed as Norco 10/325 mg and Paxil, without reference to the tramadol prescribed on or about November 8, 2010. The written prescription was changed from #120 Norco to #150 Norco, with an additional note added to the prescription stating the patient may have a refill of #120 on December 15, 2010.

(23) On or about December 9, 2010, respondent issued a handwritten prescription for Norco 10/325 mg, #30. No office visit corresponds with this prescription, which was not documented in the patient's chart.

(24) On or about January 3, 2011, patient A.S. called respondent's office requesting a refill of Norco. Respondent denied the request and referred the patient to a pain specialist and told her to go to the county hospital to see a gastrointestinal specialist. Later that day, the patient called again and stated that her rectum was falling out and that she needed pain medication, and was told to go to the emergency room.

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(25) On or about January 5, 2011, patient A.S. called respondent's office crying and complaining of withdrawal from narcotics. She was told to hold to discuss this with respondent, but the patient hung up.

(26) Patient A.S. was next seen by respondent on or about February 16, 2011, for a follow-up. No physical examination or review of systems was performed or documented. No history of present illness was taken or documented. No subjective complaint or objective findings were documented. The current medications list consisted of Norco 10/325 mg. The assessment stated: (1) depression ? Bipolar, and (2) Fx pelvis. The treatment plan was to dispense a sample of Presique, surgery pending, and lamictal 25 mg, 1-4 p.o. qhs, #120. There was no follow-up regarding whether the patient had seen the gastrointestinal or pain management specialists, or regarding the patient's complaints during her phone calls that she was suffering from withdrawal and that her rectum had fallen out.

(27) Patient A.S. was next seen by respondent on or about March 15, 2011, for a follow-up. The history of present illness states discontinued with malnutrition. The physical exam states normal general appearance, neck, lungs, and heart. No back examination was performed or documented. The current medications list stated Norco 10/325 mg. Assessment included "Chronic B.Pain" and hypertension. Respondent gave a refill for hydrocodone 10 mg / acetaminophen 325 mg, #90. No instructions for use of the hydrocodone were documented. This was patient A.S.'s final visit documented at Corona Family Care. There was no follow-up regarding the prior referrals to pain management or gastrointestinal specialists.

(28) Between April 29, 2009, and May 19, 2011, respondent prescribed to patient A.S. hydrocodone/acetaminophen or oxycodone/acetaminophen 37 times, totaling approximately 3,066 tablets for an average of about 122 tablets per month.

(29) Respondent subsequently treated patient A.S. at the practice of Dr. M.H. in Corona, starting on or about May 19, 2011. Respondent used electronic medical records at this office. Under the heading Subjective, respondent stated that the patient was there for a refill on her medications. Under the heading Objective, respondent noted no abnormal

findings. Respondent noted that her physical examination of the patient's back was within normal limits. A musculoskeletal examination showed a normal spine and bone structure. The abdomen was observed to be non-tender, no masses/organomegaly, and bowel sounds were within normal limits. Notwithstanding the lack of any subjective complaint or abnormal objective findings, respondent diagnosed patient A.S. on this visit with (1) depression, (2) Irritable Bowel Syndrome, and (3) chronic diarrhea secondary to gastric bypass. Respondent prescribed hydrocodone 10 mg / acetaminophen 325, t.i.d., #90. No instructions for taking the opiate were documented.

(30) Patient A.S. was next seen by respondent on or about June 2, 2011. Patient A.S.'s vital signs included a blood pressure of 150/84, a pulse of 102 bpm, and a temperature of 99.4° F. There was no subjective complaint. Under the heading Objective, respondent noted no abnormal findings. Respondent noted that her physical examination of the patient's back was within normal limits. A musculoskeletal examination showed a normal spine and bone structure. The abdomen was observed to be non-tender, no masses/organomegaly, and bowel sounds were within normal limits. The assessment was chronic diarrhea, and the plan was to follow up with the gastrointestinal specialist. Respondent prescribed hydrocodone 10 mg / acetaminophen 325 mg, #120. No instructions for taking the opiate were documented.

(31) Patient A.S. was next seen by respondent on or about June 20, 2011. Patient A.S's vital signs included a blood pressure of 130/80, a pulse of 122 bpm, and a temperature of 99.5° F. Under the heading Subjective, respondent noted that the patient was crying and "BEGGING FOR MEDS. HER STORY TODAY IS THAT THE HOSPITAL LOST THE RX FROM ME. . . NEEDS NARCOTICS FOR CHRONIC DIARRHEA. SAY SHE IS FOLLOWED BY GI." During the Medical Board's investigation interview, respondent acknowledged being told by medical assistants that patient A.S. had previously called "on numerous occasions" with other stories regarding why she needed more opiates, which she considered a red flag for addiction. Under the heading Objective, respondent noted no abnormal findings. Respondent noted that her physical examination of the patient's back was within normal limits. A musculoskeletal examination showed a normal spine and bone

structure. The abdomen was observed to be non-tender, no masses/organomegaly, and bowel sounds were within normal limits. Under Assessment, respondent stated, "NARCOTIC ADDICTION – PT IS AWARE OF HER PROBLEM AND IT IS VERY DIFFICULT AS HER PHYSICIAN BECAUSE I KNOW THE NARCOTICS HELP TREMENDOUSLY TO CONTROL THE DIARRHEA AND I ALSO KNOW PT USES NARCOTICS TO ELEVATE HER MOOD. HOWEVER, AS I HAVE TRIED TO EXPLAIN TO THIS PT, IT IS NOT A SAFE AND APPROPRIATE WAY TO TREAT HER PROBLEM." Respondent nevertheless gave patient A.S. a prescription for hydrocodone 10 mg / acetaminophen 325 mg, #10, and oxycodone 10 mg / acetaminophen 325 mg, #5. No instructions for taking the opiate were documented. Respondent also asked patient A.S. to find another physician to treat her.

(32) Patient A.S. was next seen by respondent on or about July 13, 2011. The chief complaint was that the patient reported an elevated blood pressure for four days. Vital signs included a blood pressure of 142/92, a pulse of 92 bpm, and a temperature of 99.6° F. Under the heading Objective, a physical examination reports no abnormal findings. No diagnosis or treatment plan was documented, and the chart note on this visit was not signed.

(33) Patient A.S. was next seen by respondent on or about July 18, 2011. No subjective complaint was documented. Under the heading Objective, a physical examination resulted in no abnormal findings. No assessment or plan was documented, and the chart note was not signed.

(34) Patient A.S. was next seen by respondent or on about July 20, 2011. The patient complained of low energy. Under the heading Objective, a physical examination resulted in no abnormal findings. No assessment or plan was documented, and the chart note was not signed.

(35) Patient A.S. was next seen by respondent on or about July 28, 2011. Under subjective, respondent noted that the patient was there for a refill on her pain medications. Under the heading Objective, a physical examination resulted in no abnormal findings. An examination of the abdomen was reported as normal. No examination of the genitourinary

system was performed. Respondent assessed the patient with chronic diarrhea and depression. Respondent prescribed hydrocodone 10 mg / acetaminophen 325, #150, and oxycodone 10 mg / acetaminophen 325 mg, #10. No instructions for taking the opiate were documented.

(36) Patient A.S. was next seen by respondent on or about August 30, 2011. The listed provider was changed from respondent to Dr. M.H., but the note was entered electronically by respondent and respondent signed the note for this visit. The note states that the patient was there to discuss vaginal cream medications. Under the heading Subjective, respondent stated that patient A.S. wanted Norco, and reported that Percocet was not working. Patient A.S. reported pain during sex, and that she was not having her period. Patient A.S refused an exam, but under the heading Objective, normal findings of examinations of the skin, head, eyes, ears, nose, throat/mouth, neck, lungs, chest, heart rhythm, abdomen, and back are reported. Respondent noted under general that the patient appeared "WELL NOURISHED," but under assessment stated, "AMENORRHEA – PROBABLY MALNOURISHMENT, NOT ESTROGEN." Respondent refilled the prescription for hydrocodone 10 mg / acetaminophen 325 mg, 5 times per day.

(37) Patient A.S. was next seen by respondent on or about September 21, 2011. The chief complaint was an infection in the left arm. No history of the present illness was documented. Patient A.S.'s vitals included a blood pressure of 122/84, with a pulse of 88 bpm, and a temperature of 99.4° F. Under the heading Objective, respondent found no abnormality of the skin and noted good turgor. An examination of the extremities resulted in no abnormal findings, and findings of no edema, no varicosities, no cyanosis or clubbing. An examination of the abdomen resulted in a finding that the abdomen and bowel sounds were within normal limits. No examination of the genitourinary system was performed or documented. Respondent's assessment stated, "chronic diarrhea/CHRONIC PAIN – LONG DISCUSSION WITH THIS PATIENT RE HER CONTINUED NARCOTIC USE. SHE NEEDS TO SEE A PAIN M.D. ASAP." Respondent also diagnosed the patient with hypertension and depression. The plan stated that the narcotic contract was discussed, and

additionally noted that the "WORK UP ABOVE IS ADDENDUM ADDED AFTER VISIT AS BEST I COULD FROM MEMORY AND TALKING TO PATIENT TO COMPLETE MEDICAL RECORDS." Respondent electronically signed this chart note on December 13, 2011.

(38) Patient A.S. was next seen by respondent on or about October 10, 2011. Under the heading Subjective, respondent noted that patient A.S. was crying hysterically, depressed, and complained of chronic abdominal pain. Under the heading Objective, the physical examinations resulted in no abnormal findings. An examination of the abdomen resulted in findings that bowel sounds were within normal limits, the abdomen was non-tender, with no masses/oranomegaly. No examination was performed or documented of the genitourinary system. The assessment stated chronic abdominal pain, and the plan included a prescription for "NORCO 10 #120. NOTE WRITTEN ON RX FOR PHARM TO CALL ME PRIOR TO FILLING SO I CAN CHECK DATES." No instructions for taking the Norco were documented.

(39) Patient A.S. was next seen by respondent on or about December 5, 2011. Under the heading Subjective, respondent noted that patient A.S. was there for a Percocet (oxycodone/acetaminophen) refill, "DX'D W / C," "FEELING GOOD THOUGH STILL HAS CHRONIC DIARRHEA." Under the heading Objective, respondent reported no abnormal findings, and noted patient A.S. was "WELL NOURISHED" with the abdomen within normal limits, non-tender, and with no masses/organomegaly. An examination of patient A.S.'s back resulted in an objective finding of within normal limits, with normal spine and bone structure. No examination of the genitourinary system was performed or documented. Notwithstanding respondent's objective finding that patient A.S. was well nourished, the assessment stated, "MALNUTRITION SECONDARY TO CHRONIC DIARRHEA." Respondent further assessed patient A.S. with "NARCOTIC USE – USED FOR CHRONIC ABDOMINAL AND BACK PAIN." The plan included a refill of Percocet 10 mg, #90, with instructions to take up to 3 per day with no early prescription. An addendum noted that the patient was asked to see a pain and a gastrointestinal specialist and

has been notified that respondent can no longer fill her narcotic prescription. Respondent electronically signed the chart note on December 12, 2011.

(40) Respondent committed gross negligence in her care and treatment of patient A.S., which included, but were not limited to, the following:

(A) Respondent repeatedly failed to take or document a past medical history, social history, or pain history prior to initiating prescriptions for opiates;

(B) Respondent repeatedly failed to perform an appropriate physical examination, including an assessment of patient A.S.'s pain, physical and psychological status and function, substance abuse history, history of prior pain treatments, and an assessment of any other underlying or co-existing conditions;

(C) Respondent repeatedly prescribed patient A.S. strong opiates for treatment of chronic diarrhea, even after she documented that she considered this an inappropriate therapy for the medical condition;

(D) Respondent repeatedly prescribed patient A.S. opiates without an appropriate medical indication;

(E) Respondent repeatedly inappropriately continued to prescribe patient A.S. opiates, even after she learned of evidence that patient A.S. was abusing the narcotics and after she documented her belief patient A.S. had an opiates addiction;

(F) Respondent repeatedly inappropriately managed patient A.S.'s therapy with controlled substances, in that she failed to assess the progress toward treatment goals or any adverse effects of the therapy, and by continuing prescriptions and escalating doses of opiates despite the lack of efficacy of the treatment and evidence of aberrant drug-seeking behaviors; and

(G) Respondent repeatedly failed to perform or document an appropriate history, physical examination, or clear indication of an assessment or treatment plan related to her prescribing of opiates to patient A.S.

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(b) Patient D.Z.

(1) On or about September 2, 2009, respondent issued prescriptions for Adipex-P (phentermine) 37.5 mg, t.i.d., #90, and Fastin (phentermine) 30 mg, b.i.d., #60, to patient D.Z., who at the time was a friend of respondent. Respondent did not perform or document any examination, or take any medical history, prior to issuing this prescription, and did not maintain a patient chart on patient D.Z. at the time of this prescription.

(2) Patient D.Z., then 48 years old, was seen by respondent on or about September 30, 2009. Vital signs obtained included a blood pressure of 142/92, a pulse of 64, a height of 5'9", and a weight of 164 lbs, which corresponds to a body mass index of 24.2. No medical history was taken or documented, and except for vital signs. No physical examination was performed or documented. Respondent assessed patient D.Z. with weight gain, and prescribed phentermine 37.5 mg, #30. Patient D.Z's elevated blood pressure was not discussed or addressed. Informed consent regarding the risks and benefits, or alternatives, to taking phentermine was not provided or documented.

(3) Patient D.Z. was again seen by respondent on or about December 2, 2009. Vital signs obtained included a blood pressure of 134/80, a pulse of 66, height of 5'9", weight of 161 lbs., which corresponds to a body mass index of 23.8. Apart from obtaining vital signs and documenting a normal general appearance, no physical examination was performed. No medical history was documented, and there was no documentation regarding any side effects from the phentermine previously prescribed. Respondent assessed patient D.Z. as being overweight, and prescribed Didrex (benzphetamine) 50 mg, b.i.d., #60. Informed consent regarding the risks and benefits, or alternatives, to taking Didrex, was not provided or documented. No office visit or other examination of patient D.Z. was documented after December 2, 2009.

(4) On or about July 28, 2010, respondent prescribed phentermine 30 mg, #30, to patient D.Z., by phone order to the Costco Pharmacy.

(5) Between on or about September 2, 2009, and July 28, 2010, respondent prescribed at least 510 tablets of phentermine to patient D.Z.

(6) Respondent committed gross negligence in her care and treatment of patient D.Z., which included, but were not limited to, the following:

(A) Respondent failed to document a through history and physical examination, including a history of present illness, past medical history, review of systems, past surgical history, social history, or other pertinent data that would assist the physician in the medical decision making process; and

(B) Respondent did not appropriately follow up with patient D.Z., having seen her on only two occasions with the last visit occurring on December 2, 2009, while continuing to prescribe phentermine and Didrex through July, 2010.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

14. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c),of the Code, in that she committed repeated negligent acts in her care and treatment of patients D.Z., A.S., and A.M., as more particularly alleged hereinafter:

(a) Patient A.S.

(1) Paragraph 13(a), above, is hereby incorporated by reference and realleged as if fully set forth herein.

(2) Respondent committed repeated negligent acts in her care and treatment of patient A.S., which included, but were limited to, the following:

(A) Respondent failed to take or document a past medical history, social history, or pain history prior to initiating prescriptions for opiates;

(B) Respondent repeatedly failed to perform an appropriate physical examination, including an assessment of patient A.S's pain, physical and psychological status and function, substance abuse history, history of prior pain treatments, and an assessment of any other underlying or co-existing conditions;

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(C) Respondent prescribed patient A.S. strong opiates for treatment of chronic diarrhea, even after she documented that she considered this an inappropriate therapy for the medical condition;

(D) Respondent repeatedly prescribed patient A.S. opiates without an appropriate medical indication;

(E) Respondent inappropriately continued to prescribe patient A.S. opiates, even after she learned of evidence that the patient was abusing the narcotics and after she documented her belief the patient had an opiates addiction;

(F) Respondent inappropriately managed patient A.S.'s therapy with controlled substances, in that she failed to assess the progress toward treatment goals or any adverse effects of the therapy, and by continuing prescriptions and escalating doses of opiates despite the lack of efficacy of the treatment and evidence of aberrant drug-seeking behaviors;

(G) Respondent repeatedly failed to perform or document an appropriate history, physical examination, or clear indication of an assessment or treatment plan related to her prescribing of opiates to patient A.S.;

(H) Respondent repeatedly failed to provide patient A.S. adequate informed consent while prescribing and escalating dosages of opiates over an extended period of time;

(I) Respondent failed to make appropriate consultations to specific specialists in the areas of gastrointestinal, opiates addiction, psychiatry, and pain management, or to condition further treatment with opiates on patient A.S. seeing the appropriate specialists;

(K) Respondent repeatedly failed to perform or document an appropriate history, physical examination, or clear indication of an assessment or treatment plan related to her prescribing of opiates to patient A.S.; and

(L) Respondent repeatedly made diagnoses that were not supported by her objective findings, or alternatively, documented objective findings from examinations that, in truth and fact, were not performed.

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(b) Patient D.Z.

(1) Paragraph 13(b) above, is hereby realleged and incorporated by reference as if fully set forth herein.

(2) Respondent engaged in repeated negligent acts in her care and treatment of patient D.Z., which included, but were not limited to, the following:

(A) Respondent failed to document a through history and physical examination, including a history of present illness, past medical history, review of systems, past surgical history, social history, or other pertinent data that would assist the physician in the medical decision making process;

(B) Respondent did not appropriately follow-up with patient D.Z., having seen her on only two occasions with the last visit occurring on December 2, 2009, while continuing to prescribe phentermine and Didrex through July 2010; and

(C) Respondent failed to document that patient D.Z. had an elevated blood pressure during the initial office visit on or about September 30, 2009, and failed to tell patient D.Z. that her blood pressure must be monitored while on phentermine, which has the potential to further increase blood pressure.

(c) Patient A.M.

(1) Patient A.M. was initially seen by respondent on or about December 16, 2010. Prior to the initial visit with respondent, patient A.M. had been treated by other providers in respondent's medical practice, but the most recent prior office visit had been more than two years prior to the initial visit with respondent, on November 10, 2008. During prior visits, patient A.M. had been diagnosed with bipolar disorder, anxiety, depression, and chronic back pain, and was prescribed alprazolam and hydrodcodone with acetaminophen. A letter from a surgeon, Dr. H.N., to Dr. J.M., dated July 3, 2008, notes that patient A.M. presented to the surgeon's office inebriated from a drug other than alcohol, and suggested that the patient's history of drug abuse be investigated. At a prior office visit on or about October 17, 2008, Dr. F.M. noted that patient A.M. reported her Vicodin was stolen, that that she had "back trauma," and a history of two years of chronic low back pain, however, Dr. F.M. also

documented that the patient denied numbness, weakness, radiation, or urinary retention and further documented the physical exam as back normal and neurology normal. Dr. F.M. noted that long-term prescription should not be Vicodin, and documented a treatment plan to obtain an x-ray, refer the patient to pain management, and obtain a patient activity report.

(2) On or about December 16, 2010, at patient A.M.'s initial visit with respondent, the patient reported a chief complaint of ear pain for three weeks and stomach problems. Respondent further noted "talk of back pain," without obtaining or documenting any further information or history regarding to the complaint of back pain. Respondent did not perform or document any examination pertaining to the patient A.M.'s complaint of back pain, and included no treatment plan to determine the etiology of the back pain. Respondent did not document patient A.M.'s prior history of pain treatments or her substance abuse history. Respondent did not document a physical examination pertaining to the complaint of ear pain, and did not assess the degree or nature of the ear pain. Respondent did not perform or document a mental status examination, but noted that patient A.M. complained of increased stress. Respondent documented her assessment as (1) depression/anxiety; and (2) "? OE (B)."[1] The treatment plan included (1) a follow-up pap smear and physical examination, (2) Fluoxetine 20 mg q.d.; (3) referral to psychiatry; and (4) Norco 7.5 mg, #60. Respondent failed to document the directions to the patient for use of the Norco 7.5 mg. During her investigation interview with the Medical Board investigator, respondent stated that the prescription for Norco was for the back pain. Respondent did not document the medical basis for the diagnosis of depression/anxiety.

(3) On or about January 19, 2011, patient A.M. was again seen by respondent. At this visit, patient A.M. requested a mammogram and refills on Xanax and Norco. The purpose of this visit was to perform a physical examination and a pap smear, but no physical examination was documented. Respondent did not perform or document a review of symptoms or a

[1] OE is presumably otitis externa, commonly called swimmer's ear, which is the inflammation of the outer ear and ear canal.

mental status examination. Respondent failed to perform or document an examination regarding patient A.M.'s complaints of back pain. Respondent's assessment was "WWC," bipolar disorder, anxiety, and lower back pain. Respondent's plan was (1) Remeron 30 mg; (2) referral given for a mammogram; (3) blood work referral; (4) refill Xanax 1 mg, #30; and (4) refill Norco #60. Respondent failed to document patient A.M.'s instructions for taking the Xanax and Norco prescriptions. Respondent did not document whether patient A.M. followed through with the referral to psychiatry made at the prior visit, and failed to include the basis for her added diagnosis of bipolar disorder.

(4) On or about February 3, 2011, patient A.M. was again seen by respondent. The history of present illness states that patient A.M. is "begging for pain meds," "has to have US of stomach," "can't describe prob," and notes no change in bowel movements. Respondent did not perform or document a review of symptoms. Respondent's physical examination is documented by checking as normal patient A.M.'s general appearance, mouth and throat, lungs and heart, and noting a non-tender abdomen. Respondent did not perform or document an examination of patient A.M.'s back or her ears. Respondent did not perform or document any history regarding the onset, frequency, or degree of abdominal pain. The assessment states (1) elevated liver enzymes secondary to Depakote; and (2) abdominal pain with a strong psychiatric component. Respondent's plan stated, (1) "Hepatic panel / Hep C / ESR"; (2) "? May need to ↓ Depakote"; (3) Norco 7.5 mg, #60; and (4) Soma #30. Respondent did not document her instructions to patient A.M. for taking the Norco and Soma, did not document the medical indication or prescribing Soma and Norco, and did not document stated objectives for her opiates treatment. Respondent did not document whether patient A.M. followed up on the referral to the psychiatrist.

(5) On or about February 3, 2011, respondent wrote a prescription to patient A.M. for Vicodin ES (hydrocodone 7.5 mg /acetaminophen 750 mg), #60, with two refills, with instructions authorizing patient A.M. to take up to a 12 tablets of Vicodin ES per day (maximum of 9000 mg per day of acetaminophen).

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(6) On or about February 22, 2011, respondent authorized a prescription to patient A.M. of Vicodin ES (hydrocodone 7.5 mg /acetaminophen 750 mg), #60, with two refills, with instructions authorizing the patient to take up to 12 tablets of Vicodin ES per day (maximum of 9000 mg per day of acetaminophen).

(7) On or about March 16, 2011, respondent authorized a prescription to patient A.M. of Vicodin ES (hydrocodone 7.5 mg /acetaminophen 750 mg), #60, with two refills, with instructions authorizing the patient may take up to 12 tablets of Vicodin ES per day (maximum of 9000 mg per day of acetaminophen).

(8) On or about April 11, 2011, a pharmacist from Walgreens Pharmacy faxed a message to respondent stating, "DR. PLEASE VERIFY HIGH DOSE OF VICODIN ES. PT CAN TAKE UP TO MAX OF 12 TABS (9000 MG OF ACETAMINOPHEN) PER YOUR DIRECTIONS WHICH EXCEEDS RECOMMENDED ACETAMINOPHEN MAX OF 4000 MG/DAY. PLEASE FAX US BACK IF THIS IS STILL OKAY, OR CHANGE DIRECTIONS FOR PT." Respondent's office replied the same day stating, "Denied. Patient needs to be seen. Patient was a no show."

(9) On or about May 16, 2011, respondent authorized a prescription to patient A.M. of Vicodin ES (hydrocodone 7.5 mg / acetaminophen 750 mg), #60, with one refills, with instructions that the patient may take up to a maximum of 12 tablets of Vicodin ES per day (maximum of 9000 mg per day of acetaminophen).

(10) Respondent failed to ever provide informed consent either in writing or by discussing with patient A.M. and documenting the discussion regarding the risks and benefits of the use of controlled substances along with other treatment modalities.

(11) Respondent failed to perform an appropriate review the opiates prescriptions to patient A.M. for apparent chronic pain while prescribing opiates for a six-month period.

(12) Respondent committed repeated negligent acts in her care and treatment of patient A.M., which included, but was not limited to, the following:

(A) Respondent failed to obtain or document an adequate history regarding patient A.M.'s complaint of back pain at the office visit on or about December 16, 2010;

(B) Respondent failed to perform or document a physical examination of the patient's back before prescribing opiates for treatment of back pain on or about December 16, 2010;

(C) Respondent failed to obtain or document a treatment plan to determine the etiology of the complaint of back pain at the visit on or about December 16, 2010;

(D) Respondent failed to take or document an adequate history of the patient's complaint of ear pain;

(E) Respondent failed to perform or document an appropriate examination of patient A.M.'s ears in response to the complaint of ear pain;

(F) Respondent failed to take or document the patient's history of prior pain treatments or patient A.M.'s substance abuse history before prescribing opiates;

(G) Respondent failed to perform or document a mental status examination, and failed to document the medical basis of her diagnosis of depression/anxiety at patient A.M.'s visit, on or about December 16, 2010;

(H) Respondent failed to document the directions for use of the hydrocodone 7.5 mg / acetaminophen 325 mg that respondent prescribed on or about December 16, 2010;

(I) Respondent failed to document a physical examination, review of symptoms, or mental status examination, on or about January 19, 2011, despite that the purpose of that visit was to perform a physical examination and a pap smear.

(J) Respondent made a diagnosis of bipolar disorder on or about January 19, 2011, but failed to document the medical basis for that diagnosis;

(K) On or about the visit on January 19, 2011, respondent failed to appropriately follow up on the patient A.M.'s complaints of back and ear pain made at previous visit, or to document the status of those complaints;

(L) Respondent failed to document the directions for use of the Xanax and Norco that she prescribed patient A.M. on or about January 19, 2011;

(M) Respondent failed to perform or document a history or physical examination regarding the patient A.M's prior complaints of ear and back pain on or about February 3, 2011, despite the patient's "begging" for pain medications at that visit;

(N) Respondent failed to perform an adequate history and physical regarding the patient's complaint of abdominal pain with strong psychiatric component on or about February 3, 2011;

(O) Respondent failed to document the medical indication for her prescriptions to patient A.M. of Norco and Soma on or about February 3, 2011;

(P) Respondent failed to document her instructions for taking the Norco and Soma prescriptions that she prescribed to patient A.M. on or about February 3, 2011;

(Q) Respondent failed to document stated objectives of her opiates treatments, including plans for further diagnostic evaluations for chronic pain;

(R) Respondent failed to provide adequate informed consent relating to the use of controlled substances along with other treatment modalities;

(S) Respondent overprescribed opiates containing acetaminophen; and

(T) Respondent failed to appropriately review and assess the course of the pain treatment with opiates.

FIFTH CAUSE FOR DISCIPLINE

(Prescribing Dangerous Drugs Without an Appropriate Prior Examination and a Medical Indication)

15. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2242, of the Code, in that she prescribed dangerous drugs without an appropriate prior examination and a medical indication, as more particularly alleged in paragraphs 13 and 14, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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SIXTH CAUSE FOR DISCIPLINE

(Incompetence)

16. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code, in that she demonstrated incompetence in her care and treatment of patient D.Z., as more particularly alleged hereinafter:

(1) Paragraph 13(b) above, is hereby incorporated by reference and realleged as if fully set forth herein.

(2) Respondent demonstrated a lack of knowledge for not being able to identify the classifications of overweight, obese, and morbidly obese as it relates to body mass index (BMI).

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

17. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that she failed to maintain adequate and accurate records, as more particularly alleged in paragraphs 13 and 14 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. Respondent is further subject to disciplinary action under sections 2227 and 2234 of the Code, in that she has engaged in conduct which breached the rules or ethical code of the medical profession, or conduct which was unbecoming to a member in good standing of the medical profession, and which demonstrated an unfitness to practice medicine, as more particularly alleged hereinafter:

(a) Paragraphs 11 through 17, above, are hereby incorporated by reference and realleged as if fully set forth herein.

(b) Respondent failed to report to the Board her misdemeanor convictions for theft on or about February 22, 2011 and July 26, 2012, as required by section 802.1 of the Code.

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NINTH CAUSE FOR DISCIPLINE

(Commission of an Action or Conduct that Would Have Warranted the Denial of a Certificate)

19. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (f), in that she committed and act or engaged in conduct that would have warranted the denial of her physician's and surgeon's certificate, as more particularly alleged in paragraphs 11-12, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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 No. A 54540 issued to respondent Zan Benjamin, M.D.;

2. Revoking, suspending or denying approval of respondent Zan Benjamin, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering respondent Zan Benjamin, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring;

4. Ordering respondent Zan Benjamin, M.D. to pay a fine of $10,000.00, pursuant to section 802.1 of the Code, for failing to report her criminal convictions to the Board; and

5. Taking such other and further action as deemed necessary and proper.

DATED: Oct. 29, 2014

Michael S. Cochrane for

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

SD2011800356