

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

**In the Matter of the Third Amended
Accusation Against:**

James Anthony Novak, M.D.

**Physician's and Surgeon's
Certificate No. G 44909**

Respondent.

Case No.: 800-2018-044421

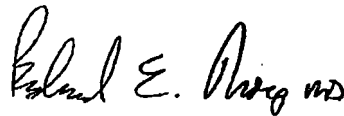
DECISION

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

This Decision shall become effective at 5:00 p.m. on February 24, 2023.

IT IS SO ORDERED: January 27, 2023.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
Deputy Attorney General
4 State Bar No. 231195
California Department of Justice
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8 *Attorneys for Complainant*

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

13 In the Matter of the Third Amended Accusation
Against:

14 **JAMES ANTHONY NOVAK, M.D.**
15 **4440 Lamont Street**
San Diego, California 92109

16 **Physician's and Surgeon's Certificate No.**
17 **G 44909,**

18 Respondent.

Case No. 800-2018-044421
OAH No. 2021100842

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 **PARTIES**

22 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, and by Joseph F. McKenna III,
25 Deputy Attorney General.

26 2. Respondent James Anthony Novak, M.D. (Respondent) is represented in this
27 proceeding by attorney Paul J. Pfingst, Esq., whose address is: 401 W "A" Street, Suite 2600,
28 San Diego, California, 92101.

3. On or about June 25, 1981, the Board issued Physician's and Surgeon's Certificate No. G 44909 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Third Amended Accusation No. 800-2018-044421, and will expire on September 30, 2024, unless renewed.

JURISDICTION

4. On May 24, 2021, Accusation No. 800-2018-044421 was filed before the Board. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on May 24, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. On November 5, 2021, First Amended Accusation No. 800-2018-044421 was filed before the Board. A true and correct copy of the First Amended Accusation and all other statutorily required documents were properly served on Respondent on November 5, 2021.

6. On February 4, 2022, Second Amended Accusation No. 800-2018-044421 was filed before the Board. A true and correct copy of the Second Amended Accusation and all other statutorily required documents were properly served on Respondent on February 4, 2022.

7. On May 25, 2022, Third Amended Accusation No. 800-2018-044421 was filed before the Board, and is currently pending against Respondent. A true and correct copy of the Third Amended Accusation and all other statutorily required documents were properly served on Respondent on May 25, 2022.

8. A copy of Third Amended Accusation No. 800-2018-044421 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

9. Respondent has carefully read, discussed with his counsel, and fully understands the charges and allegations contained in Third Amended Accusation No. 800-2018-044421. Respondent has also carefully read, discussed with his counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

10. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations contained in the Third Amended Accusation; the right to

1 confront and cross-examine the witnesses against him; the right to present evidence and to testify
2 on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses
3 and the production of documents; the right to reconsideration and court review of an adverse
4 decision; and all other rights accorded by the California Administrative Procedure Act and other
5 applicable laws, having been fully advised of same by his counsel.

6 11. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
7 waives and gives up each and every right set forth above.

8 CULPABILITY

9 12. Respondent understands and agrees that the charges and allegations contained in
10 Third Amended Accusation No. 800-2018-044421, if proven at a hearing, constitute cause for
11 imposing discipline upon his Physician's and Surgeon's Certificate No. G 44909.

12 13. Respondent stipulates that, at a hearing, Complainant could establish a *prima facie*
13 case or factual basis for the charges and allegations contained in the Third Amended Accusation;
14 that he gives up his right to contest those charges and allegations contained in the Third Amended
15 Accusation; and that he has thereby subjected his Physician's and Surgeon's Certificate to
16 disciplinary action.

17 CONTINGENCY

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

27 15. Respondent agrees that if an accusation is ever filed against him before the Board, all
28 of the charges and allegations contained in Third Amended Accusation No. 800-2018-044421

1 shall be deemed true, correct and fully admitted by Respondent for purposes of any such
2 proceeding or any other licensing proceeding involving Respondent in the State of California.

3 **ADDITIONAL PROVISIONS**

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

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

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

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 44909 issued
15 to Respondent James Anthony Novak, M.D., is revoked. However, the revocation is stayed and
16 Respondent is placed on probation for 7 years from the effective date of the Decision on the
17 following terms and conditions.

18 1. **EDUCATION COURSE.**

19 Within 60 calendar days of the effective date of this Decision, and on an annual basis
20 thereafter, Respondent shall submit to the Board or its designee for its prior approval educational
21 program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation.
22 The educational program(s) or course(s) shall be aimed at correcting any areas of deficient
23 practice or knowledge and shall be Category I certified. The educational program(s) or course(s)
24 shall be at Respondent's expense and shall be in addition to the Continuing Medical Education
25 (CME) requirements for renewal of licensure. Following the completion of each course, the
26 Board or its designee may administer an examination to test Respondent's knowledge of the
27 course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours
28 were in satisfaction of this condition.

1 2. PREScribing PRACTICES COURSE.

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

10 A prescribing practices course taken after the acts that gave rise to the charges contained in
11 Third Amended Accusation No. 800-2018-044421, but prior to the effective date of the Decision
12 may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this
13 condition if the course would have been approved by the Board or its designee had the course
14 been taken after the effective date of this Decision.

15 Respondent shall submit a certification of successful completion to the Board or its
16 designee not later than 15 calendar days after successfully completing the course, or not later than
17 15 calendar days after the effective date of the Decision, whichever is later.

18 3. MEDICAL RECORD KEEPING COURSE.

19 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
20 course in medical record keeping approved in advance by the Board or its designee. Respondent
21 shall provide the approved course provider with any information and documents that the approved
22 course provider may deem pertinent. Respondent shall participate in and successfully complete
23 the classroom component of the course not later than 12 months after Respondent's initial
24 enrollment. Respondent shall successfully complete any other component of the course within 1
25 year of enrollment. The medical record keeping course shall be at Respondent's expense and
26 shall be in addition to the CME requirements for renewal of licensure.

27 A medical record keeping course taken after the acts that gave rise to the charges contained
28 in Third Amended Accusation No. 800-2018-044421, but prior to the effective date of the

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

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

7 4. PROFESSIONALISM PROGRAM (ETHICS COURSE).

8 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
9 professionalism program, that meets the requirements of Title 16, California Code of Regulations
10 section 1358.1. Respondent shall participate in and successfully complete that program.

11 Respondent shall provide any information and documents that the program may deem pertinent.

12 Respondent shall successfully complete the classroom component of the program not later than
13 12 months after Respondent's initial enrollment, and the longitudinal component of the program
14 not later than the time specified by the program, but no later than 1 year after attending the
15 classroom component. The professionalism program shall be at Respondent's expense and shall
16 be in addition to the CME requirements for renewal of licensure.

17 A professionalism program taken after the acts that gave rise to the charges contained in the
18 Third Amended Accusation, but prior to the effective date of the Decision may, in the sole
19 discretion of the Board, be accepted towards the fulfillment of this condition if the program
20 would have been approved by the Board had the program been taken after the effective date of
21 this Decision. Respondent shall submit a certification of successful completion to the Board or its
22 designee not later than 15 calendar days after successfully completing the course, or not later than
23 15 calendar days after the effective date of the Decision, whichever is later.

24 5. CLINICAL COMPETENCE ASSESSMENT PROGRAM.

25 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
26 clinical competence assessment program approved in advance by the Board. Respondent shall
27 successfully complete the program not later than 6 months after Respondent's initial enrollment
28 unless the Board agrees in writing to an extension of that time.

1 The program shall consist of a comprehensive assessment of Respondent's physical and
2 mental health and the 6 general domains of clinical competence as defined by the Accreditation
3 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
4 Respondent's current or intended area of practice. The program shall take into account data
5 obtained from the pre-assessment, self-report forms and interview, and the Decision and
6 Disciplinary Order, the Third Amended Accusation, and any other information that the Board or
7 its designee deems relevant. The program shall require Respondent's on-site participation for a
8 minimum of 3 and no more than 5 days as determined by the program for the assessment and
9 clinical education evaluation. Respondent shall pay all expenses associated with the clinical
10 competence assessment program.

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

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

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

1 6. MONITORING – PRACTICE.

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

11 The Board or its designee shall provide the approved monitor with copies of the Decision
12 and Disciplinary Order, the Third Amended Accusation, and a proposed monitoring plan. Within
13 15 calendar days of receipt of the Decision and Disciplinary Order, the Third Amended
14 Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the
15 monitor has read the Decision and Disciplinary Order and Third Amended Accusation, fully
16 understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If
17 the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised
18 monitoring plan with the signed statement for approval by the Board or its designee.

19 Within 60 calendar days of the effective date of this Decision, and continuing throughout
20 probation, Respondent's medical practice at his own offices shall be monitored by the approved
21 monitor. Respondent shall make all records available for immediate inspection and copying on
22 the premises by the monitor at all times during business hours and shall retain the records for the
23 entire term of probation.

24 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
25 date of this Decision, Respondent shall receive a notification from the Board to cease the practice
26 of medicine within 3 calendar days after being so notified. Respondent shall cease the practice of
27 medicine until a monitor is approved to provide monitoring responsibility.

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

6 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
7 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
8 name and qualifications of a replacement monitor who will be assuming that responsibility within
9 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
10 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
11 notification from the Board or its designee to cease the practice of medicine within 3 calendar
12 days after being so notified. Respondent shall cease the practice of medicine until a replacement
13 monitor is approved and assumes monitoring responsibility.

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

19 **7. SOLO PRACTICE PROHIBITION.**

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

24 If Respondent fails to establish a practice with another physician or secure employment in
25 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
26 Respondent shall receive a notification from the Board or its designee to cease the practice of
27 medicine within 3 calendar days after being so notified. The Respondent shall not resume
28 practice until an appropriate practice setting is established.

1 If, during the course of the probation, the Respondent's practice setting changes and the
2 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
3 shall notify the Board within 5 calendar days of the practice setting change. If Respondent fails to
4 establish a practice with another physician or secure employment in an appropriate practice setting
5 within 60 calendar days of the practice setting change, Respondent shall receive a notification
6 from the Board to cease the practice of medicine within 3 calendar days after being so notified.
7 The Respondent shall not resume practice until an appropriate practice setting is established.

8 **8. PROHIBITED PRACTICE.**

9 During probation, Respondent is prohibited from issuing any type of immunization
10 exemption(s) to any patient. During probation, Respondent is prohibited from performing any
11 care or treatment of patients involving the use of insulin infusion therapy ("Trina Therapy").

12 After the effective date of this Decision, Respondent shall notify all patients requesting
13 immunization exemptions or insulin infusion therapy from Respondent that he is prohibited from
14 issuing immunization exemption(s) or performing any care or treatment involving insulin infusion
15 therapy. Any new patients requesting immunization exemptions or insulin infusion therapy from
16 Respondent must be provided this notification at the time of their initial appointment.

17 Respondent shall maintain a log of all patients to whom the required oral notification was
18 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
19 medical record number, if available; 3) the full name of the person making the notification; 4) the
20 date the notification was made; and 5) a description of the notification given. Respondent shall
21 keep this log in a separate file or ledger, in chronological order, shall make the log available for
22 immediate inspection and copying on the premises at all times during business hours by the
23 Board, and shall retain the log for the entire term of probation.

24 **9. NOTIFICATION.**

25 Within 7 days of the effective date of this Decision, the Respondent shall provide a true
26 copy of this Decision and the Third Amended Accusation to the Chief of Staff or the Chief
27 Executive Officer at every hospital where privileges or membership are extended to Respondent,
28 at any other facility where Respondent engages in the practice of medicine, including all physician

1 and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every
2 insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall
3 submit proof of compliance to the Board or its designee within 15 calendar days.

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

5 10. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
6 NURSES.

7 During probation, Respondent is prohibited from supervising physician assistants and
8 advanced practice nurses.

9 11. OBEY ALL LAWS.

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

13 12. ENFORCEMENT COST RECOVERY.

14 Respondent is hereby ordered to reimburse the Board its costs of enforcement, including
15 legal review and expert review, as applicable, in the amount of thirty-five thousand one hundred
16 seventy three dollars and seventy-five cents (\$35,173.75). Costs shall be payable to the Medical
17 Board of California. Failure to pay such costs shall be considered a violation of probation.

18 Any and all requests for a payment plan shall be submitted in writing by Respondent to the
19 Board.

20 The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility
21 to repay investigation and enforcement costs, including expert review costs (if applicable).

22 13. QUARTERLY DECLARATIONS.

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

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

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14. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

15. 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.

16. NON-PRACTICE WHILE ON PROBATION.

Respondent shall notify the Board in writing within 15 calendar days of any periods of non-

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

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

17 Respondent's period of non-practice while on probation shall not exceed 2 years.

18 Periods of non-practice will not apply to the reduction of the probationary term.

19 Periods of non-practice for a Respondent residing outside of California will relieve
20 Respondent of the responsibility to comply with the probationary terms and conditions with the
21 exception of this condition and the following terms and conditions of probation: Obey All Laws;
22 General Probation Requirements; and Quarterly Declarations.

23 17. COMPLETION OF PROBATION.

24 Respondent shall comply with all financial obligations (e.g., probation costs and
25 enforcement cost recovery) not later than 120 calendar days prior to the completion of probation.
26 Upon successful completion of probation, Respondent's certificate shall be fully restored.

27 18. VIOLATION OF PROBATION.

28 Failure to fully comply with any term or condition of probation is a violation of probation.

1 If Respondent violates probation in any respect, the Board, after giving Respondent notice and the
2 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
3 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
4 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
5 is final, and the period of probation shall be extended until the matter is final.

6 19. LICENSE SURRENDER.

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

17 20. PROBATION MONITORING COSTS.

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

22 21. FUTURE ADMISSIONS CLAUSE.

23 If Respondent should ever apply or reapply for a new license or certification, or petition for
24 reinstatement of a license, by any other health care licensing action agency in the State of
25 California, all of the charges and allegations contained in Third Amended Accusation No. 800-
26 2018-044421 shall be deemed to be true, correct, and admitted by Respondent for the purpose of
27 any Statement of Issues or any other proceeding seeking to deny or restrict license.

28 ////

ACCEPTANCE

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

DATED: 11/21/2022

James A. Novak
JAMES ANTHONY NOVAK, M.D.
Respondent

I have read and fully discussed with Respondent James Anthony Novak, 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: _____

PAUL J. PFINGST, 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: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

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

DATED: _____
JAMES ANTHONY NOVAK, M.D.
Respondent

I have read and fully discussed with Respondent James Anthony Novak, 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: November 21, 2022

PAUL J. PFINGST, 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: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Third Amended Accusation No. 800-2018-044421

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8 *Attorneys for Complainant*

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

13 In the Matter of the Third Amended Accusation
14 Against:

15 **JAMES ANTHONY NOVAK, M.D.**
16 **4440 Lamont Street**
San Diego, California 92109

17 **Physician's and Surgeon's Certificate No.**
G 44909,

18 Respondent.

Case No. 800-2018-044421
OAH No. 2021100842

THIRD AMENDED ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

22 1. William Prasifka (Complainant) brings this Third Amended Accusation solely in his
23 official capacity as the Executive Director of the Medical Board of California (Board),
24 Department of Consumer Affairs.

25 2. On or about June 25, 1981, the Board issued Physician's and Surgeon's Certificate
26 No. G 44909 to James Anthony Novak, M.D. (Respondent). The Physician's and Surgeon's
27 Certificate was in full force and effect at all times relevant to the charges and allegations brought
28 herein and will expire on September 30, 2022, unless renewed.

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COST RECOVERY

8. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

PERTINENT DRUG INFORMATION

9. Opioids are Schedule II controlled substances pursuant to Health and Safety Code section 11055, and are a dangerous drug pursuant to Code section 4022. The Drug Enforcement Administration (DEA) has identified opioids as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2017 Edition), at pp. 38-39.)

10. Adderall is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, and a dangerous drug pursuant to Code section 4022. Adderall contains 2 drugs (amphetamine and dextroamphetamine) and it belongs to a class of medications called stimulants. When properly prescribed and indicated, Adderall is most commonly used to treat attention deficit hyperactivity disorder (ADHD).

11. Suboxone is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, and a dangerous drug pursuant to Code section 4022. Suboxone contains a combination of buprenorphine (opioid partial agonist) and naloxone (opiate antagonist). Buprenorphine is an opioid medication. Naloxone blocks the effects of opioid medication, including pain relief or feelings of well-being that can lead to opioid abuse. Suboxone is specifically intended for use as a treatment for opioid use disorder (OUD), which is a problematic pattern of opioid use that leads to serious impairment or distress.

12. Benzodiazepines are Schedule IV controlled substances pursuant to Health and Safety Code section 11057, and are a dangerous drug pursuant to Code section 4022. The risk of respiratory depression, drug overdose, and death is increased with the concomitant prescribing of benzodiazepines with opioids, muscle relaxants (Soma), and sedatives (Ambien). The DEA has identified benzodiazepines as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2017 Edition), at p. 59.)

13. Soma (brand name for carisoprodol) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and a dangerous drug pursuant to Code section 4022. Soma is a skeletal muscle relaxant. When properly prescribed and indicated, Soma is used for the short-term treatment of acute and painful musculoskeletal conditions. Soma is commonly used by those who abuse opioids to potentiate the euphoric effect of opioids, to create a better "high."

1 The risk of respiratory depression, synergistic sedation, and death is increased with the
2 concomitant prescribing of Soma with Suboxone and Ambien.

3 14. Ambien (brand name for zolpidem) is a Schedule IV controlled substance pursuant
4 to Health and Safety Code section 11057, and a dangerous drug pursuant to Code section 4022.
5 When properly prescribed and indicated, Ambien is used for the short-term treatment of
6 insomnia, typically 2 to 3 weeks. If treatment of insomnia with Ambien extends beyond this
7 initial period, regular follow-up by the treating physician is recommended to assess for efficacy,
8 possible side-effects and harms, as well as to evaluate other treatment approaches including other
9 medication classes. Ambien has central nervous system (CNS) depressant effects and its use can
10 potentially worsen symptoms of depression and suicidal thoughts in patients suffering from
11 depression. The use of Ambien is associated with increased incidence of completed suicide. It
12 should be prescribed with caution in patients suspected of having depression or suicidal thoughts,
13 and in the lowest effective dose.

14 15. Methocarbamol is a prescription medication and is a dangerous drug pursuant to Code
15 section 4022. Methocarbamol is a muscle relaxant and CNS depressant, and it interacts with
16 opioids, benzodiazepines, and Soma, causing additive CNS and respiratory suppression. When
17 properly prescribed and indicated, Methocarbamol is used to relieve the discomfort caused by
18 acute (short-term), painful muscle or bone conditions.

19 16. Baclofen is a prescription medication and is a dangerous drug pursuant to Code
20 section 4022. Baclofen is a muscle relaxant and CNS depressant, and it has additive adverse CNS
21 effects with opioids, benzodiazepines, and other muscle relaxants. When properly prescribed and
22 indicated, Baclofen is used to treat muscle spasms caused by certain medical conditions.

23 17. Naltrexone is a prescription medication and is a dangerous drug pursuant to Code
24 section 4022. Naltrexone belongs to a group of drugs known as opioid antagonists, which block
25 the effects of heroin and other opioid drugs. When properly prescribed and indicated, Naltrexone
26 is used to treat OUD and alcohol use disorder.

27 18. Hydroxyzine is a prescription medication and is a dangerous drug pursuant to Code
28 section 4022. Hydroxyzine is an antihistamine, and it interacts with both opioids and

1 benzodiazepines, with additive respiratory and CNS suppression. When properly prescribed and
2 indicated, Hydroxyzine is used to treat itching caused by allergies.

3 19. Selegiline is a prescription medication and is a dangerous drug pursuant to Code
4 section 4022. Selegiline is a selective monoamine oxidase (MAO) type B inhibitor, which
5 presents risks of multiple serious and potentially lethal drug-drug interactions. When properly
6 prescribed and indicated, Selegiline is used to treat symptoms of Parkinson's disease.

7 20. For a comparison of opioid doses, "morphine milligram equivalents" was developed
8 to equate the many different opioids into one standard value. This standard value is based on
9 morphine and its potency. "Morphine milligram equivalents" is commonly referred to as MME.
10 The Centers for Disease Control and Prevention states, "Higher dosages of opioids are associated
11 with higher risk of overdose and death – even relatively low dosages (20-50 morphine milligram
12 equivalents (MME) per day) increase risk."

13 21. The Controlled Substance Utilization Review and Evaluation System (CURES) is a
14 program operated by the California Department of Justice (DOJ) to assist health care practitioners
15 in their efforts to ensure appropriate prescribing of controlled substances, and law enforcement
16 and regulatory agencies in their efforts to control diversion and abuse of controlled substances.
17 (Health & Saf. Code, § 11165.) California law requires dispensing pharmacies to report to the
18 DOJ the dispensing of Schedule II, III, and IV controlled substances as soon as reasonably
19 possible after the prescriptions are filled. (Health & Saf. Code, § 11165, subd. (d).) It is
20 important to note that the history of controlled substances dispensed to a specific patient based on
21 the data contained in CURES is available to a health care practitioner who is treating that patient.
22 (Health & Saf. Code, § 11165.1, subd. (a).)

23 22. Polypharmacy means the use of several medications on a daily basis. The more
24 drugs, the higher the risk of adverse drug interactions and unintentional overdose. Polypharmacy
25 exposes older adults to an increased risk of adverse drug interactions, drug toxicity, falls with
26 injury, delirium and nonadherence. Polypharmacy increases the risk of adverse reactions to
27 medications.

28 ////

PERTINENT CASE INFORMATION

23. Respondent, at all times relevant to the charges and allegations brought in Third Amended Accusation No. 800-2018-044421, owned Novak Medical Group (NMG), a clinic where he also employed and supervised Family Nurse Practitioner P.F. (FNP P.F.).

24. On or about January 22, 2020, Respondent, with his attorney present, was interviewed by a Division of Investigation (DOI) investigator and a district medical consultant (DMC) working on behalf of the Board. During the interview, Respondent answered a number of general background questions, including questions about medical providers working at NMG whom he supervised, which are relevant to the charges and allegations brought in Third Amended Accusation No. 800-2018-044421. During the interview, Respondent stated that FNP P.F. had worked for him for approximately twenty-one years. Respondent admitted to having a "Scope of Practices" agreement with FNP P.F., and that it was signed by them both. At all times relevant to the charges and allegations brought in Third Amended Accusation No. 800-2018-044421, Respondent was the supervising physician of FNP P.F. During the interview, Respondent also answered specific questions regarding the care and treatment involving Patients D and E and Trina Therapy.¹

25. Trina therapy is advertised as resolving complications for people with diabetes through use of pulses of intravenous insulin administered by a pump, and delivered via catheter into the patient. The weekly therapy is performed in outpatient settings and lasts 4 hours at each visit.

26. On or about April 6, 2021, Respondent, with his attorney present, was telephonically interviewed by a DOI investigator and a DMC working on behalf of the Board. During the interview, Respondent answered a number of general background questions which are relevant to the charges and allegations brought in Third Amended Accusation No. 800-2018-044421. During the interview, Respondent answered specific questions regarding the care and treatment involving Patient C.²

¹ To protect the privacy of the patients involved in this matter, patient names have not been included in this pleading. Respondent is aware of the identities of Patients D and E.

² Respondent is aware of the identity of Patient C.

27. On or about June 17, 2021, Respondent, with his attorney present, was telephonically interviewed by a DOI investigator and a DMC working on behalf of the Board. During the interview, Respondent answered a number of general background questions which are relevant to the charges and allegations brought in Third Amended Accusation No. 800-2018-044421. During the interview, Respondent answered specific questions regarding the care and treatment involving Patients A and B.³

28. On or about July 28, 2021, Respondent, with his attorney present, was telephonically interviewed by a DOI investigator and answered a number of follow-up questions regarding prescription pads and the care and treatment involving Patients A and B.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

29. Respondent has subjected his Physician's and Surgeon's Certificate No. G 44909 to disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (b), of the Code, in that Respondent committed acts of gross negligence in his care and treatment of Patients A, B, and C, and he also committed acts of gross negligence by failing to properly supervise FNP P.F. in her care and treatment of Patients A, B, and C, as more particularly alleged hereinafter:

30. Patient A

(a) From in or around January 2016, to in or around August 2021, Patient A treated with Respondent and FNP P.F. at NMG. During that timeframe, Respondent and FNP P.F. saw Patient A for a number of chronic medical issues including, opioid dependence under treatment with Suboxone, chronic pain, chronic fatigue, muscle spasm, insomnia, and gastroesophageal reflux disorder. During that same timeframe, Respondent and FNP P.F. routinely issued prescriptions for controlled substances to Patient A including, but not limited to, Suboxone, Soma, Ambien, and Adderall.

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³ Respondent is aware of the identities of Patient A and B.

1 (b) On or about January 6, 2016, Patient A, a then-55-year-old male,
2 presents at NMG for medication refills. Under history of present illness (HPI) in
3 the progress note, Patient A's chronic pain is described as "stable" on Suboxone
4 and his addictive behavior is "under control." Under current medications, the
5 progress note lists Soma, Ambien, and Suboxone.

6 (c) On or about March 14, 2016, Patient A returns to NMG for a follow-up
7 visit. HPI is word-for-word identical to progress notes from prior visits in 2016.
8 Although Suboxone is missing under current medications, the prescription is
9 refilled at this visit, along with Soma and Ambien.

10 (d) On or about June 8, 2016, Patient A returns to NMG for medication
11 refills. The general examination is word-for-word identical to progress notes from
12 prior visits in 2016. And again, HPI is word-for-word identical to progress notes
13 from prior visits in 2016. Suboxone is again missing under current medications,
14 but the prescription is refilled at this visit. The prescriptions for Soma and Ambien
15 are also refilled at this visit.

16 (e) On or about December 20, 2016, Patient A returns to NMG for a follow-up
17 visit. The general examination remains word-for-word identical to progress notes
18 from prior visits in 2016. Suboxone remains missing under current medications, but
19 the drug prescription is refilled similar to prior visits in 2016.

20 (f) In or around 2016, Respondent and FNP P.F. charted approximately 12
21 clinical visits with Patient A at NMG. Significantly, at each visit Patient A
22 received concomitant prescriptions for Suboxone, Soma, and Ambien.

23 (g) On or about January 19, 2017, Patient A returns to NMG for medication
24 refills. The current medications for Patient A are the same as in 2016, including
25 Suboxone, Soma, and Ambien.

26 (h) On or about August 23, 2017, Patient A returns to NMG for a follow-up
27 visit. The general examination is word-for-word identical to progress notes from
28 prior visits in 2017, with minor alterations to HPI. The current medications remain

1 essentially the same for Patient A, except that the progress note indicates
2 Suboxone was to be taken "three times daily," but only 60 tablets are prescribed by
3 Respondent. Respondent does not document in detail in the note the rationale for
4 changing the quantity of Suboxone at this visit.

5 (i) On or about September 21, 2017, Patient A returns to NMG for a
6 follow-up visit. The progress note indicates Soma is discontinued under current
7 medications, but it is still prescribed by Respondent to Patient A at this visit.
8 Similar to the prior month's visit, the Suboxone prescription is to be taken "three
9 times daily," but only 60 tablets are prescribed by Respondent. Again, Respondent
10 does not document in detail in the note the rationale for changing the quantity of
11 Suboxone at this visit.

12 (j) On or about October 19, 2017, Patient A returns to NMG for a follow-up
13 visit. The Suboxone prescription is lowered to 1.5 tablets daily (#45) but Respondent
14 does not document in detail in the note the rationale for changing the quantity of
15 Suboxone at this visit.

16 (k) On or about December 20, 2017, Patient A returns to NMG for
17 medication refills. The Suboxone prescription is lowered again (#30) but
18 Respondent does not document in detail in the note the rationale for changing the
19 quantity of Suboxone at this visit.

20 (l) In or around 2017, Respondent and FNP P.F. charted approximately 13
21 clinical visits with Patient A at NMG. Significantly, at each visit Patient A
22 received concomitant prescriptions for Suboxone, Soma, and Ambien. The
23 Suboxone prescription was changed at multiple visits in 2017, with no detailed
24 documentation of the rationale for changing the quantity of Suboxone.

25 (m) On or about January 18, 2018, Patient A returns to NMG for a follow-up
26 visit. The Suboxone prescription is increased to 1.5 tablets daily (#45), but Respondent
27 does not document in detail in the progress note the rationale for changing the quantity
28 of Suboxone at this visit. The current medications remain mostly unchanged.

1 (n) On or about May 10, 2018, Patient A returns to NMG for a follow-up
2 visit. The Suboxone prescription is lowered to 30 tablets a month at this visit, but
3 Respondent does not document in detail in the progress note the rationale for
4 changing the quantity of Suboxone. The general examination is word-for-word
5 identical to progress notes from prior visits in 2017.

6 (o) On or about August 1, 2018, Patient A returns to NMG for a follow-up
7 visit. Patient A is "now down to 30 [Suboxone] a month," according to the
8 progress note for the visit. Respondent increases the Suboxone prescription to 1.5
9 tablets daily (#45), but he does not document in detail in the note the rationale for
10 changing the quantity of Suboxone at this visit. The current medications remain
11 mostly unchanged.

12 (p) On or about November 19, 2018, Patient A returns to NMG for a follow-up
13 visit. Respondent increases the Suboxone prescription to 2 tablets daily (#60), but he
14 does not document in detail in the progress note the rationale for changing the quantity
15 of Suboxone at this visit. The current medications remain mostly unchanged.

16 (q) In or around 2018, Respondent and FNP P.F. charted approximately 17
17 clinical visits with Patient A at NMG. Significantly, at each visit Patient A
18 received concomitant prescriptions for Suboxone, Soma, and Ambien. The
19 Suboxone prescription was changed at multiple visits in 2018, with no detailed
20 documentation in the progress notes of the rationale for changing the quantity of
21 Suboxone. Regarding Patient A's Ambien and Soma prescriptions listed under
22 current medications, several progress notes indicated "Not-Taking/PRN" for the
23 drugs; but according to CURES, Patient A consistently filled both of those
24 prescriptions in 2018. The general examination language contained in progress
25 notes are mostly identical in 2018.

26 (r) On or about January 17, 2019, Patient A returns to NMG for medication
27 refills. Respondent again lowers the Suboxone prescription to 1.5 tablets daily
28 (#45) and continues to concomitantly prescribe Soma and Ambien to Patient A.

1 (s) On or about April 10, 2019, Patient A returns to NMG for a follow-up
2 visit. Respondent doubles the Suboxone prescription to 3 tablets daily (#90), but
3 he does not document in detail in the progress note the rationale for changing the
4 quantity of Suboxone at this visit.

5 (t) On or about July 10, 2019, Patient A returns to NMG for medication
6 refills. According to the progress note for the visit, the dose of Suboxone is listed
7 as 1.5 tablets per day (#45); however, different daily amounts of Suboxone (#30
8 and #60) are also documented in the same note.

9 (u) On or about September 24, 2019, Patient A returns to NMG for
10 medication refills. Respondent increases the Suboxone prescription to 2 tablets
11 daily (#60), but he does not document in detail in the note the rationale for
12 changing the quantity of Suboxone at this visit.

13 (v) Progress notes from visits to NMG in November and December of 2019
14 document that Patient A stated he wants to stop taking Suboxone and treat his pain
15 naturally. The notes further indicate that Patient A would start decreasing the
16 number of Suboxone tablets taken per month, according to a "decreasing dosage
17 prescription written by [Respondent]."

18 (w) In or around 2019, Respondent and FNP P.F. charted approximately 13
19 clinical visits with Patient A at NMG. Significantly, at each visit Patient A received
20 concomitant prescriptions for Suboxone, Soma, and Ambien. The Suboxone
21 prescription was changed at multiple visits in 2019, with no detailed documentation
22 in the progress notes of the rationale for changing the quantity of Suboxone. The
23 HPI and general examination language contained in the notes are mostly identical in
24 2019.

25 (x) On or about January 28, 2020, Patient A returns to NMG for a follow-up
26 visit. Patient A is "tapered off" of Suboxone and "agreed to no further Suboxone"
27 treatment, according to the progress note for the visit. There is no further
28 documentation in the note regarding a plan for tapering of the drug after years of

1 use by Patient A. There is also no documentation regarding the large supply of
2 Suboxone recently obtained by Patient A from prescriptions issued by
3 Respondent.⁴ At this visit, Respondent diagnoses Patient A with ADHD and
4 prescribes a 1-month trial of Adderall (stimulant) to address complaints of fatigue,
5 and lack of concentration and focus. The note does not document any discussion
6 regarding whether a taper of other sedatives taken by Patient A (i.e., Suboxone,
7 Soma, and Ambien) would address the symptoms of inattention.

8 (y) On or about February 25, 2020, Patient A returns to NMG for a follow-up
9 visit. According to the progress note for the visit, Patient A is "doing well off of
10 suboxone. denies cravings. bp stable. adhd much improved with adderall. thyroid is
11 stable." There is no documentation of Suboxone being prescribed at this visit.⁵
12 However, on or about March 4, 2020, Patient A fills a prescription issued by
13 Respondent for Suboxone 2mg-0.5mg (#90), according to CURES.

14 (z) On or about April 2, 2020, Patient A returns to NMG for a follow-up
15 visit. According to the progress note, "add well controlled with adderall. needs
16 refill of suboxone." Respondent issues a prescription for Suboxone #60 (2mg-
17 0.5mg) to Patient A. Significantly, Respondent does not document in the note the
18 rationale for resuming the use of Suboxone with Patient A after allegedly "tapering
19 off" the drug only two months earlier.

20 (aa) On or about June 16, 2020, Patient A returns to NMG for a follow-up
21 visit. According to the progress note, "needs refill of suboxone/adhd meds. stable.
22 still grieving for death of daughter." Respondent documents a psychiatric
23 examination of Patient A in the note for this visit. Respondent doubles the
24 Adderall prescription to #60 tablets, and he also continues to refill prescriptions of
25 Suboxone, Soma, and Ambien.

26
27 ⁴ According to CURES, on or about January 22, 2020, Patient A filled two separate
Suboxone prescriptions totaling #360 tablets (2mg/0.5mg).

28 ⁵ Suboxone 8-2 mg tablet is the dosage strength listed under current medications in the
progress note.

1 (bb) On or about September 15, 2020, Patient A returns to NMG for a follow-up
2 visit. No drug prescriptions are documented in the progress note for this visit.
3 However, CURES shows Patient A filled his usual prescriptions issued by
4 Respondent that same month.

5 (cc) In or around 2020, Respondent charted approximately 11 clinical visits
6 with Patient A at NMG. Significantly, Respondent issued concomitant
7 prescriptions for Suboxone, Soma, Ambien, and Adderall to Patient A at nearly
8 every office visit in 2020. The progress notes do not document the rationale for
9 prescribing Adderall rather than first attempting a taper of Suboxone, Soma, and
10 Ambien. Despite routine prescriptions of Adderall issued by Respondent,
11 Adderall is not listed under current medications in any of the progress notes in
12 2020. In 2020, Respondent issued near monthly prescriptions of Suboxone (2mg-
13 0.5mg) in varying quantities to Patient A, according to CURES. However, there is
14 no detailed documentation in the notes of the rationale for changing the quantity of
15 Suboxone from visit to visit. In addition, Suboxone 8-2 mg tablet is the dosage
16 strength listed under current medications in the progress notes in 2020, which is
17 significantly different from the prescribing data shown in CURES in 2020. The
18 HPI and general/psychiatric examination language contained in many of the
19 progress notes are mostly identical in 2020.

20 (dd) On or about January 5, 2021, Patient A returns to NMG for a follow-up
21 visit. Respondent documents performing a psychiatric examination of Patient A at
22 this visit. The psychiatric examination documented at this visit contains the exact
23 same language used in 7 prior progress notes, which allegedly document
24 psychiatric examinations performed by Respondent at each visit. Respondent
25 issues prescriptions for Suboxone, Soma, Ambien, and Adderall to Patient A at
26 this visit.

27 (ee) On or about February 2, 2021, Patient A returns to NMG for a follow-up
28 visit. Patient A's Ambien prescription is increased by Respondent, according to

1 the progress note for the visit. Respondent also issues prescriptions for Suboxone,
2 Soma, and Adderall to Patient A at this visit.

3 (ff) On or about March 2, 2021, Patient A returns to NMG for a follow-up
4 visit. Patient A is "tapered off" of Suboxone, according to the progress note for
5 the visit. Patient A's Ambien prescription is doubled by Respondent, according to
6 the note. Respondent also issues prescriptions for Soma and Adderall to Patient A
7 at this visit.

8 (gg) On or about March 22, 2021, Patient A returns to NMG for a follow-up
9 visit. Patient A is experiencing "withdrawal symptoms from cessation of
10 suboxone" which includes anxiety and insomnia, according to progress note for
11 visit. Respondent increases Soma and Ambien prescriptions at Patient A's request,
12 according to the note.

13 (hh) On or about August 18, 2021, Patient A returns to NMG for medication
14 refills. Patient A complains of "overactive autonomic nervous system since
15 stopping suboxone," according to progress note for visit. Despite HPI indicating
16 that Suboxone is no longer prescribed to Patient A, Suboxone continues to be
17 listed under current medications in the progress note.

18 (ii) From in or around January 2021, to in or around August 2021, Respondent
19 and FNP P.F. charted approximately 9 clinical visits with Patient A at NMG.
20 Significantly, Respondent continued issuing concomitant prescriptions for Suboxone,
21 Soma, Ambien, and Adderall to Patient A. The general/psychiatric examination
22 language contained in the progress notes remain mostly identical in 2021.

23 (jj) From in or around January 2016, to in or around August 2021, the progress
24 notes do not accurately document the exact quantities of Suboxone, Soma, Ambien,
25 and Adderall prescribed to Patient A during this timeframe.

26 (kk) From in or around January 2016, to in or around August 2021, the progress
27 notes do not document an accurate current medication list of drugs prescribed to
28 Patient A during this timeframe.

1 (ll) From in or around January 2016, to in or around February 2021,
2 Respondent, with full knowledge of Patient A's OUD, does not clearly document
3 the rationale for multiple changes in dose and/or quantity of Suboxone prescribed to
4 Patient A during this timeframe.

5 (mm) From in or around January 2016, to in or around February 2021,
6 Respondent, with full knowledge of Patient A's OUD, does not competently manage
7 Patient A's Suboxone treatment and/or orderly taper the dose during this timeframe.

8 31. Respondent committed gross negligence in his care and treatment of Patient A
9 including, but not limited to, the following:

10 (a) Respondent issued multiple concomitant prescriptions of Suboxone and
11 Soma, which drug combination posed serious risks to Patient A's health;

12 (b) Respondent issued multiple concomitant prescriptions of Suboxone,
13 Soma, and Ambien, which drug combination posed serious risks to Patient
14 A's health;

15 (c) Respondent issued multiple concomitant prescriptions of Suboxone,
16 Soma, Ambien, and Adderall, which drug combination posed serious risks to
17 Patient A's health;

18 (d) Respondent failed to accurately document performance of physical
19 and/or psychiatric examinations of Patient A, which language appears
20 identical/word for word in multiple progress notes over several years;

21 (e) Respondent failed to accurately document the exact quantities of
22 Suboxone, Soma, Ambien, and Adderall prescribed to Patient A in the
23 progress notes;

24 (f) Respondent failed to maintain an accurate current medication list of
25 drugs prescribed to Patient A in the progress notes;

26 (g) Respondent failed to competently manage Patient A's Suboxone
27 treatment and/or orderly taper the dose prescribed to Patient A;

28 ////

- 1 (h) Respondent diagnosed Patient A with ADHD based on symptoms of
2 inattention, but failed to document any consideration on the combined effects
3 of concomitant prescriptions of three sedatives (i.e., Suboxone, Soma, and
4 Ambien) being taken by Patient A;
- 5 (i) Respondent failed to document the rationale for prescribing Adderall to
6 Patient A rather than first attempting a taper of Soma and Ambien;
- 7 (j) Respondent failed to adequately and accurately document Patient A's
8 medical record, wherein he documented that Patient A had "tapered off
9 suboxone" and agreed to no longer take the drug, without any further
10 explanation in the progress note dated January 28, 2020; and
- 11 (k) Respondent failed to document the rationale for the rapid dose
12 escalation of Adderall prescribed to Patient A on or about June 16, 2020.

13 32. **Patient B**

14 (a) From in or around January 2017, to in or around February 2019,
15 Patient B treated with Respondent and FNP P.F. at NMG.⁶ During that timeframe,
16 Respondent and FNP P.F. saw Patient B for a number of chronic medical issues
17 including, but not limited to, opioid addiction, chronic pain syndrome, chronic
18 fatigue, low back pain, diabetes, Lyme disease, chronic urethritis, heart problems,
19 sleep apnea, prostate cancer, and depression. During that same timeframe,
20 Respondent and FNP P.F. regularly issued prescriptions to Patient B for controlled
21 substances and other prescription only medication including, but not limited to,
22 Suboxone, Norco, OxyContin, oxycodone HCL, Lorazepam, Diazepam, Ambien,
23 methocarbamol, baclofen, hydroxyzine, selegiline, and naltrexone.

24 (b) On or about January 5, 2017, Patient B, a then-73-year-old male, presented
25 at NMG for infusion therapy. Under HPI in the progress note, Patient B also
26 complains of fatigue and pudendal pain. Under the current medications list, the

27 ⁶ Patient B has been Respondent's patient for 35 years, according to Respondent.
28

1 following drugs are listed: hydroxyzine, selegiline, DHEA, naltrexone, Diazepam,
2 Lorazepam, baclofen, methocarbamol.⁷ This medication list is reviewed and
3 reconciled with Patient B, according to the progress note for the visit.

4 (c) On or about February 14, 2017, Patient B returns to NMG for a follow-up
5 visit. Patient B complains of increased "intolerable pain," according to the progress
6 note for the visit. A prescription for Norco is refilled at this visit, but the drug is not
7 listed under current medications in the note.

8 (d) On or about March 14, 2017, Patient B returns to NMG for a follow-up
9 visit. A pain management consult is ordered, according to the progress note for
10 the visit. A prescription for Norco is refilled at this visit, and the drug is added to
11 the current medications list in the note.

12 (e) On or about March 17, 2017, Patient B was seen at Integrated Pain
13 Specialists (IPS) by a pain management specialist (Dr. K.S.) for a consultation.
14 Respondent is listed as Patient B's primary care provider, according to the
15 progress note for the visit. Dr. K.S. advises Patient B that he is "not a candidate
16 for chronic oral systemic opioid therapy" and documents alternative methods for
17 pain management in the note. Dr. K.S. further advises Patient B that he does not
18 recommend taking a combination of opioids and benzodiazepines "due to the
19 increased risk of respiratory depression and death." Significantly, Patient B
20 discloses his prior use of hallucinogenic drugs, participation in an alcohol/drug
21 treatment program, and that he had attended "AA" and "NA" meetings.

22 (f) On or about March 28, 2017, Patient B returns to NMG for a follow-up
23 visit. Patient B advises that Dr. K.S. cannot prescribe him pain medication until he
24 receives medical records and test results, according to the progress note for the
25 visit. A prescription for Norco is refilled at this visit, but the drug is still not listed
26 under current medications in the note.

27
28 ⁷ These same medications remain consistently listed under current medications in every
progress note from January 2017 to February 2019.

1 (g) On or about May 9, 2017, Patient B returns to IPS for medication refills.
2 Patient B is switched from Norco to Percocet, according to the progress note for
3 the visit. The note also indicates that Patient B will proceed with a spinal cord
4 stimulation trial later that week.

5 (h) On or about July 6, 2017, Patient B has a telephonic encounter with staff
6 at IPS. Patient B states that he wants to "get off the pain medication," and that
7 Respondent has a plan to wean him off of the pain medications, according to
8 documentation of the telephone call. It is also documented that Patient B was
9 given a list of detox facilities to coordinate his care.

10 (i) In or around 2017, Respondent and FNP P.F. charted approximately 75
11 clinical visits with Patient B at NMG. Significantly, in 2017, Respondent
12 routinely issued concomitant prescriptions for (1) opioids and benzodiazepines;
13 (2) naltrexone and oxycodone; and (3) hydroxyzine, selegiline, baclofen, and
14 methocarbamol. In 2017, according to CURES, Respondent consistently issued
15 prescriptions for controlled substances to Patient B, but the progress notes do not
16 accurately document if these prescriptions were issued at clinical visits. The
17 progress notes do not document an accurate current medication list of drugs
18 prescribed to Patient B in 2017. The progress notes do not adequately document
19 objective goals of therapy for Patient B and/or the degree to which they were met
20 or not met by treatment in 2017. Respondent did not adequately document in
21 progress notes the rationale for changing the doses of controlled substances that he
22 had prescribed to Patient B in 2017. The progress notes do not document any
23 discussion with Patient B concerning aberrant drug behavior, or document whether
24 any evidence of aberrant drug behavior was observed and/or not observed in 2017.
25 Finally, in light of their knowledge that Patient B was being treated for chronic
26 pain by Dr. K.S., Respondent and/or FNP P.F. did not adequately document in
27 progress notes the rationale for their continued use of controlled drug therapy in
28 treating and managing Patient B's chronic pain issues in 2017.

1 (j) On or about January 2, 2018, Patient B returns to NMG for a trigger
2 point injection. Patient B states that the neurostimulator was helpful in reducing
3 his pain levels and wants to continue with the therapy, according to the progress
4 note for this visit. The progress note does not accurately document the current
5 medications being prescribed to Patient B by Respondent. Respondent issues a
6 prescription for OxyContin 20mg (#90) to Patient B at this visit. However, the
7 actual quantity of this OxyContin prescription filled by Patient B was #120,
8 according to CURES.

9 (k) On or about January 19, 2018, Patient B returns to NMG for
10 implantation of a Stivax neurostimulator. The progress note does not document
11 any objective goals of this specific therapy for Patient B.

12 (l) On or about March 1, 2018, Patient B returns to NMG for ozone
13 treatment. The progress note does not accurately document the current
14 medications being prescribed to Patient B by Respondent. The note does not
15 document any prescription for OxyContin being issued at this visit. However, on
16 or about the same date of this visit, Patient B filled a prescription of OxyContin
17 30mg (#90), according to CURES.

18 (m) On or about March 22 and 29, and April 5, 2018, Patient B filled three
19 separate prescriptions issued by Respondent for OxyContin, according to CURES.
20 There is no documentation in Patient B's progress notes showing these
21 prescriptions were issued by Respondent; and nor why the drug's milligram
22 strength was increased to 40mg.

23 (n) On or about August 5, 2018, Patient B returns to NMG for a follow-up
24 visit. Patient B reports that he is still experiencing "detox symptoms from opioids,"
25 according to the progress note for the visit. Patient B also reports that he "does not
26 feel he can manage pain on current psychotropic meds alone." "No suicidal ideation
27 at present," according to Respondent. Respondent then diagnoses Patient B with
28 opioid dependence with withdrawal, and issues a prescription for Suboxone 4mg-

1 1mg (#10) at this visit. However, Respondent does not first discuss or document
2 discussing with Patient B the risks and benefits of beginning Suboxone treatment.

3 (o) On or about August 8, 2018, Patient B returns to NMG for a follow-up
4 visit. In the progress note for this visit, Respondent documents an identical
5 psychiatric examination of Patient B that he had just performed only 2 days earlier.
6 Respondent issues a new prescription for Suboxone 8mg-2mg (#30) to Patient B.
7 However, Respondent does not document in the progress note the rationale for
8 increasing the Suboxone prescription at this visit. Respondent again does not
9 discuss or document discussing with Patient B the risks and benefits of beginning
10 Suboxone treatment.

11 (p) On or about September 12, 2018, Patient B returns to NMG for a trigger
12 point injection. The progress note for this visit indicates "chronic pain stable on
13 suboxone." Patient B wants a trigger point injection for chronic back pain, and he
14 also complains of chronic fatigue. The note documents an identical psychiatric
15 examination of Patient B that was recently performed at prior visits. A review of
16 CURES indicates no inappropriate activity and Patient B "signed a narcotic
17 contract," according to the note. The naltrexone prescription is documented as
18 continued ("every day"), but the note does not document that a prescription was
19 issued for Suboxone. However, Patient B filled a prescription issued by
20 Respondent for Suboxone 8mg-2mg (#30) on or about September 14, 2018,
21 according to CURES.

22 (q) In or around 2018, Respondent and FNP P.F. charted approximately 75
23 clinical visits with Patient B at NMG. Significantly, in 2018, Respondent
24 routinely issued concomitant prescriptions for (1) opioids and benzodiazepines;
25 (2) naltrexone and oxycodone; and (3) hydroxyzine, selegiline, baclofen, and
26 methocarbamol. In 2018, according to CURES, Respondent consistently issued
27 prescriptions for controlled substances to Patient B, but the progress notes do not
28 accurately document if these prescriptions were issued at clinical visits. The

1 progress notes do not document an accurate current medication list of drugs
2 prescribed to Patient B in 2018. The progress notes do not adequately document
3 objective goals of therapy for Patient B and/or the degree to which they were met
4 or not met by treatment in 2018. Respondent did not document in progress notes
5 the rationale for changing the dosage of Suboxone that he had prescribed to Patient
6 B in 2018. The psychiatric examination language contained in many of the
7 progress notes are mostly identical in 2018. Finally, the progress notes do not
8 document any discussion with Patient B concerning aberrant drug behavior, or
9 document whether any evidence of aberrant drug behavior was observed and/or
10 not observed in 2018.

11 (r) On or about January 3, 2019, Patient B returns to NMG for ozone
12 treatment. Chronic pain and depression are documented in the progress note for
13 this visit. A psychiatric examination documented in the note is identical to prior
14 examinations performed by Respondent. The note does not list Suboxone under
15 current medications, or whether the drug was even prescribed at this visit.
16 However, Patient B filled a prescription issued by Respondent for Suboxone 4mg-
17 1mg (#30) on or about January 4, 2019, according to CURES.

18 (s) On or about January 31, 2019, Patient B returns to NMG for ozone
19 treatment. Chronic pain, depression, and neuropathy are documented in the
20 progress note for this visit. A psychiatric examination documented in the note is
21 identical to prior examinations performed by Respondent. Again, the note does
22 not list Suboxone under current medications, or whether the drug was even
23 prescribed at this visit. However, Patient B filled a prescription issued by
24 Respondent for Suboxone 4mg-1mg (#60) on or about February 2, 2019, according
25 to CURES.

26 (t) From in or around January 2017, to in or around February 2019,
27 Respondent does not carefully evaluate and monitor Patient B's polypharmacy.

28 ////

1 33. Respondent committed gross negligence in his care and treatment of Patient B
2 including, but not limited to, the following:

- 3 (a) Respondent issued multiple concomitant prescriptions of naltrexone and
4 oxycodone, which drug combination posed serious risks to Patient B's
5 health;
- 6 (b) Respondent issued multiple concomitant prescriptions of naltrexone and
7 Suboxone, which drug combination posed serious risks to Patient B's
8 health;
- 9 (c) Respondent issued multiple concomitant prescriptions of opioids and
10 benzodiazepines, which drug combination posed serious risks to Patient
11 B's health;
- 12 (d) Respondent issued multiple concomitant prescriptions of hydroxyzine,
13 selegiline, baclofen, and methocarbamol, which drug combination posed
14 serious risks to Patient B's health;
- 15 (e) Respondent failed to adequately evaluate and monitor Patient B's
16 polypharmacy;
- 17 (f) Respondent failed to maintain an accurate current medication list of
18 drugs prescribed to Patient B in the progress notes;
- 19 (g) Respondent failed to accurately document in the medical record each
20 controlled substance prescribed to Patient B;
- 21 (h) Respondent failed to adequately document in progress notes the
22 rationale for changing the doses of controlled substances that he had
23 prescribed to Patient B;
- 24 (i) Respondent failed to adequately document in progress notes the rationale
25 for changing the dosage of Suboxone that he had prescribed to Patient B;
- 26 (j) Respondent failed to adequately document objective goals of therapy for
27 Patient B and/or the degree to which they were met or not met by
28 treatment;

1 (k) Respondent failed to adequately monitor Patient B for evidence of
2 aberrant drug behavior; and

3 (l) Respondent failed to maintain an adequate and accurate medical record,
4 which included frequent use of inaccurate cut-and-paste content carried
5 forward from progress note to progress note.

6 34. **Patient C**

7 (a) On or about December 22, 2015, Respondent saw Patient C, a then-4-
8 year-old female, for the first time at NMG's clinic. Patient C's parents requested
9 an immunization waiver from Respondent during the visit at NMG. This was
10 Patient C's first and only documented visit at NMG.

11 (b) During the visit, Respondent performs a physical examination of Patient
12 C. According to the progress note of the visit, Respondent documents "normal
13 growth and development" and notes an ongoing molluscum infection
14 "for several months." The progress note indicates that Patient C was not taking
15 any current medication, had no surgical history or medical history, and that she
16 was otherwise healthy.

17 (c) Respondent documents additional information in the progress note,
18 as given to him by Patient C's parents, including, a history of mild eczema and
19 a strong family history of autoimmune disease. Despite the history relayed to him
20 by the parents, Respondent does not order a work-up for possible immune
21 deficiency or issue a referral to a pediatric immunologist. Respondent does not
22 document that Patient C, herself, had suffered from severe, opportunistic, or
23 frequent infections in the past, or had an immune deficiency.

24 (d) On the same date of the initial clinical visit, Respondent drafts a
25 handwritten letter on NMG letterhead recommending that Patient C "not be
26 vaccinated due to symptoms of impaired immunity and a strong family history of
27 autoimmune disease." The letter is addressed "To whom it may concern" and it is
28 signed by the Respondent.

1 (e) On or about August 18, 2016, Respondent signs a form entitled
2 "Medical Exemption to Required Immunizations," which is prepared on behalf of
3 Patient C. The form exempts Patient C from all mandatory immunizations for
4 entering school including: Polio; DTaP; MMR; HIB; Hepatitis B; Varicella; and
5 Tdap. Significantly, the form gives "permanent exemption" from these mandatory
6 immunizations to Patient C. By signing the form as a licensed physician,
7 Respondent certified that Patient C had a "physical condition or medical
8 circumstance such that immunization otherwise required for admission to school
9 ... in California is not considered safe." There is no documentation that
10 Respondent saw and/or physically examined Patient C after the December 22,
11 2015 clinical visit, before signing this form 8 months later.

12 (f) Patient C's medical records from NMG do not contain copies of medical
13 records from outside medical providers and/or copies of lab tests about the past
14 and then-existing condition of her immunity.

15 (g) Respondent, without the benefit of additional medical information,
16 relied upon information given to him by Patient C's parents to conclude that she
17 should be exempted from mandatory immunizations.

18 (h) Respondent, despite having a very limited medical history, hand-wrote
19 and signed a letter recommending Patient C should not be vaccinated; and 8
20 months later, signed a form certifying that Patient C's immunity condition
21 warranted permanent exemption from all mandatory school aged immunizations.

22 35. Respondent committed gross negligence in his care and treatment of Patient C
23 including, but not limited to, the following:

24 (a) Respondent failed to provide adequate and supported reasons for the
25 medical exemptions he provided to Patient C;

26 (b) Respondent failed to adequately act on impaired immunity concerns for
27 Patient C;

28 ////

1 (c) Respondent failed to provide adequate and supported reasons for
2 exempting Patient C from all vaccines; and

3 (d) Respondent failed to provide adequate and supported reasons for
4 providing permanent exemption to Patient C from all vaccines.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Repeated Negligent Acts)**

7 36. Respondent has further subjected his Physician's and Surgeon's Certificate No.
8 G 44909 to disciplinary action under sections 2227 and 2234, as defined in section 2234,
9 subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and
10 treatment of Patients A, B, C, D, and E, as more particularly alleged hereinafter:

11 37. **Patient A**

12 (a) Paragraphs 29, 30, and 31, above, are hereby incorporated by reference
13 and realleged as if fully set forth herein.

14 38. **Patient B**

15 (a) Paragraphs 29, 32 and 33, above, are hereby incorporated by reference
16 and realleged as if fully set forth herein.

17 39. **Patient C**

18 (b) Paragraphs 29, 34, and 35, above, are hereby incorporated by reference
19 and realleged as if fully set forth herein.

20 40. **Patient D**

21 (a) On or about June 23, 2017, Patient D, a then-34-year-old female, had
22 her first documented visit at Respondent's clinic. Respondent saw Patient D and
23 documents in the progress note for the initial visit that she is there "to discuss
24 Trina Therapy." Respondent documents a limited medical history of Patient D and
25 diabetes complications. The progress note indicates that Patient D had diabetes
26 since the age of twelve, that she is insulin dependent, and that she is "currently on
27 pump." The note does not document whether Respondent performed a physical
28 examination, whether Respondent reviewed home blood glucose monitoring data,

1 or whether Respondent reviewed the specific amounts of insulin then-currently
2 being taken by Patient D.

3 (b) Significantly, in the progress note from the first visit, Respondent does
4 not document whether Patient D should follow up with a primary care physician
5 (PCP) or an endocrinologist to manage her insulin pump and monitor her for
6 diabetic complications, once Trina therapy was started at NMG. Respondent
7 schedules Patient D to begin Trina therapy without first attempting to review
8 medical records from other medical providers documenting information and/or
9 data about her diabetes complications. Furthermore, neither Respondent nor FNP
10 P.F. ever review any medical records from other providers for Patient D during her
11 Trina therapy, according to the patient's medical record from NMG.

12 (c) From in or around July 2017, to in or around August 2017, Patient D
13 had 8 documented visits at NMG for Trina therapy. The progress notes for these
14 visits were all signed by FNP P.F. Respondent does not counter-sign or initial any
15 of these notes. Significantly, during this timeframe, there is no documentation that
16 Respondent saw Patient D and/or monitored the Trina therapy that she is receiving
17 at his clinic.

18 (d) All of the progress notes signed by FNP P.F. list Respondent's name as
19 "PCP" at the top of each note. However, the notes do not include diabetes
20 monitoring and screening information including, but not limited to: no referrals for
21 eye exams; no lab orders to check for microalbuminuria or dyslipidemia; and no
22 foot examinations to check for neuropathy.

23 41. Patient E

24 (a) On or about June 23, 2017, Patient E, a then-69-year-old male, had his
25 first documented visit at Respondent's clinic. Respondent saw Patient E and
26 documents a very brief progress note for the initial visit, with almost no medical
27 history and/or history of diabetes complications about Patient E in the note. The
28 note indicates that Patient E has insulin dependent diabetes, that he is starting to

1 get neuropathy, that he is currently on humulin and nvovolin insulins, and that he
2 complains of fatigue. The note does not document whether Respondent performed
3 a physical examination, whether Respondent reviewed home blood glucose
4 monitoring data, or whether Respondent reviewed the specific amounts of insulin
5 then-currently being taken by Patient E.

6 (b) Significantly, in the progress note from the first visit, Respondent does
7 not document whether Patient E should follow up with a PCP or an
8 endocrinologist to manage his insulin and monitor his diabetic complications, once
9 Trina therapy was started at NMG. Respondent schedules Patient E to begin Trina
10 therapy without first attempting to review medical records from other medical
11 providers documenting information and/or data about his diabetes complications.
12 Furthermore, neither Respondent nor FNP P.F. ever review any medical records
13 from other providers for Patient E during his Trina therapy, according to the
14 patient's medical record from NMG.

15 (c) From in or around July 2017, to in or around October 2018,
16 Patient E had approximately 58 documented visits at NMG for Trina therapy. The
17 progress notes for these visits were all signed by FNP P.F. Respondent does not
18 counter-sign or initial any of these notes. Significantly, during this timeframe,
19 there is limited documentation that shows Respondent monitored the monthly
20 Trina therapy that Patient E was receiving at his clinic.

21 (d) All of the progress notes signed by FNP P.F. list Respondent's name as
22 "PCP" at the top of each note. However, the notes do not include diabetes
23 monitoring and screening information including, but not limited to: no referrals for
24 eye exams; no foot examinations to check for neuropathy; only one (1) lipid panel
25 was checked and documented; and no substantive documentation related to
26 managing Patient E's elevated blood pressure readings and attendant
27 cardiovascular risk factors.

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42. Respondent committed repeated negligent acts in his care and treatment of Patients D and E including, but not limited to, the following:

- (a) Respondent failed to properly monitor the diabetes care and treatment that Patient D received at his clinic;
- (b) Respondent failed to document an adequate medical history of Patient D;
- (c) Respondent failed to properly monitor the diabetes care and treatment that Patient E received at his clinic; and
- (d) Respondent failed to document an adequate medical history of Patient E.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

43. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 44909 to disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (d), of the Code, in that Respondent demonstrated incompetence in his care and treatment of Patient A, as more particularly alleged hereinafter:

44. Patient A

- (a) Paragraphs 29, 30, and 31, above, are hereby incorporated by reference and realleged as if fully set forth herein.
- (b) During his subject interview on or about June 17, 2021, Respondent is asked a question about why a prescription for Suboxone is missing from the current medication list in the progress note, to which he replies, "I don't really know. ... I don't manage that part of the record."
- (c) From in or around January 2016, to in or around February 2021, Respondent does not adequately document in the progress notes the rationale for multiple dose changes of Suboxone for treating Patient A's OUD during this timeframe.
- (d) From in or around January 2016 to in or around February 2021, Respondent, with full knowledge of Patient A's OUD and polypharmacy, does not document any consideration of a diagnosis of polysubstance use disorder during this timeframe.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Medical Records)**

3 45. Respondent has further subjected his Physician's and Surgeon's Certificate No.
4 G 44909 to disciplinary action under sections 2227 and 2234, as defined in section 2266, of the
5 Code, in that Respondent failed to maintain adequate and accurate records in connection with his
6 care and treatment of Patients A, B, C, D, and E, as more particularly alleged in paragraphs 29
7 through 44, above, which are hereby incorporated by reference and realleged as if fully set forth
8 herein.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct)**

11 46. Respondent has further subjected his Physician's and Surgeon's Certificate No.
12 G 44909 to disciplinary action under sections 2227 and 2234 of the Code, in that Respondent has
13 engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct
14 which is unbecoming to a member in good standing of the medical profession, and which
15 demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 29
16 through 45, above, which are hereby incorporated by reference and realleged as if fully set forth
17 herein.

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1 PRAYER

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


4 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 44909, issued
5 to Respondent James Anthony Novak, M.D.;

6 2. Revoking, suspending, or denying approval of Respondent James Anthony Novak,
7 M.D.'s authority to supervise physician assistants pursuant to section 3527 of the Code, and
8 advanced practice nurses;

9 3. Ordering Respondent James Anthony Novak, M.D., to pay the Board the costs of the
10 investigation and enforcement of this case, and if placed on probation, the costs of probation
11 monitoring; and

12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: MAY 25 2022

15 
16 WILLIAM PRASIFKA
17 Executive Director
18 Medical Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant

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27 SD2020800883
28 Doc.No.83387647