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

In the Matter of the First Amended Accusation Against: **Mark Scheier, M.D.** Physician's and Surgeon's Certificate No. A 36345 Respondent.	Case No: 800-2019-057710

ORDER CORRECTING NUNC PRO TUNC MISTAKE OR CLERICAL ERROR IN DECISION

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a mistake or clerical error in the Decision in the above-entitled matter and that such mistake or clerical error should be corrected.

IT IS HEREBY ORDERED that the Decision in the above-entitled matter be and hereby is amended and corrected, pursuant to Government Code section 11518.5, subdivision (d), as follows:

1. Page 4, line 15: "800-2019-057710" is amended and corrected to read "800-2017-031603".
2. Page 4, line 27: "800-2019-057710" is amended and corrected to read "800-2017-031603".

IT IS SO ORDERED February 10, 2023

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

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

In the Matter of the First Amended Accusation Against: Mark Scheier, M.D. Physician's and Surgeon's Certificate No. A 36345 Respondent.	Case No.: 800-2019-057710

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 26, 2023.

MEDICAL BOARD OF CALIFORNIA

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

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

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

In the Matter of the First Amended Accusation Against: **MARK SCHEIER, M.D.** **5451 La Palma Avenue, Ste. 22** **La Palma, CA 90623** **Physician's and Surgeon's Certificate No. A 36345,** Respondent.	Case No. 800-2019-057710 OAH No. 2022090568 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

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2. Respondent Mark Scheier, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is: Doyle Shafer McMahon, LLP, 5440 Trabuco Road, Irvine, CA 92620.

3. On or about February 23, 1981, the Board issued Physician's and Surgeon's Certificate No. A 36345 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2019-057710, and will expire on May 31, 2024, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2019-057710 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on September 13, 2022, superseding Accusation No. 800-2019-057710 that had been served on Respondent, along with all other statutorily required documents, on June 9, 2022. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of First Amended Accusation No. 800-2019-057710 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2019-057710. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges in Accusation No. 800-2019-057710, a copy of which is attached hereto as exhibit A, and that Respondent has thereby subjected his Physician's and Surgeon's Certificate No. A 36345 to disciplinary action.

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

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in First Amended Accusation No. 800-2019-057710 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

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

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ADDITIONAL PROVISIONS

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 36345 issued to Respondent Mark Scheier, M.D. is revoked. However, the revocation is stayed and Respondent is placed on a period of probation to run concurrent with the existing probation term previously ordered in Medical Board case No. 800-2019-057710, with the following additional terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 20 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 85 hours of CME of which 20 hours were in satisfaction of this condition (and of which 40 hours were in satisfaction of condition 3 of Board Decision and Order No. 800-2019-057710).

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

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

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

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

5. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, and investigation(s), as applicable, in the amount of $20,000 (twenty thousand dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within one year of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs, including expert review costs.

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

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

7. 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 thirty (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.

8. 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.

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

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

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws;

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General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

10. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. This term does not include cost recovery, which is due within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

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

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

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

14. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, before any other health care licensing agency in the State of California, all of the charges and allegations contained in First Amended Accusation No. 800-2019-057710 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict a license.

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ACCEPTANCE

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

DATED: 11/11/22

MARK SCHEIER, M.D.
Respondent

I have read and fully discussed with Respondent Mark Scheier, 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 11, 2022

RAYMOND J. MCMAHON
Attorney for Respondent

ENDORSEMENT

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

DATED: November 15, 2022

Respectfully submitted,

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

GIOVANNI F. MEJIA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2019-057710

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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **Mark Scheier, M.D.** **5451 La Palma Avenue, Ste. 22** **La Palma, CA 90623** **Physician's and Surgeon's Certificate No. A 36345** Respondent.	Case No. 800-2019-057710 **FIRST AMENDED ACCUSATION**

PARTIES

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

2. On or about February 23, 1981, the Medical Board issued Physician's and Surgeon's Certificate No. A 36345 to Mark Scheier, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2024, unless renewed.

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JURISDICTION

3. This First Amended Accusation, which supersedes Accusation No. 800-2019-057710 filed on June 9, 2022 in the above-entitled matter, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227, subdivision (a) of the Code states:

> A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

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

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
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> ...
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the

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

6. Section 2242 of the Code states:

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

"..."

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

8. Section 725 of the Code states:

(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"..."

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

COST RECOVERY

10. 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 licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

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(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.

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FACTS

Patient A[1]

11. Beginning in or around 2015[2], Respondent began rendering medical care and treatment to Patient A, an adult patient with a history of ailments including, but not limited to, obesity, hypertension,[3] chronic obstructive pulmonary disease (COPD),[4] chronic low back and hip pain, and current tobacco addiction.

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[1] Patients' true names are not used in the instant First Amended Accusation to maintain patient confidentiality. The patients' identities are known to Respondent or will be disclosed to Respondent upon receipt of a duly issued request for discovery in accordance with Government Code section 11507.6.

[2] Any act or omission alleged to have occurred more than seven years prior to the filing of the instant First Amended Accusation is alleged for informational purposes only, and is not alleged as a basis for disciplinary action.

[3] Hypertension refers to a condition in which the force of the blood against the artery walls is too high (high blood pressure).

[4] Chronic obstructive pulmonary disease (COPD) is a group of lung diseases that block airflow and make it difficult to breathe.

12. In or around January 2016 through in or around June 30, 2016, Respondent issued recurring prescriptions for hydrocodone[5] 40 mg daily (MED[6] of 40 mg) with Soma[7] 350 mg 4X daily.

13. In or around October 2017, November 2017, December 2017, January 2018, and March 2018, Respondent prescribed hydrocodone 40 mg daily (MED of 40 mg) and Soma 350 mg 4X daily.

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[5] Hydrocodone APAP (Vicodin®, Lortab® and Norco®) is a hydrocodone combination of hydrocodone bitartrate and acetaminophen which was formerly a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. On August 22, 2014, the DEA published a final rule rescheduling hydrocodone combination products (HCPs) to schedule II of the Controlled Substances Act, which became effective October 6, 2014. Schedule II controlled substances are substances that have a currently accepted medical use in the United States, but also have a high potential for abuse, and the abuse of which may lead to severe psychological or physical dependence. When properly prescribed and indicated, it is used for the treatment of moderate to severe pain. In addition to the potential for psychological and physical dependence there is also the risk of acute liver failure which has resulted in a black box warning being issued by the U.S. Food and Drug Administration (FDA). The FDA black box warning provides that "Acetaminophen has been associated with cases of acute liver failure, at times resulting in liver transplant and death. Most of the cases of liver injury are associated with use of the acetaminophen at doses that exceed 4000 milligrams per day, and often involve more than one acetaminophen containing product."

[6] Morphine equivalency dose (MED) is a value assigned to opioids to represent their relative potencies. MED is determined by using an equivalency factor to calculate a dose of morphine that is equivalent to the prescribed opioid. Daily MED is the sum total of all opioids, with conversion factors applied, that are being taken within a 24-hour period, which is used to determine if a patient is at risk of addiction, respiratory depression, or other delirious effects associated with opioids. The process of converting opioid doses to an overall morphine equivalency dose can be accomplished by using a MED calculator or a morphine equivalency table, also known as opioid conversion chart.

[7] Soma® (carisoprodol) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it 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." According to the DEA, Office of Diversion Control, "[c]arisoprodol abuse has escalated in the last decade in the United States. According to Diversion Drug Trends, published by the DEA on the trends in diversion of controlled and noncontrolled pharmaceuticals, carisoprodol continues to be one of the most commonly diverted drugs. Diversion and abuse of carisoprodol is prevalent throughout the country. As of March 2011, street prices for [carisoprodol] Soma® ranged from $1 to $5 per tablet. Diversion methods include doctor shopping for the purposes of obtaining multiple prescriptions and forging prescriptions."

14. Between 2017 through 2018, Patient A presented to Respondent frequently for pain medications and Soma prescription renewals. The clinic notes for these visits lacked any detailed musculoskeletal and spine examinations of Patient A. The clinic notes consistently showed that Patient A was wheezing[8] on auscultations.[9]

15. In or around late 2018, Respondent added atenolol[10] therapy to Patient A's high blood pressure medication regimen. However, Patient A still had uncontrolled blood pressure in May 2019 during her follow-up visit.

Evaluation and Non-Opiate Management of Chronic Pain

16. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to request and/or failing to document having requested Patient A's prior medical records for review and/or confirmation of history of prior care and/or treatment and/or evaluation of Patient A's total body pains, including, but not limited to, neck, upper back, and hips, before prescribing hydrocodone and Soma on a regular basis.

17. In or around January 2016 to December 31, 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to adequately utilize and/or failing to document having adequately utilized non-opiate pain management options, including, but not limited to, failing to titrate upwards the dosages of gabapentin[11] and tricyclics[12] for pain

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[8] Wheeze means (of a person) breathe with a whistling or rattling sound in the chest, as a result of obstruction in the air passages.

[9] Auscultation refers to the action of listening to sounds from the heart, lungs, or other organs, typically with a stethoscope, as a part of medical diagnosis.

[10] Atenolol is a beta blocker, which can be used to treat high blood pressure and chest pain (angina). It can also reduce the risk of death after a heart attack.

[11] Gabapentin is an anticonvulsant and nerve pain medication, which can be used to treat seizures and pain caused by shingles (a reactivation of the chickenpox virus in the body, causing a painful rash).

[12] Tricyclic antidepressants are a class of medications that are used primarily for antidepressants, which is important for the management of depression.

management, failing to offer safer medications such as NSAIDS,[13] pregabalin,[14] SSRI,[15] non-addictive muscle relaxants, and topical creams, failing to offer physical therapy or chiropractic manipulation or surgical orthopedic consultation, and failing to discuss aggressive steps such as daily exercises and dietary restrictions to achieve weight reduction.

Initiation and Monitoring of Chronic Pain Medications

18. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A in that prior to initiating prescribing of chronic pain medications on a regular basis, Respondent failed to review and/or failed to document having reviewed Patient A's previous medical records and/or failed to consult and/or failed to document having consulted former prescribing doctors, before formulating his own independent judgment regarding prescribing of opiates to Patient A.

19. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A in that prior to initiating prescribing of chronic pain medications on a regular basis, Respondent failed to properly perform risk stratification (determining the patient's risk of drug addiction and aberrancy), by failing to, among other things, perform a psychological evaluation assessing risks of addictive behaviors by using a set of questionnaire such as Opioid Risk Tool (ORT),[16] SOAPP-R,[17] or PHQ-9,[18] failing to make a possible referral to psychiatry physicians, if Patient A shows above average risk of addiction, and

[13] Nonsteroidal anti-inflammatory drugs (NSAIDs) are medicines that are widely used to relieve pain, reduce inflammation, and bring down a high temperature.

[14] Pregabalin is a nerve pain medication, which can treat nerve and muscle pain.

[15] Selective serotonin reuptake inhibitors (SSRIs) are the most commonly prescribed antidepressants.

[16] Opioid risk tool (ORT) is a brief, self-report screening tool designed for use with adult patients in primary care settings to assess risk for opioid abuse among individuals prescribed opioids for treatment of chronic pain.

[17] The Screener and Opioid Assessment for Patients with Pain-Revised (SOAPP-R) is a tool for clinicians to help determine how much monitoring a patient on long-term opioid therapy might require.

[18] PHQ-9 (Patient Health Questionnaire – 9) is a multipurpose instrument for screening, diagnosing, monitoring, and measuring the severity of depression.

failing to closely monitor with regular urine drug testing and/or consultations with a state prescription drug monitoring program (PDMP)[19] such as CURES reports.[20]

20. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to offer and/or failing to document having offered a multidisciplinary pain management approach including, but not limited to, surgical orthopedic consultation, pain management consultation, cognitive behavioral therapy with mental health, physical therapy, and primary care coordination, which may reduce Patient A's addiction risks, while adequately treating her pain syndrome.

21. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to adequately obtain routine regular urine toxicology testing and/or failing to adequately check CURES reports.

22. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to prescribe and/or failing to document having prescribed naloxone[21] antidote to Patient A, a patient with active COPD illness who was consuming long-term opiates and Soma.

23. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to perform and/or failing to document having performed relevant musculoskeletal examinations and functional assessments during Patient A's visits for narcotic refills.

Carisoprodol (Soma) Therapy and Its Indications

24. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by prescribing Soma to Patient A, on a long-term basis.

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[19] Prescription Drug Monitoring Program (PDMP) is an electronic databse that tracks controlled substance prescriptions.

[20] CURES is the Controlled Substances Utilization Review and Evaluation System (CURES), a database of schedule II, III, and IV controlled substance prescriptions dispensed in California, serving the public health, regulatory oversight agencies, and law-enforcement.

[21] Naloxone is a narcotic, which can treat narcotic overdose in an emergency situation.

25. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to prescribe naloxone antidote to Patient A, a patient who was consuming Soma while opiate dependent with an active COPD.

Informed Consent and Pain Management Agreement

26. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by initiating prescribing of chronic pain medications on a regular basis, without having first obtained adequate informed consent, which includes, but is not limited to, adequately discussing Patient A's increased risk of accidental overdose from consuming both opiate and Soma, due to her COPD.

27. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by initiating prescribing of chronic pain medications on a regular basis, without having first obtained a pain management agreement with Patient A.

Management of Chronic Obstructive Lung Disease (COPD)

28. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to properly treat Patient A's COPD with multiple inhalers.

29. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to conduct and/or failing to document having conducted adequate functional assessment(s) in order to determine the severity of Patient A's COPD.

30. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to offer and/or failing to document having offered Patient A medications to help with Patient A's tobacco addiction.

Management of Chronic Hypertension

31. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to take and/or failing to document having taken more aggressive steps towards management of Patient A's chronic hypertension,

including, but not limited to, encouraging Patient A to do home self-monitoring of her blood pressure readings and sharing them with Respondent, engaging in a serious discussion with Patient A about weight loss and dietary sodium modifications to improve blood pressure measurements, and faster titration of Patient A's blood pressure medications.

Medical Record-Keeping

32. In or around January 2016 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient A by failing to document relevant musculoskeletal examination(s), if any, and functional assessment(s), if any, of opiate therapy, and/or by failing to document his counseling of Patient A regarding lifestyle measures for lowering her blood pressure, if any, and/or by failing to document having prescribed inhalation therapies for Patient A's COPD, if any.

Patient B

33. In or around 2014,[22] Respondent began rendering medical care and treatment to Patient B, an adult patient with a history of ailments including, but not limited to, chronic low back pain and ADHD.[23]

34. In early 2016, a urine toxicology confirmed Patient B's illicit use of marijuana.

35. In or around January 2017 through in or around December 2019, Patient B presented to Respondent on a monthly basis for medication refills and pain management. In 2017, Respondent prescribed to Patient B, on a monthly basis, hydrocodone mg daily (MED of 40 mg),

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[22] Conduct occurring more than seven (7) years from the filing date of Accusation No. 800-2019-057710 is for informational purposes only and is not alleged as a basis for disciplinary action.

[23] Attention-deficit hyperactivity disorder (ADHD) is a chronic condition including attention difficulty, hyperactivity, and impulsiveness.

amphetamine (Adderall)[24] 60-90 mg daily, and alprazolam (Xanax)[25] 6 mg daily. Respondent prescribed alprazolam to Patient B for generalized anxiety disorder. In 2017, Respondent also prescribed to Patient B ibuprofen[26] and cyclobenzaprine therapy[27], without significant benefits. There were no detailed musculoskeletal examinations and no detailed functional assessment(s) of the opiate therapy.

36. In 2018, Patient B continued to present to Respondent for medication refills. In June 2018, Patient B's alprazolam medication was lowered to 4 mg daily and discontinued in October 2018.

37. In or around January 2019, Respondent prescribed naloxone antidote therapy to Patient B.

38. In or around September 2019, Respondent reduced Patient B's daily hydrocodone prescription to 15 mg daily (MED of 15 mg).

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[24] Adderall®, a mixture of d-amphetamine and l-amphetamine salts in a ratio of 3:1, is a central nervous system stimulant of the amphetamine class, and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for attention-deficit hyperactivity disorder and narcolepsy. According to the DEA, amphetamines, such as Adderall®, are considered a drug of abuse. "The effects of amphetamines and methamphetamine are similar to cocaine, but their onset is slower and their duration is longer." (Drugs of Abuse – A DEA Resource Guide (2011), at p. 44.) Adderall and other stimulants are contraindicated for patients with a history of drug abuse.

[25] Xanax® (alprazolam), a benzodiazepine, is a centrally acting hypnotic-sedative that is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the management of anxiety disorders. Concomitant use of Xanax® with opioids "may result in profound sedation, respiratory depression, coma, and death." The Drug Enforcement Administration (DEA) has identified benzodiazepines, such as Xanax®, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2011 Edition), at p. 53.)

[26] Ibuprofen is a nonsteroidal anti-inflammatory drug, which can be used to treat fever and mild to severe pain.

[27] Cyclobenzaprine is a muscle relaxant, which can be used to treat pain and stiffness caused by muscle spasms.

Management of Generalized Anxiety Disorder

39. In or around January 2017 through in or around December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to perform a comprehensive anxiety evaluation of Patient B.

40. In or around January 2017 through in or around December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to prescribe safer and non-addictive anxiolytic medications[28] like SSRI and antihistamines[29] in conjunction with and/or instead of Adderall.

41. In or around January 2017 through in or around December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to offer and/or failing to document having offered mental health consultation to Patient B, a patient consuming Adderall (stimulant medication) with ADHD and co-existing anxiety disorder.

Prescribing of amphetamine (Adderall)

42. In or around January 2017 through in or around December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to properly prescribe Adderall in that he failed to conduct an ADHD screening questionnaire, failed to confirm with Patient B's previous physicians and/or review prior medical records to determine validity of self-reported ADHD diagnosis, and failed to conduct detailed review(s) of Patient B's ADHD symptoms, if any.

Evaluation and Non-Opiate Management of Chronic Pains

43. In or around January 2017 through in or around December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to prescribe safer, non-opiate pharmacotherapy, including, but not limited to, NSAIDs, SSRI, topical creams, and gabapentin/pregabalin.

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[28] Anxiolytic means (chiefly of a drug) used to reduce anxiety.

[29] Antihistamines are medications often used to relieve symptoms of allergies and reactions to insect bites or stings. They are also used to prevent motion sickness and as a short-term treatment for insomnia.

44. In or around January 2017 through in or around December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to consider and/or failing to document having considered referring Patient B to mental health services for cognitive behavioral therapy.

Initiation and Monitoring of Chronic Opiate Pain Medications

45. In or around January 2017 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient B in that prior to initiating prescribing of chronic pain medications on a regular basis, Respondent failed to review and/or failed to document having reviewed Patient B's previous medical records and/or failed to consult and/or failed to document having consulted former prescribing doctors, before formulating his own independent judgment regarding prescribing opiates to Patient B.

46. In or around January 2017 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient B in that prior to initiating prescribing of chronic pain medications on a regular basis, Respondent failed to properly perform risk stratification (determining the patient's risk of drug addiction and aberrancy), by failing to, among other things, perform a psychological evaluation assessing risks of addictive behaviors by using a set of questionnaire such as Opioid Risk Tool (ORT), SOAPP-R, or PHQ-9, failing to make a possible referral to psychiatry physicians, if Patient B shows above average risk of addiction, and failing to closely monitor with regular urine drug testing and/or consultations with a state prescription drug monitoring program (PDMP) such as CURES reports.

47. In or around January 2017 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to recognize Patient B's elevated risks for addiction, given Patient B's anxiety disorder and illicit marijuana usage.

48. In or around January 2017 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to offer and/or failing to document having offered a multidisciplinary pain management approach including, but not limited to, surgical orthopedic consultation, pain management consultation, cognitive behavioral therapy

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with mental health, physical therapy, and primary care coordination, which may reduce Patient B's addiction risks, while adequately treating his pain syndrome.

49. In or around January 2017 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to adequately obtain routine regular urine toxicology testing and/or failing to adequately check CURES reports.

Concurrent Usage of Benzodiazepines and Opiates

50. In or around January 2017 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by prescribing benzodiazepine(s) and opiate(s) concurrently, from January 2017 to June 2018, without proper indication.

Medical Record-Keeping

51. In or around January 2017 to December 2019, Respondent committed negligence in the course of his care and treatment of Patient B by failing to document functional assessment(s) of narcotic therapy, failing to document relevant physical examination findings, if any, and failing to document the dosage and proper indication of the long-term alprazolam (Xanax) therapy.

Patient C

52. In or around 2018, Respondent began rendering medical care and treatment to Patient C, an adult patient with a history of ailments including, but not limited to, anxiety disorder.

53. On or about February 7, 2018, Patient C presented to Respondent. In his progress note for the encounter, Respondent documented or caused to be documented that Patient C had a history of severe anxiety and wanted to the raise the dosage of her Xanax (alprazolam). Respondent documented or caused to be documented that Patient C was at the time taking one alprazolam 0.25 mg tablet three times per day.

54. On or about February 7, 2018, Respondent increased Patient C's prescribed alprazolam dosage to one alprazolam 2 mg tablet two times per day.

55. Respondent failed to conduct an adequate evaluation of Patient C's anxiety illness prior to increasing the patient's alprazolam dosage to approximately 4 mg daily.

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56. On multiple occasions following February 7, 2018, through as late as December 2020, Respondent issued alprazolam prescriptions to Patient C, at a frequency of approximately once per month and in dosages ranging from approximately 1 to 4 mg per day.

57. Respondent failed to take adequate steps to obtain consultation from a psychiatric healthcare professional for management of the Patient C's persistent anxiety.

58. Respondent committed negligence in the course of his care and treatment of Patient C by failing to conduct an adequate anxiety evaluation of Patient C before increasing her alprazolam dosage.

59. Respondent committed negligence in the course of his care and treatment of Patient C by excessively escalating Patient C's daily alprazolam dosage to 4 mg per day.

60. Respondent committed negligence in the course of his care and treatment of Patient C by failing to take adequate steps to request consultation with psychiatry staff for management of Patient C's persistent anxiety.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

61. Respondent has subjected his Physician's and Surgeon's Certificate No. A 36345 to disciplinary action under sections 2227 and 2234, subdivision (b), of the Code, in that he committed gross negligence in the course of his care and treatment of one or more patients, as more particularly alleged in paragraphs 11 through 15; 18 through 23; 33 through 38; and 45 through 49, above, which are incorporated by reference as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

62. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 36345 to disciplinary action under sections 2227 and 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in the course of his care and treatment of Patient A, Patient B and Patient C, as more particularly alleged in paragraphs 11 through 61, above, which are incorporated by reference as if fully set forth herein.

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THIRD CAUSE FOR DISCIPLINE

(Prescribing, Dispensing, or Furnishing of a Dangerous Drug without an Appropriate Prior Examination and a Medical Indication)

63. Respondent has further subjected his Physician's and Surgeon's Certificate No. 36345 to disciplinary action under sections 2227 and 2234, as defined by section 2242, of the Code in that he prescribed, dispensed, or furnished a dangerous drug on one or more occasions without an appropriate prior examination and a medical indication, as more particularly alleged in paragraphs 11 through 62, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Acts of Clearly Excessive Prescribing)

64. Respondent has further subjected his Physician's and Surgeon's Certificate No. 36345 to disciplinary action under sections 2227 and 2234, as defined by section 725, of the Code in that he committed repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of a drug or treatment, as more particularly alleged in paragraph 11 through 62, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

65. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 36345 to disciplinary action under sections 2227, 2234 and 2266 of the Code, in that he failed to maintain adequate and accurate records relating to the provision of services to Patient A and Patient B, as more particularly alleged in paragraphs 11 through 62, above, which are incorporated by reference as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

66. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 36345 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct

which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 11 through 51, above, which are hereby incorporated by reference as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

67. To determine the degree of discipline, if any, to be imposed on Respondent Mark Scheier, M.D., Complainant alleges that in a prior disciplinary action entitled *In the Matter of the Accusation Against Mark Scheier, M.D.* before the Medical Board of California, in Case Number 800-2017-031603, effective March 20, 2020, Respondent's license was placed on probation for five (5) years for gross negligence, repeated negligent acts, prescribing, dispensing, or furnishing of a dangerous drug without an appropriate prior examination and medical indication, repeated acts of clearly excessive prescribing, failure to maintain adequate and accurate records, and violation of medical practice act. That decision is now final and is incorporated by reference as if fully set forth herein.

68. On or about May 19, 1998, in another prior action, the Board issued Decision No. 11-96-61601 (the "Decision"), which is hereby incorporated by reference and alleged as if fully set forth herein, wherein the Board found that Respondent committed repeated negligent acts, incompetence, unprofessional conduct, and failed to keep accurate or complete records in rendering medical care and treatment to two pregnant female patients. The decision revoked Respondent's Physician and Surgeon's Certificate No. A 36345, revocation stayed, and placed Respondent on four years' probation. Probation conditions imposed on Respondent included, but were not limited to, completion of a physician assessment and clinical education program of at least three days and including appropriate patient chart documentation, practice monitoring, and completion of an ethics course. By a subsequent Board decision on or about March 1, 2001, a Petition for Penalty Relief filed by Respondent was granted and his probation was terminated effective March 30, 2001.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. 36345, issued to Respondent Mark Scheier, M.D.;

2. Revoking, suspending or denying approval of Respondent Mark Scheier, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Mark Scheier, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: SEP 13 2022

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

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