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

In the Matter of the Accusation Against: Henry J. Low, M.D. Physician's and Surgeon's Certificate No. A 71770 Respondent.	Case No.: 800-2021-080453 and 800-2022-090691

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 JUL 3 1 2024

IT IS SO ORDERED: JUL 0 1 2024.

MEDICAL BOARD OF CALIFORNIA

Michelle Bholat, M.D., Interim Chair
Panel A

ROB BONTA
Attorney General of California
MICHAEL C. BRUMMEL
Supervising Deputy Attorney General
KALEV KASEORU
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **HENRY J. LOW, M.D.** **6510 Lonetree Blvd., Ste. 300** **Rocklin, CA 95765** **Physician's and Surgeon's Certificate No. A 71770** Respondent.	Case No. 800-2022-090691 OAH No. 2024030207 Case No. 800-2021-080453 OAH No. 2023070730 **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. Reji Varghese (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 Kalev Kaseoru, Deputy Attorney General.

2. Respondent Henry J. Low, M.D. (Respondent) is represented in this proceeding by attorney Lawrence S. Giardina Esq., whose address is: 400 University Ave., Sacramento, CA 95825-6502.

3. On or about May 22, 2000, the Board issued Physician's and Surgeon's Certificate No. A 71770 to Henry J. Low, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No.'s 800-2022-090691, and 800-2021-080453, and will expire on December 31, 2025, unless renewed.

JURISDICTION

4 Accusation No. 800-2022-090691 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 6, 2024. Respondent timely filed his Notice of Defense contesting the Accusation. Accusation No. 800-2021-080453 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 24, 2023. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2022-090691 and Accusation No. 800-2021-080453 are 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 Accusations No. 800-2022-090691 and No. 800-2021-080453. 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 Accusations; 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 agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2021-078500, and 800-2021-080453, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 62641 to disciplinary action.

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

RESERVATION

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

CONTINGENCY

13. 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.

14. 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 Accusations No. 800-2022-090691 and No. 800-2021-080453 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.

15. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 71770 issued to Respondent Henry J. Low, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule(s) I, III, IV and V of the Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an

appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

Respondent shall immediately surrender Respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this Decision, Respondent shall submit proof that Respondent has surrendered Respondent's DEA permit to the Drug Enforcement Administration for cancellation and re-issuance. Within 15 calendar days after the effective date of issuance of a new DEA permit, Respondent shall submit a true copy of the permit to the Board or its designee.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All

records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. 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 80 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 65 hours of CME of which 40 hours were in satisfaction of this condition.

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

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

Respondent shall submit a certification of successful completion to the Board or its

designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

6. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in

addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation as determined by the program for the assessment and clinical education and evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

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

medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

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

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

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

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

with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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

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

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

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

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart

review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

8. 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.

9. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is NOT prohibited from supervising physician assistants and advanced practice nurses.

10. 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.

11. 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, investigation(s), and subpoena enforcement, as applicable, in the amount of $39,646.05 (thirty-nine thousand six hundred forty-six dollars and five cents). 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 30 calendar days 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.

12. 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.

13. 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.

14. 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.

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

16. 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.

17. 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.

18. 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.

19. 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.

20. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2022-090691 and Accusation No. 800-2021-080853 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Lawrence S. Giardina Esq.. 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: 5/1/2024

HENRY J. LOW, M.D.
Respondent

I have read and fully discussed with Respondent Henry J. Low, 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: 5/3/2024

LAWRENCE S. GIARDINA ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: May 7, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL C. BRUMMEL
Supervising Deputy Attorney General

KALEV KASEORU
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No.'s 800-2022-090691 & 800-2021-080453

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

In the Matter of the Accusation Against: **Henry J. Low, M.D.** **6510 Lonetree Blvd., Ste. 300** **Rocklin, CA 95765** **Physician's and Surgeon's Certificate No. A 71770,** Respondent.	Case No. 800-2022-090691 **A C C U S A T I O N**

PARTIES

1. Reji Varghese (Complainant) brings this 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 May 22, 2000, the Medical Board issued Physician's and Surgeon's Certificate Number A 71770 to Henry J. Low, 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 December 31, 2025, unless renewed.

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JURISDICTION

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

5. Section 2234 of the Code, states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
>
> (d) Incompetence.
>
> (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct that would have warranted the denial of a certificate.
>
> (g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

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

7. Section 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. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.
>
> (b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:
>
> (1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of the patient's practitioner, but in any case no longer than 72 hours.
>
> (2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:
>
> (A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.
>
> (B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.
>
> (3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.
>
> (4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

8. 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.

9. Health and Safety Code § 11165 states:

(a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, Schedule IV and Schedule V controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, Schedule IV, and Schedule V controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) (A) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, if patient information, including any information that may identify the patient, is not compromised. The University of California shall be provided access to identifiable data for research purposes if the requirements of subdivision (t) of Section 1798.24 of the Civil Code are satisfied. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to a third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) The Department of Justice shall, no later than January 1, 2021, adopt regulations regarding the access and use of the information within CURES. The Department of Justice shall consult with all stakeholders identified by the department during the rulemaking process. The regulations shall, at a minimum, address all of the following in a manner consistent with this chapter:

(A) The process for approving, denying, and disapproving individuals or entities seeking access to information in CURES.

(B) The purposes for which a health care practitioner may access information in CURES.

(C) The conditions under which a warrant, subpoena, or court order is required for a law enforcement agency to obtain information from CURES as part of a criminal investigation.

(D) The process by which information in CURES may be provided for educational, peer review, statistical, or research purposes.

(4) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data is provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, Schedule IV, or Schedule V controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, 1308.14 and 1308.15, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice or contracted prescription data processing vendor as soon as reasonably possible, but not more than one working day after the date a controlled substance is released to the patient or patient's representative, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) The International Statistical Classification of Diseases (ICD) Code contained in the most current ICD revision, or any other revision deemed sufficient by the State Board of Pharmacy, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Prescribing date of the prescription.

(10) Date of dispensing of the prescription.

(11) The serial number for the corresponding prescription form, if applicable.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. A prescriber and dispenser invitee shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

(h) (1) The Department of Justice may enter into an agreement with an entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information.

(2) Data obtained from CURES may be provided to authorized users of another state's prescription drug monitoring program, as determined by the Department of Justice pursuant to subdivision (c), if the entity operating the interstate data sharing hub, and the prescription drug monitoring program of that state, as applicable, have entered into an agreement with the Department of Justice for interstate data sharing of prescription drug monitoring program information.

(3) An agreement entered into by the Department of Justice for purposes of interstate data sharing of prescription drug monitoring program information shall ensure that all access to data obtained from CURES and the handling of data contained within CURES comply with California law, including regulations, and meet the same patient privacy, audit, and data security standards employed and required for direct access to CURES.

(4) For purposes of interstate data sharing of CURES information pursuant to this subdivision, an authorized user of another state's prescription drug monitoring program shall not be required to register with CURES, if the authorized user is registered and in good standing with that state's prescription drug monitoring program.

(5) The Department of Justice shall not enter into an agreement pursuant to this subdivision until the department has issued final regulations regarding the access and use of the information within CURES as required by paragraph (3) of subdivision (c).

(i) Notwithstanding subdivision (d), a veterinarian shall report the information required by that subdivision to the department as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed.

(j) If the dispensing pharmacy, clinic, or other dispenser experiences a temporary technological or electrical failure, it shall, without undue delay, seek to correct any cause of the temporary technological or electrical failure that is reasonably within its control. The deadline for transmitting prescription information

to the department or contracted prescription data processing vendor pursuant to subdivision (d) shall be extended until the failure is corrected. If the dispensing pharmacy, clinic, or other dispenser experiences technological limitations that are not reasonably within its control, or is impacted by a natural or manmade disaster, the deadline for transmitting prescription information to the department or contracted prescription date processing vendor shall be extended until normal operations have resumed.

10. Health and Safety Code § 11165.4 states:

(a) (1) (A) (i) A health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance shall consult the patient activity report or information from the patient activity report obtained by the CURES database to review a patient's controlled substance history for the past 12 months before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least once every six months thereafter if the prescriber renews the prescription and the substance remains part of the treatment of the patient.

(ii) If a health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance is not required, pursuant to an exemption described in subdivision (c), to consult the patient activity report from the CURES database the first time the health care practitioner prescribes, orders, administers, or furnishes a controlled substance to a patient, the health care practitioner shall consult the patient activity report from the CURES database to review the patient's controlled substance history before subsequently prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient and at least once every six months thereafter if the substance remains part of the treatment of the patient.

(iii) A health care practitioner who did not directly access the CURES database to perform the required review of the controlled substance use report shall document in the patient's medical record that they reviewed the CURES database generated report within 24 hours of the controlled substance prescription that was provided to them by another authorized user of the CURES database.

(B) For purposes of this paragraph, "first time" means the initial occurrence in which a health care practitioner, in their role as a health care practitioner, intends to prescribe, order, administer, or furnish a Schedule II, Schedule III, or Schedule IV controlled substance to a patient and has not previously prescribed a controlled substance to the patient.

(2) A health care practitioner shall obtain a patient's controlled substance history from the CURES database no earlier than 24 hours, or the previous business day, before the health care practitioner prescribes, orders, administers, or furnishes a Schedule II, Schedule III, or Schedule IV controlled substance to the patient.

(b) The duty to consult the CURES database, as described in subdivision (a), does not apply to veterinarians or pharmacists.

(c) The duty to consult the CURES database, as described in subdivision (a), does not apply to a health care practitioner in any of the following circumstances:

(1) If a health care practitioner prescribes, orders, or furnishes a controlled substance to be administered to a patient in any of the following facilities or during a transfer between any of the following facilities for use while on facility premises:

(A) A licensed clinic, as described in Chapter 1 (commencing with Section 1200) of Division 2.

(B) An outpatient setting, as described in Chapter 1.3 (commencing with Section 1248) of Division 2.

(C) A health facility, as described in Chapter 2 (commencing with Section 1250) of Division 2.

(D) A county medical facility, as described in Chapter 2.5 (commencing with Section 1440) of Division 2.

(E) Another medical facility, including, but not limited to, an office of a health care practitioner and an imaging center.

(F) A correctional clinic, as described in Section 4187 of the Business and Professions Code, or a correctional pharmacy, as described in Section 4021.5 of the Business and Professions Code.

(2) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance in the emergency department of a general acute care hospital and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use.

(3) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance to a patient as a part of the patient's treatment for a surgical, radiotherapeutic, therapeutic, or diagnostic procedure and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use, in any of the following facilities:

(A) A licensed clinic, as described in Chapter 1 (commencing with Section 1200) of Division 2.

(B) An outpatient setting, as described in Chapter 1.3 (commencing with Section 1248) of Division 2.

(C) A health facility, as described in Chapter 2 (commencing with Section 1250) of Division 2.

(D) A county medical facility, as described in Chapter 2.5 (commencing with Section 1440) of Division 2.

(E) A place of practice, as defined in Section 1658 of the Business and Professions Code.

(F) Another medical facility where surgical procedures are permitted to take place, including, but not limited to, the office of a health care practitioner.

(4) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance to a patient who is terminally ill, as defined in subdivision (c) of Section 11159.2.

(5) (A) If all of the following circumstances are satisfied:

(i) It is not reasonably possible for a health care practitioner to access the information in the CURES database in a timely manner.

(ii) Another health care practitioner or designee authorized to access the CURES database is not reasonably available.

(iii) The quantity of controlled substance prescribed, ordered, administered, or furnished does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use and no refill of the controlled substance is allowed.

(B) A health care practitioner who does not consult the CURES database under subparagraph (A) shall document the reason he or she did not consult the database in the patient's medical record.

(6) If the CURES database is not operational, as determined by the department, or cannot be accessed by a health care practitioner because of a temporary technological or electrical failure. A health care practitioner shall, without undue delay, seek to correct any cause of the temporary technological or electrical failure that is reasonably within the health care practitioner's control.

(7) If the CURES database cannot be accessed because of technological limitations that are not reasonably within the control of a health care practitioner.

(8) If consultation of the CURES database would, as determined by the health care practitioner, result in a patient's inability to obtain a prescription in a timely manner and thereby adversely impact the patient's medical condition, provided that the quantity of the controlled substance does not exceed a nonrefillable seven-day supply if the controlled substance were used in accordance with the directions for use.

(d) (1) A health care practitioner who fails to consult the CURES database, as described in subdivision (a), shall be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board.

(2) This section does not create a private cause of action against a health care practitioner. This section does not limit a health care practitioner's liability for the negligent failure to diagnose or treat a patient

(e) All applicable state and federal privacy laws govern the duties required by this section.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) This section shall become operative on July 1, 2021, or upon the date the department promulgates regulations to implement this section and posts those regulations on its internet website, whichever date is earlier.

11. Section 4022 of the Code states:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

12. 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.

(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DEFINITIONS

14. **Clonazepam** (generic name for Klonopin) is a benzodiazepine[1] drug used to treat a wide range of conditions, including anxiety, panic attacks and seizures, among others. It is a Schedule IV controlled substance pursuant to California Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to California Business and Professions Code section 4022.

15. **Diazepam** is an anxiolytic[2] benzodiazepine which is a fast acting, long-lasting drug used to treat anxiety disorders, alcohol detoxification, acute recurrent seizures, severe muscle spasms, and spasticity associated with neurological disorders. It is a Schedule IV controlled substance pursuant to California Health and Safety Code Section 11057, subdivision (d), and a dangerous drug pursuant to California Business and Professions Code section 4022.

16. **Fentanyl** is a synthetic opioid drug used for pain relief and as an anesthetic. Fentanyl is a Schedule II controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.12. It is a Schedule II controlled substance pursuant to California Health and Safety Code Section 11055, subdivision (c), and a dangerous drug pursuant to California Business and Professions Code section 4022.

17. **Hydromorphone** is an opioid analgesic[3] drug used to manage moderate to severe acute and chronic pain in patients. Hydromorphone is a Schedule II controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.12. It is a Schedule II controlled substance pursuant to California Health and Safety Code Section 11055, subdivision (c), and a dangerous drug pursuant to California Business and Professions Code section 4022.

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[1] Benzodiazepines are depressants that produce sedation and hypnosis, relieve anxiety and muscle spasms, and reduce seizures. Common benzodiazepines are Valium, Xanax, Halcion, Ativan, and Klonopin.

[2] A drug used to reduce anxiety.

[3] A pain relief drug or medication.

18. **Lorazepam** is a benzodiazepine used to treat anxiety and for short-term relief of the symptoms of anxiety. It is a Schedule IV controlled substance under California Health and Safety Code Section 11057, subdivision (d), and a dangerous drug pursuant to California Business and Professions Code section 4022.

19. **Methadone** (generic name for Symoron) is a synthetic opioid. It is used medically as an analgesic and a maintenance anti-addictive and reductive preparation for use by patients with opioid dependence. Methadone is a Schedule II controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.12. It is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to California Business and Professions Code section 4022.

20. **Morphine Sulfate** is an opioid analgesic medication used for the treatment of pain. Morphine is a Schedule II controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.12. It is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to California Business and Professions Code section 4022.

21. **Oxycodone HCL-Acetaminophen** is a synthetic analgesic similar to morphine which binds to opioid receptors in the central nervous system, and is used to relieve moderate to severe pain. It is a dangerous drug pursuant to California Business and Professions Code section 4022 and is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (b). An oxycodone and acetaminophen combination is used to relieve pain severe enough to require opioid treatment. Acetaminophen is used to relieve pain and reduce fever in patients.

22. **Zolpidem Tartrate** (generic name for Ambien): is a sedative and hypnotic used for short-term treatment of insomnia. It is a Schedule IV controlled substance pursuant to California Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to California Business and Professions Code section 4022.

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FACTUAL ALLEGATIONS

Patient A[4]

23. Patient A was a 60-year-old male who Respondent first began treating in 2018 for a neuro-generative disorder. Patient A suffered from contractures and imbalance. Patient A lived in a skilled nursing facility and Respondent inherited his care.

24. Patient A was already being prescribed high doses of opiates to manage his pain when Respondent took over his care. However, upon taking over Patient A's care, Respondent did not fully assess Patient A with a complete medical history and focused physical exam including evaluation of Patient A's pain, prior successful and failed treatments, and assessments of risk of treatment options (including co-existing conditions and/or risk of addiction) before continuing his opioid prescriptions. Respondent did not review the indications for the use of opiates as opposed to non-opiate treatment options for pain control for Patient A.

25. While Respondent has stated that he did discuss the risks, alternatives and benefits of all therapies with each of his patients, no documentation of any such conversation with Patient A exists.

26. Respondent did not create or complete a signed agreement between himself and Patient A regarding Patient A's pain management.

Patient B

27. Patient B was a male in his mid-60's and resided in a skilled nursing facility. Respondent took over Patient B's care and treated him in an out-patient clinic beginning in 2018 through 2019. Patient B was already being prescribed long acting opiates when Respondent assumed care. Respondent did not fully assess Patient B with a complete medical history and focused physical exam including evaluation of Patient B's pain, prior successful and failed treatments, and assessments of risk of treatment options (including co-existing conditions and/or risk of addiction) prior to continuing his opioid prescriptions. Respondent did not review the

[4] Patient names have been redacted to protect patient privacy. They are known to Respondent and will be provided in discovery.

indications for the use of opiates as opposed to non-opiate treatment options for pain control for Patient B.

28. While Respondent has stated that he did discuss the risks, alternatives and benefits of all therapies with each of his patients, no documentation of any such conversation with Patient B exists.

29. Respondent did not create or complete a signed agreement between himself and Patient B regarding Patient B's pain management.

30. Respondent documented refilling Patient B's opioid prescriptions, but never checked CURES[5]. Respondent did not order intermittent toxicology screening for Patient B to control for diversion of medications.

31. Contemporaneous with Respondent's treatment, Patient B was prescribed high doses of opioids by several other physicians.

32. Patient B was prescribed the following medications by Respondent during the relevant period:

Date Filled	Drug Name	Dosage	Quantity	Schedule
2/1/2018	Clonazepam	1 mg	30	IV
2/1/2018	Methadone	10 mg	120	II
2/2/2018	Fentanyl (transdermal)	100 mcg/1 hr	10	II
3/7/2018	Fentanyl (transdermal)	100 mcg/1 hr	10	II
3/7/2018	Methadone	10 mg	120	II
3/23/2018	Clonazepam	1 mg	30	IV
4/19/2018	Fentanyl (transdermal)	100 mcg/1 hr	10	II
4/25/2018	Methadone	10 mg	120	II
5/18/2018	Methadone	10 mg	120	II
5/18/2018	Fentanyl (transdermal)	100 mcg/1hr	10	II
5/18/2018	Clonazepam	1 mg	30	IV
6/20/2018	Methadone	10 mg	120	II
6/20/2018	Fentanyl (transdermal)	100 mcg/1hr	10	II

[5] Controlled Substance Utilization Review and Evaluation System is a database of Schedule II, Schedule III, Schedule IV and Schedule V controlled substance prescriptions dispensed in California.

Date Filled	Drug Name	Dosage	Quantity	Schedule
6/20/2018	Clonazepam	1 mg	30	IV
7/18/2018	Methadone	10 mg	120	II
7/18/2018	Clonazepam	1 mg	30	IV
7/18/2018	Fentanyl (transdermal)	100 mcg/1 hr	10	II
8/31/2018	Methadone	10 mg	120	II
8/31/2018	Clonazepam	1 mg	30	IV
8/31/2018	Fentanyl (transdermal)	100 mcg/1hr	10	II
9/28/2018	Methadone	10 mg	120	II
9/28/2018	Clonazepam	1 mg	30	IV
9/28/2018	Fentanyl (transdermal)	100 mcg/1hr	10	II
10/24/2018	Methadone	10 mg	120	II
10/24/2018	Fentanyl (transdermal)	100 mcg/1hr	10	II
10/24/2018	Clonazepam	1 mg	30	IV
11/21/2018	Clonazepam	1 mg	30	IV
11/21/2018	Fentanyl (transdermal)	100 mcg/1hr	10	II
11/21/2018	Methadone	10 mg	120	II
1/18/2019	Clonazepam	1 mg	30	IV
1/18/2019	Methadone	10 mg	120	II
1/23/2019	Fentanyl (transdermal)	100 mcg/1hr	10	II
1/31/2019	Fentanyl (transdermal)	75 mcg/1hr	10	II
3/4/2019	Fentanyl (transdermal)	50 mcg/1hr	10	II
10/10/2019	Hydrocodone Bitartrate-Acetaminophen	10 mg	60	II

33. Respondent prescribed Patient B Fentanyl and Methadone and Patient B's MED[6] was well over 80 mg/day with his Fentanyl and Methadone at 620 MME[7] per day. Respondent did not review or order an ECG/EKG for Patient B to screen for cardiac arrhythmia potentially resulting from his methadone prescription.

34. Respondent did not consult with a pain management specialist with regards to Patient B's high opiate dosage.

[6] Morphine Equivalent Dose.
[7] Morphine Milligram Equivalents is an opioid dosage's equivalency to morphine.

35. Respondent prescribed clonazepam to Patient B in addition to high doses of opiates without documenting the need for the benzodiazepine prescription.

Patient C

36. Patient C was a female in her late-40's who Respondent treated from 2018 to 2020. Patient C was undergoing radiation treatment at a hospital for breast cancer. Respondent recorded that Patient C suffered from "chronic pain syndrome" but acknowledged that he had no objective data to support this diagnosis.

37. Patient C was already being prescribed methadone and MS Contin when Respondent assumed care. Respondent did not fully assess Patient C with a complete medical history and focused physical exam including evaluation of Patient C's pain, prior successful and failed treatments, and assessments of risk of treatment options (including co-existing conditions and/or risk of addiction) prior to continuing her opioid prescriptions. Neither did Respondent review the indications for the use of opiates as opposed to non-opiate treatment options for pain control for Patient C.

38. Respondent did not create or complete a signed agreement between himself and Patient C regarding Patient C's pain management.

39. Respondent documented refilling Patient C's opioid prescriptions, but never checked CURES. Respondent did not order intermittent toxicology screening for Patient C to control for diversion of medications.

40. Contemporaneous with Respondent's treatment, Patient C was prescribed high doses of opioids by several other physicians.

41. Patient C was prescribed the following medications by Respondent during the relevant period:

Date Filled	Drug Name	Dosage	Quantity	Schedule
1/10/2018	Methadone	10 mg	240	II
1/27/2018	Morphine Sulfate	30 mg	60	II
2/4/2018	Methadone	10 mg	240	II
2/22/2018	Methadone	10 mg	240	II

Date Filled	Drug Name	Dosage	Quantity	Schedule
2/23/2018	Morphine Sulfate	30 mg	90	II
3/15/2018	Methadone	10 mg	240	II
3/23/2018	Morphine Sulfate	30 mg	90	II
4/2/2018	Methadone	10 mg	360	II
4/22/2018	Morphine Sulfate	30 mg	90	II
4/24/2018	Methadone	10 mg	360	II
5/21/2018	Methadone	10 mg	240	II
6/8/2018	Methadone	10 mg	270	II
6/8/2018	Hydrocodone Bitartrate Acetaminophen	10 mg	60	II
7/5/2018	Hydrocodone Bitartrate Acetaminophen	10 mg	60	II
7/5/2018	Methadone	10 mg	270	II
8/2/2018	Methadone	10 mg	270	II
8/24/2018	Methadone	10 mg	270	II
9/20/2018	Hydrocodone Bitartrate Acetaminophen	10 mg	60	II
9/24/2018	Methadone	10 mg	270	II
10/17/2018	Methadone	10 mg	270	II
11/12/2018	Methadone	10 mg	270	II
12/10/2018	Methadone	10 mg	270	II
1/3/2019	Methadone	10 mg	360	II
1/3/2019	Oxycodone HCL-Acetaminophen	10 mg	60	II
1/29/2019	Methadone	10 mg	360	II
2/10/2019	Oxycodone HCL-Acetaminophen	10 mg	60	II
2/25/2019	Methadone	10 mg	360	II
3/21/2019	Methadone	10 mg	360	II
3/28/2019	Oxycodone HCL-Acetaminophen	10 mg	90	II
4/12/2019	Methadone	10 mg	360	II
4/29/2019	Oxycodone HCL-Acetaminophen	10 mg	90	II
5/9/2019	Methadone	10 mg	360	II
6/7/2019	Oxycodone HCL-Acetaminophen	10 mg	84	II
6/7/2019	Methadone	10 mg	360	II
7/3/2019	Oxycodone HCL-	10 mg	90	II

Date Filled	Drug Name	Dosage	Quantity	Schedule
	Acetaminophen			
7/5/2019	Methadone	10 mg	360	II
7/31/2019	Methadone	10 mg	360	II
7/31/2019	Diazepam	5 mg	60	IV
8/28/2019	Oxycodone HCL-Acetaminophen	10 mg	90	II
8/29/2019	Methadone	10 mg	360	II
9/3/2019	Diazepam	5 mg	60	IV
9/27/2019	Methadone	10 mg	360	II
10/25/2019	Diazepam	5 mg	60	IV
10/25/2019	Oxycodone HCL-Acetaminophen	10 mg	90	II
10/25/2019	Methadone	10 mg	360	II
11/22/2019	Diazepam	5 mg	90	IV
11/22/2019	Oxycodone HCL-Acetaminophen	10 mg	90	II
11/25/2019	Methadone	10 mg	360	II
12/5/2019	Hydromorphone HCL	8 mg	60	II
12/20/2019	Diazepam	5 mg	60	IV
12/23/2019	Diazepam	5 mg	60	IV
12/24/2019	Methadone	10 mg	360	II

42. Respondent prescribed methadone to Patient C in very high doses resulting in a MED of at least 360 MED. Respondent did not review or order an ECG/EKG for Patient C to screen for cardiac arrhythmia potentially resulting from his methadone prescription.

43. Respondent did not consult with a pain management specialist with regards to Patient C's high opiate dosage.

Patient D

44. Patient D was a male patient in his mid-30's who began care with Respondent in June of 2018 and continued through 2021. Patient D already had prescriptions for Fentanyl and Methadone prior to engaging Respondent.

45. Respondent provided refills for Methadone, Fentanyl, and Ambien for Patient D.

46. Respondent did not fully assess Patient D with a complete medical history and focused physical exam including evaluation of Patient D's pain, prior successful and failed treatments, and assessments of risk of treatment options (including co-existing conditions and/or risk of addiction) prior to continuing his opioid prescriptions. Neither did Respondent review the indications for the use of opiates as opposed to non-opiate treatment options for pain control for Patient D.

47. At one point in 2021, Respondent documented in Patient D's records that "he had no medical justification to continue to prescribe controlled substances."

48. While Respondent has stated that he did discuss the risks, alternatives and benefits of all therapies with each of his patients, no documentation of any such conversation with Patient D exists.

49. Respondent did not create or complete a signed agreement between himself and Patient D regarding Patient D's pain management.

50. Respondent documented refilling Patient D's opioid prescriptions, but never checked CURES. Respondent did not order intermittent toxicology screening for Patient D to control for diversion of medications.

51. Patient D was prescribed the following medications by Respondent during the relevant period:

Date Filled	Drug Name	Dosage	Quantity	Schedule
6/15/2018	Zolpidem Tartrate	10 mg	30	IV
6/15/2018	Fentanyl (Transdermal)	100 mcg/hr	10	II
6/15/2018	Methadone	10 mg	180	II
7/14/2018	Methadone	10 mg	180	II
7/14/2018	Zolpidem Tartrate	10 mg	30	IV
7/14/2018	Fentanyl (Transdermal)	100 mcg/hr	10	II
8/13/2018	Methadone	10 mg	180	II
8/13/2018	Zolpidem Tartrate	10 mg	30	IV
8/13/2018	Fentanyl (Transdermal)	100 mcg/hr	10	II
9/14/2018	Zolpidem Tartrate	10 mg	30	IV

Date Filled	Drug Name	Dosage	Quantity	Schedule
9/15/2018	Methadone	10 mg	180	II
9/17/2018	Fentanyl (Transdermal)	100 mcg/hr	10	II
10/15/2018	Methadone	10 mg	180	II
10/15/2018	Zolpidem Tartrate	10 mg	30	IV
10/17/2018	Fentanyl (Transdermal)	100 mcg/hr	30	II
11/14/2018	Methadone	10 mg	180	II
11/14/2018	Zolpidem Tartrate	10 mg	30	IV
11/18/2018	Fentanyl (Transdermal)	100 mcg/hr	10	II
12/13/2018	Methadone	10 mg	180	II
12/13/2018	Fentanyl (Transdermal)	100 mcg/hr	10	II
12/13/2018	Zolpidem Tartrate	10 mg	30	IV
1/15/2018	Methadone	10 mg	180	II
1/15/2018	Fentanyl (Transdermal)	100 mcg/hr	10	II
1/22/2018	Zolpidem Tartrate	10 mg	30	IV
2/15/2019	Zolpidem Tartrate	10 mg	30	IV
2/15/2019	Methadone	10 mg	180	II
2/15/2019	Fentanyl (Transdermal)	100 mcg/hr	30	II
3/15/2019	Zolpidem Tartrate	10 mg	30	IV
3/15/2019	Methadone	10 mg	180	II
3/15/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
4/12/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
4/12/2019	Methadone	10 mg	180	II
4/12/2019	Zolpidem Tartrate	10 mg	30	IV
5/12/2019	Zolpidem Tartrate	10 mg	30	IV
5/13/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
5/13/2019	Methadone	10 mg	180	II
6/12/2019	Zolpidem Tartrate	10 mg	30	IV
6/14/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
6/14/2019	Methadone	10 mg	180	II
7/10/2019	Methadone	10 mg	180	II
7/10/2019	Zolpidem Tartrate	10 mg	30	IV
7/11/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
8/8/2019	Zolpidem Tartrate	10 mg	30	IV
8/12/2019	Methadone	10 mg	180	II
8/12/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II

Date Filled	Drug Name	Dosage	Quantity	Schedule
9/10/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
9/10//2019	Methadone	10 mg	180	II
9/10/2019	Zolpidem Tartrate	10 mg	30	IV
10/11/2019	Zolpidem Tartrate	10 mg	30	IV
10/11/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
10/11/2019	Methadone	10 mg	180	II
11/12/2019	Zolpidem Tartrate	10 mg	30	IV
11/12/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
11/12/2019	Methadone	10 mg	180	II
12/13/2019	Fentanyl (Transdermal)	100 mcg/hr	10	II
12/13/2019	Methadone	10 mg	180	II

52. Respondent prescribed Methadone and Fentanyl to Patient D in an amount equal to 620 Morphine equivalents per day, putting Patient D at a very high risk of overdose. Respondent did not review or order an ECG/EKG for Patient D to screen for cardiac arrhythmia potentially resulting from these prescriptions.

53. Respondent did not consult with a pain management specialist with regard to Patient D's high opiate dosage.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

54. Respondent has subjected his Physician's and Surgeon's Certificate No. A 71770 to disciplinary action under Code section 2234, subdivision (b), in that he committed gross negligence during the care and treatment of Patients B and D, as more particularly alleged in paragraphs 23 through 53 above, which are hereby incorporated by reference and realleged as if fully set forth herein. More specifically, the grossly negligent acts include:

A. Respondent's care and treatment of Patient B constituted an extreme departure from the standard of care when he failed to obtain or review an updated ECG/EKG of Patient B while prescribing him Methadone and Fentanyl at a level of 620 Morphine equivalents/day, and failing to realize that Patient B was obtaining prescriptions for opioids from other prescribers.

Respondent also failed to consult with a pain management specialist in light of such high opiate dosing.

B. Respondent's care and treatment of Patient D constituted an extreme departure from the standard of care when he documented in Patient D's records that he had no medical justification for prescribing the specific opioid medications/dosages to Patient D that he was prescribing.

C. Respondent's care and treatment of Patient D constituted an extreme departure from the standard of care when he failed to obtain or review an updated ECG/EKG of Patient D while prescribing him Methadone and Fentanyl at a level of 620 Morphine equivalents/day, and failing to realize that Patient D was obtaining prescriptions for opioids from other prescribers. Respondent also failed to consult with a pain management specialist in light of such high opiate dosing.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

55. Respondent's Physician's and Surgeon's Certificate No. A 71770 is subject to disciplinary action under Code sections 725 and 2234, subdivision (c), in that he committed repeated negligent acts during the care and treatment of Patients A, B, C, and D as more particularly alleged in paragraphs 23 through 54, above, and those paragraphs are incorporated by reference as if fully set forth herein.

56. Specifically, Respondent committed negligence in his care of Patient A, which includes, but is not limited, to the following:

A. Respondent failed to obtain a complete medical history of Patient A prior to continuing Patient A's opioid medications;

B. Respondent failed to complete a focused physical examination of Patient A's pain before continuing Patient A's opioid medications;

C. Respondent failed to discuss the risks, alternatives, and benefits of all therapies with Patient A before continuing Patient A's opioid medications;

D. Respondent failed to complete a signed agreement with Patient A regarding Patient A's pain management.

57. Specifically, Respondent committed negligence in his care of Patient B, which includes, but is not limited to, the following:

A. Respondent failed to obtain a complete medical history of Patient B before continuing Patient B's opioid medications;

B. Respondent failed to complete a focused physical examination of Patient B's pain before continuing Patient B's opioid medications;

C. Respondent failed to discuss the risks, alternatives, and benefits of all therapies with Patient B before continuing Patient B's opioid medications;

D. Respondent failed to complete a signed agreement with Patient B regarding Patient B's pain management;

E. Respondent failed to check CURES before prescribing opioids and other controlled substances to Patient B;

F. Respondent failed to review or order an ECG/EKG for Patient B while prescribing him high doses of methadone to screen for cardiac arrhythmia;

G. Respondent failed to consult with a pain management specialist with regard to Patient B's high opiate dosage;

H. Respondent failed to document the need for prescribing a benzodiazepine along with high doses of opiates to Patient B.

58. Specifically, Respondent committed negligence in his care of Patient C, which includes, but is not limited to, the following:

A. Respondent failed to obtain a complete medical history of Patient C before continuing Patient C's opioid medications;

B. Respondent failed to complete a focused physical examination of Patient C's pain prior to continuing Patient C's opioid medications;

C. Respondent failed to discuss the risks, alternatives, and benefits of all therapies with Patient C before continuing Patient C's opioid medications;

D. Respondent failed to complete a signed agreement with Patient C regarding Patient C's pain management;

E. Respondent failed to check CURES before prescribing opioids and other controlled substances to Patient C;

F. Respondent failed to review or order an ECG/EKG for Patient C while prescribing him high doses of methadone to screen for cardiac arrhythmia;

G. Respondent failed to consult with a pain management specialist with regard to Patient C's high opiate dosage.

59. Specifically, Respondent committed negligence in his care of Patient D, which includes, but is not limited to, the following:

A. Respondent failed to obtain a complete medical history of Patient D before continuing Patient D's opioid medications;

B. Respondent failed to complete a focused physical examination of Patient D's pain before continuing Patient D's opioid medications;

C. Respondent failed to discuss the risks, alternatives, and benefits of all therapies with Patient D before continuing Patient D's opioid medications;

D. Respondent failed to complete a signed agreement with Patient D regarding Patient D's pain management;

E. Respondent failed to check CURES before prescribing opioids and other controlled substances to Patient D;

F. Respondent failed to review or order an ECG/EKG for Patient D while prescribing him high doses of methadone to screen for cardiac arrhythmia;

G. Respondent failed to consult with a pain management specialist with regard to Patient D's high opiate dosage.

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THIRD CAUSE FOR DISCIPLINE

(Prescribing Controlled Substances Without an Appropriate Examination or Medical Indication)

60. Respondent Henry J. Low, M.D. has subjected his Physician's and Surgeon's Certificate No. A 71770 to disciplinary action under sections 2227, 2234, and 2242 of the Code in that Respondent prescribed controlled substances and dangerous drugs to Patients A, B, C, and D without an appropriate examination or medical indication as more particularly alleged in paragraphs 23 through 59, above, and those paragraphs are incorporated by reference as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Check CURES)

61. Respondent Henry J. Low, M.D. has subjected his Physician's and Surgeon's Certificate No. A 71770 to disciplinary action under sections 2234, and 2242, of the Code, and section 11165.4 of the Health and Safety Code, in that Respondent failed to check CURES before prescribing controlled substances and dangerous drugs to Patients A, B, C, and D as more particularly alleged in paragraphs 23 through 60, above, and those paragraphs are incorporated by reference as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Excessive Prescribing)

62. Respondent Henry J. Low, M.D. has subjected his Physician's and Surgeon's Certificate No. A 71770 to disciplinary action under Code sections 2234, and 725, in that he engaged in the excessive prescribing of controlled substances and dangerous drugs to Patients B, C, and D, as more particularly alleged in paragraphs 23 through 61 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

63. Respondent Henry J. Low, M.D. has subjected his Physician's and Surgeon's Certificate No. A 71770 to disciplinary action under Code sections 2234 and 2266, in that he

failed to maintain adequate and accurate medical records relating to his care and treatment of Patients A, B, C, and D, as more particularly alleged in paragraphs 23 through 62 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

64. Respondent Henry J. Low, M.D. has subjected his Physician's and Surgeon's Certificate No. A 71770 to disciplinary action under Code section 2234, in that he committed unprofessional conduct relating to his care and treatment of Patients A, B, C, and D, as more particularly alleged in paragraphs 23 through 63 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

65. To determine the degree of discipline, if any, to be imposed on Respondent Henry J. Low, M.D., Complainant alleges that on or about April 24, 2023, in a prior disciplinary action titled "In the Matter of the Accusation Against Henry J. Low, M.D." before the Medical Board of California, in Case Number 800-2021-080453, Respondent was alleged to have committed repeated negligent acts and overprescribing in the treatment of a single patient under his care. That matter is pending hearing and is incorporated by reference as if fully set forth herein.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 71770, issued to Respondent Henry J. Low, M.D.;

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

3. Ordering Respondent Henry J. Low, 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;

4. Ordering Respondent Henry J. Low, M.D., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.1; and

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

DATED: FEB 0 6 2024

REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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

In the Matter of the Accusation Against: **HENRY J. LOW, M.D.** **6510 Lonetree Blvd., Ste. 300** **Rocklin, CA 95765** **Physician's and Surgeon's Certificate No. A 71770,** Respondent.	Case No. 800-2021-080453 **ACCUSATION**

PARTIES

1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about May 22, 2000, the Medical Board issued Physician's and Surgeon's Certificate Number A 71770 to Henry J. Low, 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 December 31, 2023, unless renewed.

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JURISDICTION

3. This Accusation 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 2234 of the Code, states:

> "The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
>
> (d) Incompetence.
>
> (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct that would have warranted the denial of a certificate.
>
> (g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

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

6. 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."

7. 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.

(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

8. Section 4022 of the Code states:

"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

9. Health and Safety Code Section 11165.4, subdivision (a)(1)(A)(i) states that "A health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance shall consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance

to the patient for the first time and at least once every four months thereafter if the substance remains part of the treatment of the patient.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DEFINITIONS

11. **Fioricet with Codeine** is a combination drug product intended as a treatment for tension headaches. Fioricet consists of a fixed combination of 50 mg of butalbital (a sedative that helps decrease anxiety and causes sleepiness and relaxation), 325 mg of acetaminophen, and 40 mg of caffeine. Codeine is an opioid pain reliever that acts on certain centers in the brain to provide an individual with pain relief. Acetaminophen helps to decrease the pain from the headache. It is a dangerous drug pursuant to California Business and Professions Code section 4022 and is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (b).

12. **Codeine** is an opioid pain reliever used to treat moderately severe pain. It is also used, usually in combination with other medications, to reduce coughing. It is a dangerous drug pursuant to California Business and Professions Code section 4022 and is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (b).

13. **Alprazolam (Xanax)** is a short-acting benzodiazepine used to treat anxiety, and is a Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21, section 1308.14. It is a dangerous drug pursuant to California Business and Professions Code section 4022 and is a Schedule IV controlled substance pursuant to California Health and Safety Code section 11057, subdivision (d).

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14. **Oxycodone** is a synthetic analgesic similar to morphine which binds to opioid receptors in the central nervous system, and is used to relieve moderate to severe pain. It is a dangerous drug pursuant to California Business and Professions Code section 4022 and is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (b).

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

15. Respondent's license is subject to disciplinary action under Code sections 725, and 2234, subdivision (c), in that he committed repeated negligent acts during the care and treatment of Patient A.[1] The circumstances are as follows:

16. Respondent is a physician who, at all relevant times to the charges brought herein, worked at El Camino Medical Clinic in Rocklin, California.

17. In September of 2016, Respondent began prescribing Fioricet to Patient A, a 41-year-old female, who sought treatment from Respondent for severe upper back and neck pain. Respondent was not sure if Patient A was already taking Fioricet when he issued this prescription. Respondent cannot access medical records for his patients prior to 2017 due to the office changing medical record systems.

18. According to CURES[2] data, Patient A first received, and filled, a prescription of 60 count Fioricet with Codeine from Respondent, on January 23, 2017.

19. Respondent steadily increased the quantity of Fioricet with Codeine pills per each prescription over time, from an initial quantity of 60 pills per prescription in 2017, to 120 pills per prescription in 2019, and then to 180 in 2020. According to CURES data, during the period of January 2017 through May of 2021, Respondent prescribed and Patient A filled the following Fioricet with Codeine prescriptions:

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[1] Patient names are omitted to protect privacy. They are known to Respondent and will be provided in discovery.

[2] Controlled Substance Utilization Review and Evaluation System (CURES) is a database of Schedule II, III, and IV Controlled Substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement.

Date Filled	Drug Name	Dosage	Quantity	Schedule
2017-01-23	Fioricet w/Codeine	300mg	60	II
2017-03-17	Fioricet w/Codeine	300mg	60	II
2017-06-07	Fioricet w/Codeine	300mg	60	II
2017-07-17	Fioricet w/Codeine	300mg	20	II
2017-07-18	Fioricet w/Codeine	300mg	40	II
2018-01-02	Fioricet w/Codeine	300mg	60	II
2018-09-07	Fioricet w/Codeine	300mg	60	II
2018-10-06	Fioricet w/Codeine	300mg	60	II
2018-11-04	Fioricet w/Codeine	300mg	60	II
2018-12-10	Fioricet w/Codeine	300mg	60	II
2019-01-25	Fioricet w/Codeine	300mg	60	II
2019-03-13	Fioricet w/Codeine	300mg	60	II
2019-05-17	Fioricet w/Codeine	300mg	60	II
2019-06-27	Fioricet w/Codeine	300mg	90	II
2019-08-01	Fioricet w/Codeine	300mg	120	II
2019-10-04	Fioricet w/Codeine	300mg	120	II
2019-11-04	Fioricet w/Codeine	300mg	120	II
2019-12-24	Fioricet w/Codeine	300mg	120	II
2020-01-27	Fioricet w/Codeine	300mg	120	II
2020-03-06	Fioricet w/Codeine	300mg	120	II
2020-04-10	Fioricet w/Codeine	300mg	120	II
2020-05-19	Fioricet w/Codeine	300mg	120	II
2020-07-15	Fioricet w/Codeine	300mg	120	II
2020-07-16	Fioricet w/Codeine	300mg	120	II
2020-10-19	Fioricet w/Codeine	300mg	120	II
2020-11-07	Fioricet w/Codeine	300mg	180	II

2021-01-13	Fioricet w/Codeine	300mg	180	II
2021-02-16	Fioricet w/Codeine	300mg	180	II
2021-03-25	Fioricet w/Codeine	300mg	180	II
2021-04-22	Fioricet w/Codeine	300mg	180	II
2021-05-21	Fioricet w/Codeine	300mg	180	II

20. According to CURES data, during the period of January 2017 through May of 2021, Patient A was prescribed, and filled, the following controlled substances from other practitioners:

Date Filled	Drug Name	Dosage	Quantity	Schedule
2018-07-23	Diazepam	5mg	15	IV
2018-07-23	Tramadol HCL	50mg	15	IV
2018-07-25	Tramadol HCL	50mg	30	IV
2018-09-06	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2018-10-06	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2018-11-06	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2018-12-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-01-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-02-09	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-03-11	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-04-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-05-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-06-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-07-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-08-08	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-09-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-10-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2019-11-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II

2019-12-10	Acetaminophen-Hydrocodone Bitartratee	325mg	90	II
2019-12-31	Alprazolam	.25mg	60	IV
2020-01-09	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2020-02-03	Alprazolam	.25mg	60	IV
2020-02-10	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2020-03-11	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2020-03-23	Alprazolam	.25mg	60	IV
2020-04-16	Acetaminophen-Hydrocodone Bitartrate	325mg	90	II
2020-05-11	Alprazolam	.25mg	60	IV
2020-05-17	Oxycodone HCL-Acetaminophen	325mg	90	II
2020-07-03	Alprazolam	.25mg	60	IV
2020-07-07	Oxycodone HCL-Acetaminophen	325mg	90	II
2020-07-21	Oxycodone HCL-Acetaminophen	325mg	90	II
2020-07-23	Oxycodone HCL-Acetaminophen	325mg	90	II
2020-10-14	Alprazolam	.25mg	60	IV
2020-10-19	Oxycodone HCL-Acetaminophen	325mg	90	II
2020-11-17	Oxycodone HCL-Acetaminophen	325mg	90	II
2020-12-17	Oxycodone HCL-Acetaminophen	325mg	90	II
2021-01-15	Oxycodone HCL-Acetaminophen	325mg	90	II
2021-02-18	Oxycodone HCL-Acetaminophen	325mg	90	II
2021-03-21	Oxycodone HCL-Acetaminophen	325mg	90	II
2021-04-20	Oxycodone HCL-Acetaminophen	325mg	90	II
2021-05-24	Oxycodone HCL-Acetaminophen	325mg	90	II
2021-06-24	Oxycodone HCL-Acetaminophen	325mg	90	II

2021-07-24	Oxycodone HCL-Acetaminophen	325mg	90	II
2021-08-27	Oxycodone HCL-Acetaminophen	325mg	90	II

21. Respondent failed to check CURES during the entire duration of his treatment of Patient A.

22. Respondent committed repeated negligent acts in his care and treatment of Patient A, which included, but is not limited, to the following:

A. Respondent failed to consult CURES while prescribing controlled substances to Patient A.

B. Respondent failed to implement initial therapies prior to prescribing Fioricet with Codeine and failed to document why such therapies were dismissed or not attempted with Patient A.

C. Respondent exposed Patient A to a high risk of transforming her migraines from episodic to chronic because of the prolonged prescription and use of barbiturates or opiates.

SECOND CAUSE FOR DISCIPLINE

(Excessive Prescribing)

23. Respondent's license is subject to disciplinary action under sections 2234, and 725 of the Code, in that he engaged in excessive prescribing of controlled substances and dangerous drugs to Patient A, as more particularly alleged in paragraphs 16 through 22 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Inadequate Record Keeping)

24. Respondent's license is subject to disciplinary action under sections 2234 and 2266, of the Code, in that he failed to maintain adequate and accurate medical records relating to Patient A's care and treatment as more particularly alleged in paragraphs 16 through 22 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 71770, issued to Henry J. Low, M.D.;

2. Revoking, suspending or denying approval of Henry J. Low, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Henry J. Low, 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;

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

DATED: APR 24 2023

JENNA JONES FOR
REJI VARGHESE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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