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

In the Matter of the Accusation Against:	)	
Gene Chang Tu, M.D.	)	Case No. 09-2009-200735
Physician's and Surgeon's Certificate No. A 60067	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on October 25, 2013.

IT IS SO ORDERED: September 26, 2013.

MEDICAL BOARD OF CALIFORNIA

Barbara Yaroslavsky, Chair
Panel A

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
KLINT JAMES MCKAY
Deputy Attorney General
State Bar No. 120881
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 576-1327
Facsimile: (213) 897-9395
Attorneys for Complainant

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

In the Matter of the Accusation Against: **GENE CHANG TU, M.D.** **AAA Advanced Care Medical Group** **1330 S. Fullerton Road, #288** **Rowland Heights, CA 91748** **Physician's and Surgeon's Certificate No. A 60067** Respondent.	Case No. 09-2009-200735 OAH No. 2012070263 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Klint James McKay, Deputy Attorney General.

2. Respondent Gene Chang Tu, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, whose address is: Bonne Bridges Mueller O'Keefe & Nichols, 3699 Wilshire Blvd., 10th Floor, Los Angeles, California 90010-2719.

3. On or about May 2, 1996, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 60067 to Gene Chang Tu, 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. 09-2009-200735 and will expire on January 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. 09-2009-200735 was filed before the Medical Board of California (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 11, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 09-2009-200735 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 09-2009-200735. Respondent has also carefully read, fully discussed with 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 Accusation; the right to be represented by counsel at his own expense; 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. a) Respondent admits each and every allegation set forth in the Second, Eighth, Tenth, Twelfth, Sixteenth, and Eighteenth Causes for Discipline in Accusation No. 09-2009-200735.

b) If Respondent ever petitions to modify or terminate any term or condition set forth herein, including but not limited to probation, or should the Board or any other regulatory agency in California or elsewhere hereinafter institute any other action against Respondent, including but not limited to an Accusation, Statement of Issues, and/or Petition to Revoke Probation, the allegations and facts set forth in the Accusation may be deemed admitted for all purposes.

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

CIRCUMSTANCES IN MITIGATION

11. Respondent Gene Chang Tu, M.D. has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

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

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 60067 issued to Respondent Gene Chang Tu, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 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.

2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial

enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

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

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

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

A professionalism program taken after the acts that gave rise to the charges in the 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.

5. MONITORING - PRACTICE/ Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including

but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

The monitor(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 whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60

calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

6. 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.

7. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

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

9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

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

Address Changes

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

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.

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

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

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

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

14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,

or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff. 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: 4/24/13

GENE CHANG TU, M.D.
Respondent

I have read and fully discussed with Respondent Gene Chang Tu, 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: 4/25/13

Peter R. Osinoff
Attorney for Respondent

ENDORSEMENT

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

Dated: 25 April, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

KLINT JAMES MCKAY
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 09-2009-200735

KAMALA D. HARRIS,
Attorney General of California
ROBERT McKIM BELL
Supervising Deputy Attorney General
State Bar No. 56332
KLINT JAMES McKAY
Deputy Attorney General
State Bar No. 120881
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 576-1327
Facsimile: (213) 897-9395
Attorneys for Petitioner

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 11 20 12
BY H. Park ANALYST

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

In the Matter of the Accusation Against: GENE CHANG TU, M.D. 1330 South Fullerton Road, Suite 288 Rowland Heights, California 91748 Physician's and Surgeon's Certificate A60067, Respondent.	Case No. 09-2009-200735 **A C C U S A T I O N**

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as Executive Director of the Medical Board of California.

2. On or about May 2, 1996, the Board issued Physician's and Surgeon's Certificate Number A 60067 to Gene Chang Tu, M.D. (Respondent). That Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2014, unless renewed. At or about the same time, Respondent obtained Registration Number

BT4871186 from the Drug Enforcement Administration. Such Registration allows Respondent to obtain controlled substances for administration to patients.

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 unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing[1] Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Be publicly reprimanded by the division.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and

[1] California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Code section 2234 provides:

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

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

"(b) Gross negligence.

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

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

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

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

6. Code section 2241.5 provides:

"(a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

"(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

"(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

"(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

"(2) Violates Section 2241 regarding treatment of an addict.

"(3) Violates Section 2242 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs.

"(4) Violates Section 2242.1 regarding prescribing on the Internet.

"(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving

the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

"(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

"(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

"(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

"(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

7. Code section 2266 provides:

"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."

FIRST CAUSE FOR DISCIPLINE
(Repeated Negligent Acts – Patient Lana R.[2])

8. Respondent is subject to discipline pursuant to Business and Professions Code sections 2234(c) [repeated negligent acts] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. The facts and circumstances are as follows.

A) Lana R. was ostensibly a patient of Respondent's wife, Lisa Tseng, D.O.[3]; however, Respondent saw Lana R. numerous times as a patient. Respondent saw Lana R. beginning as

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[2] The patients' names are abbreviated for privacy reasons.

[3] Dr. Tseng was an osteopathic physician, and was assigned Osteopathic Physician and Surgeon License No. 0A7116 on August 15, 1997; she surrendered her license, which was (continued...)

early as January, 2007. Over the succeeding years, he prescribed Effexor, Motrin, Norco, Compazine, and alprazolam to her.

B) Although Lana R. told Respondent that she had been addicted her "whole life", he still made no effort to have her seen by an addiction specialist or develop a treatment plan himself to address the patient's possible addiction. Lana R. saw Respondent repeatedly, and he prescribed drugs for her on at least six occasions between September 7, 2010 and September 10, 2011.

C) The notes of Respondent which do exist show that Lana R. repeatedly complained of pain in her lower back, abdominal pain, dizziness, generalized weakness, "malaise", and Vitamin B 12 deficiency – in total, over 20 separate complaints. Respondent's records also reflect that he ran liver tests on Lana R., which came back slightly elevated. However, Respondent never referred Lana R. to any other physicians to investigate these complaints, nor did he undertake to determine the cause of her complaints himself. Specifically, there was no referral to a psychiatrist or psychologist, a neurologist, or orthopedist.

D) Nonetheless, Respondent continued to prescribe drugs to Lana R. By 2008, Lana R. was taking so many pills that she checked herself into a detoxification facility operated by Philip Z., M.D.[4] Dr. Z. professed shock at the sheer magnitude of drugs Lana R. was consuming.

E) Nonetheless, after Respondent's wife lost her DEA certificate and could therefore no longer prescribe to Lana R. in August, 2011, Respondent continued to prescribe drugs to Lana R.

9. By reason of the foregoing facts, Respondent's actions constitute repeated negligent acts within the meaning of Business and Professions Code section 2234(c). Specifically, Respondent failed:

1) to document the basis for frequent refills of opioids;

2) to perform tests and/or examinations which would justify such extensive and repeated prescription of opioids;

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accepted by Osteopathic Board order made February 29, 2012 and effective March 14, 2012. She is currently in custody and charged with second degree murder due to patient deaths from drugs she prescribed.

[4] Dr. Z.'s name is also abbreviated to protect his privacy.

3) to perform urine screens;

4) to create opioid risk or depression scales;

5) to provide the patient with a pain management agreement; and

6) to refer the patient to outside physicians who could address her medical issues.

SECOND CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records – Patient Lana R.)

10. Respondent is subject to discipline for failure to maintain adequate and accurate records relating to the provision of professional services under Business and Professions Code sections 2266. The records of his treatment of Lana R. were inadequate and inaccurate, in that they did not contain a regular recording of Lana R.'s subjective complaints, Respondent's objective observations, his assessment, and treatment plan.

THIRD CAUSE FOR DISCIPLINE
(Gross Negligence – Patient Joseph R.)

11. Respondent is subject to discipline pursuant to Business and Professions Code sections 2234(b) [gross negligence] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. The facts and circumstances are that Joseph R. (the former husband of Lana R.) never saw Respondent as a patient. However, records maintained by the California Controlled Substance Utilization Review and Evaluation System (CURES) reflect that Respondent wrote prescriptions to Joseph R. for hundreds of pills over the course of his treatment of the patient.

12. The prescribing of drugs to an individual Respondent had not seen constitutes gross negligence.

FOURTH CAUSE FOR DISCIPLINE
(Incompetence – Patient Joseph R.)

13. By reason of the facts set forth above in the foregoing Cause for Discipline, Respondent is subject to discipline for incompetence pursuant to Business and Professions Code sections 2234(d).

FIFTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts – Patient Joseph R.)

14. By reason of the facts set forth above in the First Cause for Discipline, Respondent is subject to discipline for repeated negligent acts in regard to Patient Joseph R. pursuant to Business and Professions Code sections 2234(c). Further, the failure to establish and implement a treatment plan for Joseph R. and to maintain adequate and accurate records of his treatment also constitute repeated negligent acts.

SIXTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records – Patient Joseph R.)

15. Respondent is subject to discipline for failure to maintain adequate and accurate records relating to the provision of professional services to Joseph R. under Business and Professions Code sections 2266. The records of his treatment of Joseph R. were inadequate and inaccurate, in that they did not contain a regular recording of Joseph R.'s subjective complaints, Respondent's objective observations, his assessment, and treatment plan.

SEVENTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts – Patient Jon H.)

16. Respondent is subject to discipline pursuant to Business and Professions Code sections 2234(c) [repeated negligent acts] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. The facts and circumstances are as follows.

A) Jon H. was ostensibly a patient of Respondent's wife; however, Respondent saw Jon H. numerous times as a patient. Jon H. was a 38-year-old male first seen at the practice on or about May 6, 2008. He had experienced upper back pain for eighteen months. He was receiving Norco, and had shoulder and chronic back pain. He had decreased range of motion in his neck and his lower back. Although an MRI[5] and x-ray of his shoulder was recommended, as well as an

[5]MRI means magnetic resonance imaging, a scan (in this case) to determine the condition of the patient's shoulder.

x-ray of his lumbosacral region, no referral was made to another physician and these tests were never done.

B) Nonetheless, Respondent continued to prescribe opioids to Jon H., despite his complaints of chest discomfort and palpitations. In many follow-up visits, Respondent prescribed Norco, one pill every 4 to 6 hours. This was continued for approximately three years Jon H. treated with Respondent. During this time, Jon H. had many follow-up visits and Respondent simply prescribed more Norco, one pill every four to six hours. Opioids were often prescribed with no explanation in the notes as to basis therefor.

C) CURES reports show that Jon H. had taken Respondent's prescriptions to three different pharmacies to get them filled, a clear sign that he was an addict and was obtaining drugs outside what would be appropriate for this patient.

17. By reason of the foregoing facts, Respondent's actions constitute repeated negligent acts within the meaning of Business and Professions Code section 2234(c). Specifically, Respondent failed:

1) to document the basis for frequent refills of opioids;
2) to perform tests and/or examinations which would justify such extensive and repeated prescription of opioids;
3) to perform urine screens;
4) to create opioid risk or depression scales;
5) to provide the patient with a pain management agreement; and
6) to refer the patient to outside physicians who could address his medical issues.

EIGHTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records – Patient Jon H.)

18. Respondent is subject to discipline for failure to maintain adequate and accurate records relating to the provision of professional services to Jon H. under Business and Professions Code sections 2266. The records he kept of his treatment of Jon H. were inadequate and inaccurate, in that they did not contain a regular recording of Jon H.'s subjective complaints, Respondent's objective observations, his assessment, and treatment plan.

NINTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts – Patient Ken N.)

19. Respondent is subject to discipline pursuant to Business and Professions Code sections 2234(c) [repeated negligent acts] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. The facts and circumstances are as follows.

A) Ken N. was ostensibly a patient of Respondent's wife; however, Respondent saw Ken N. numerous times as a patient, including solely after Dr. Tseng's DEA certificate was surrendered in August, 2011. Ken N. was a 48-year-old man with a diagnosis of arm pain, elbow tendonitis, chronic fatigue, insomnia and also a history of moderate tachycardia. He was on Vicodin (later changed to Dilaudid), Diovan, Oxycontin, diazepam and Norco. .

B) Respondent continued to prescribe opioids to Ken N. over the course of his treatment, despite the fact that Respondent indicated on June 15, 2006 that he needed a refill because his wife took away his medication. There was no discussion of the reason for this in the notes. The notes were repetitive and formulaic and did not set forth any reason why the drugs continued to be prescribed. Lower back pain, dermatitis and cellulitis (a common condition for addicts who inject) was noted, but no investigation of this or a treatment plan was established. Similarly, there were entries made in his medical records during several appointments that Ken N. suffered from ongoing anxiety, but no referral was made for psychiatric or psychological treatment. In each appointment, repetitive notes were made; there appeared to be little effort to actually investigate and document the patient's condition or complaints; merely a perfunctory effort by Respondent to comply, at least minimally, with his legal obligations. Ken N. had many follow-up visits and Respondent simply prescribed more drugs, particularly after Dr. Tseng's DEA certificate was surrendered in August, 2011. Opioids were often prescribed with no explanation in the notes as to basis therefor.

C) CURES reports for the period the patient treated with Respondent show that Ken N. had taken Respondent's prescriptions to five different pharmacies to get them filled; this is a clear indication that the patient may be addicted, or at the very least, that Respondent's prescriptions were far more than appropriate for the patient. In fact, Respondent requested a change of drug

from Vicodin to Dilaudid because the pharmacies would not fill his prescriptions. This, again, is a common sign that overprescribing is occurring.

20. By reason of the foregoing facts, Respondent's actions constitute repeated negligent acts within the meaning of Business and Professions Code section 2234(b). Specifically, Respondent failed:

1) to document the basis for frequent refills of opioids;

2) to perform tests and/or examinations which would justify such extensive and repeated prescription of opioids;

3) to perform urine screens;

4) to create opioid risk or depression scales;

5) to provide the patient with a pain management agreement;

6) to refer the patient to outside physicians who could address her medical issues;

TENTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records – Patient Ken N.)

21. Respondent is subject to discipline for failure to maintain adequate and accurate records relating to the provision of professional services to Ken N. under Business and Professions Code sections 2266. The records of his treatment of Ken N. were inadequate and inaccurate, in that they did not contain a regular recording of Ken N.'s subjective complaints, Respondent's objective observations, his assessment, and treatment plan.

ELEVENTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts – Patient John H.)

22. Respondent is subject to discipline pursuant to Business and Professions Code sections 2234(c) [repeated negligent Acts] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. The facts and circumstances are as follows.

A) John H. was ostensibly a patient of Respondent's wife; however, Respondent saw John H. numerous times as a patient, particularly after Dr. Tseng's DEA certificate was surrendered in August, 2011. John H. was a 51 year-old-man with a diagnosis of lumbar spine spasm, loss of range of motion, and tenderness. He had undergone a significant multilevel

lumbar disk replacement. The orthopedist felt that the patient had a permanent disorder. The patient had an MRI and abnormal nerve conduction studies confirming the diagnosis. He also complained of sleep problems, although no sleep studies were performed.

B) The patient was on Norco and oxycodone, as well as Vicodin and Neurontin intermittently. Although the notes indicate that the patient was allergic to Norco and oxycodone (notwithstanding Respondent's prescriptions), Vicodin is similar in chemical structure to these two drugs. Over time, he was prescribed Oxycontin, ultimately receiving 80 mg. per day.

23. By reason of the foregoing facts, Respondent's actions constitute repeated negligent acts within the meaning of Business and Professions Code section 2234(b). Specifically, Respondent failed:

1) to document the basis for frequent refills of opioids;

2) to perform tests and/or examinations which would justify such extensive and repeated prescription of opioids;

3) to perform urine screens;

4) to create opioid risk or depression scales;

5) to provide the patient with a pain management agreement; and

6) to refer the patient to outside physicians who could address her medical issues.

24. Further, the failure to establish and implement a treatment plan for John H., to maintain adequate and accurate records of his treatment, and to obtain his previous medical records also constitute repeated negligent acts.

TWELFTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records – Patient John H.)

25. Respondent is subject to discipline for failure to maintain adequate and accurate records relating to the provision of professional services to John H. under Business and Professions Code sections 2266. The records he kept of his treatment of John H. were inadequate and inaccurate, in that they did not contain a regular recording of John H.'s subjective complaints, Respondent's objective observations, his assessment, and treatment plan.

THIRTEENTH CAUSE FOR DISCIPLINE
(Gross Negligence – Patient Laurie D.)

26. Respondent is subject to discipline pursuant to Business and Professions Code sections 2234(b) [gross negligence] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. The facts and circumstances are as follows.

A) Laurie D. was ostensibly a patient of Respondent's wife; however, Respondent saw Laurie D. numerous times as a patient, particularly after Dr. Tseng's DEA certificate was surrendered in August, 2011. Laurie D. was a 44 year old woman with a diagnosis of chronic back pain radiating into her buttocks and thighs. She had decreased range of motion in her neck. When she first began to see Respondent and his wife in 2006, she was taking no medication. Although her neurological scan was normal, over the period he saw her, Respondent prescribed Soma, Norco and ultimately Vicodin, all drugs with an addiction potential.

B) Over the ensuing years, Respondent continued to prescribe opioids, but added depression, cellulitis, and vitamin B 12 deficiency to his diagnosis. Respondent's notes are not detailed and are repetitive. When the patient complained of work-related stress, benzodiazepines were added to her medication. There was no referral to outside consultants for the patient's issues, but Respondent continued to prescribe opioids to Laurie D.

C) CURES reports show that Laurie D. had taken Respondent's prescriptions to five different pharmacies to get them filled, a clear sign that she was an addict and was obtaining drugs outside what would be appropriate for this patient.

27. By reason of the foregoing facts, Respondent's actions in regard to Laurie D. constitute gross negligence within the meaning of Business and Professions Code section 2234(b). Specifically, Respondent failed:

1) to document the basis for frequent refills of opioids;

2) to perform tests and/or examinations which would justify such extensive and repeated prescription of opioids;

3) to perform urine screens;

4) to create opioid risk or depression scales;

5) to provide the patient with a pain management agreement; and

6) to refer the patient to outside physicians who could address her medical issues.

FOURTEENTH CAUSE FOR DISCIPLINE
(Incompetence – Patient Laurie D.)

28. By reason of the facts set forth above in the Thirteenth Cause for Discipline, Respondent is subject to discipline for incompetence in regards Patient Laurie D. pursuant to Business and Professions Code sections 2234(d).

FIFTEENTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts – Patient Laurie D.)

29. By reason of the facts set forth above in the Thirteenth Cause for Discipline, Respondent is subject to discipline for repeated negligent acts pursuant to Business and Professions Code section 2234(c) [repeated negligent acts] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. Further, the failure to establish and implement a treatment plan for Laurie D., to maintain adequate and accurate records of her treatment, and to obtain her previous medical records also constitute repeated negligent acts.

SIXTEENTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records – Patient Laurie D.)

30. Respondent is subject to discipline for failure to maintain adequate and accurate records relating to the provision of professional services to Laurie D. under Business and Professions Code sections 2266. The records he kept of his treatment of Laurie D. were inadequate and inaccurate, in that they did not contain a regular recording of Laurie D.'s subjective complaints, Respondent's objective observations, his assessment, and treatment plan.

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SEVENTEENTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts – Patient Clinton C.)

31. Respondent is subject to discipline pursuant to Business and Professions Code sections 2234(c) [repeated negligent acts] and 2241.5(c) [improper administration of controlled substances to a person experiencing pain]. The facts and circumstances are as follows.

A) Clinton C. was ostensibly a patient of Respondent's wife; however, Respondent saw Clinton C. numerous times as a patient, particularly after Dr. Tseng surrendered her DEA certificate in August, 2011. Clinton C. was a 25-year-old man with lower and upper back pain. Beginning in 2008, Respondent prescribed Vicodin and Xanax to Clinton C.

B) Each time he saw the patient, Respondent's notes were repetitive; there was no referral to appropriate consultants, although the patient complained of anxiety and fatigue.

32. By reason of the foregoing facts, Respondent's actions in regard to Clinton C. constitute Repeated Negligent Acts within the meaning of Business and Professions Code section 2234(c). Specifically, Respondent failed:

1) to document the basis for frequent refills of opioids;
2) to perform tests and/or examinations which would justify such extensive and repeated prescription of opioids;
3) to perform urine screens;
4) to create opioid risk or depression scales;
5) to provide the patient with a pain management agreement; and
6) to refer the patient to outside physicians who could address his medical issues.

EIGHTEENTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records – Patient Clinton C.)

33. Respondent is subject to discipline for failure to maintain adequate and accurate records relating to the provision of professional services to Clinton C. under Business and Professions Code sections 2266. The records of his treatment of Clinton C. were inadequate and inaccurate, in that they did not contain a regular recording of Clinton C.'s subjective complaints, Respondent's objective observations, his assessment, and treatment plan.

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 & Surgeon's Certificate number A 60067, issued to Gene Chang Tu, M.D.;

2. Revoking, suspending, or denying approval of his authority to supervise physician assistants, pursuant to Section 3527 of the Code;

3. Ordering him to pay the costs of probation monitoring, if placed on probation; and

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

DATED: May 11, 2012

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant