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

In the Matter of the First Amended Accusation Against:	)	
Doanh Andrew Nguyen, M.D.	)	**Case No. 800-2014-007573**
Physician's and Surgeon's Certificate No. G 80814	)	
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 February 16, 2018.

IT IS SO ORDERED: January 19, 2018.

MEDICAL BOARD OF CALIFORNIA

Kristina Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
TAN N. TRAN
Deputy Attorney General
State Bar No. 197775
California Department of Justice
300 So. Spring Street, Suite 1702
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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **DOANH ANDREW NGUYEN, M.D.** **9500 Bolsa Avenue, Suite I-J** **Westminster, CA 92683** **Physician's and Surgeon's Certificate No. G 80814** Respondent.	Case No. 800-2014-007573 OAH No. 2017010722 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Tan N. Tran, Deputy Attorney General.

2. Respondent DOANH ANDREW NGUYEN, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is: DOYLE SCHAFER McMAHON, 5440 Trabuco Road, Irvine, CA 92620.

3. On or about March 15, 1995, the Board issued Physician's and Surgeon's Certificate No. G 80814 to DOANH ANDREW NGUYEN, 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. 800-2014-007573, and will expire on October 31, 2018, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2014-007573 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on May 15, 2017. Respondent timely filed his Notice of Defense contesting the First Amended Accusation.

5. A copy of First Amended Accusation No. 800-2014-007573 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2014-007573. 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 First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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CULPABILITY

9. Respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in First Amended Accusation No. 800-2014-007573 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in First Amended Accusation No. 800-2014-007573 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 80814 issued to Respondent DOANH ANDREW NGUYEN, 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 - TOTAL RESTRICTION. Until Respondent has successfully completed the clinical competence assessment program, as described in term # 8 below, and has been so notified by the Board or its designee in writing, Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances 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 a medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary

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

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

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education 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.

9. 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(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 (Amended) Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), (Amended) Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and (Amended) 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. 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.

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

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

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

12. 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.

13. 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.

14. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

and Professions Code section 2021(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.

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

16. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board 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.

17. 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.

18. 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.

19. 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.

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

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ACCEPTANCE

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

DATED: 12-5-2017

DOANH ANDREW NGUYEN, M.D.
Respondent

I have read and fully discussed with Respondent DOANH ANDREW NGUYEN, 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: December 5, 2017

RAYMOND J. MCMAHON
Attorney for Respondent

ENDORSEMENT

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

Dated: 12/6/17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2014-007573

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 15 2017
BY Robyn Fitzwater ANALYST

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

In the Matter of the First Amended Accusation Against: **Doanh Andrew Nguyen, M.D.** **9500 Bolsa Avenue, Suite I-J** **Westminster, CA 92683** **Physician's and Surgeon's Certificate No. G 80814,** Respondent.	Case No. 800-2014-007573 Consolidated with Case No. 800-2016-023039 OAH No. 2017010722 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 15, 1995, the Medical Board issued Physician's and Surgeon's Certificate Number G 80814 to Doanh Andrew Nguyen, 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 October 31, 2018, unless renewed.

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JURISDICTION

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

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. Section 2227 of the Code provides 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.

6. 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 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 by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. Section 2241 of the Code states:

"(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

"(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

"(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

"(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

"(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

"(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

"(d)(1) For purposes of this section and Section 2241.5, "addict" means a person whose actions are characterized by craving in combination with one or more of the following:

"(A) Impaired control over drug use.

"(B) Compulsive use.

"(C) Continued use despite harm.

"(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section or Section 2241.5."

8. Section 2242 of the Code states:

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

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

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

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

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

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

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

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

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

10. Section 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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence- 5 Patients)

11. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code for the commission of acts or omissions involving gross negligence in the care and treatment of patients M.F., B.C., R.A., J.A. and M.O.[1] The circumstances are as follows:

Patient M.F.

12. M.F. (or "patient") was a 65-year-old male who treated with Respondent from approximately August 3, 2011 to September 29, 2011,[2] the day before his death.[3] The patient's chief complaints were pain in the shoulders, left arm, low back, and right [leg] stump, as a result

[1] The patients are identified by initials to protect their privacy.

[2] These are approximate dates, based on the records which were available for review.

[3] The patient had had multiple arrests including alcohol and drug violations, and he had lost his driver's license. The patient was also attending a drug treatment program, and his sister told investigators that the patient was a heroin and prescription drug addict. The autopsy diagnosis was a combined overdose from Klonopin, methadone, hydrocodone, dihydrocodeine, Prozac, Seroquel, all of which are controlled substances with a high potential for addiction. These should have been "red flags" for drug seeking and addiction.

of a knee amputation. Respondent diagnosed the patient with Lumbar Radiculitis, shoulder pain, right stump pain, opioid dependency,[4] and depression/anxiety disorder.

13. Per CURES,[5] nine prescriptions were filled in the four months prior to the patient's first visit with Respondent. In this group, the patient received prescriptions from five physicians, filled at four pharmacies. The drugs include Klonopin, Vicodin, Morphine, Ambien, OxyContin, and Percocet.[6] In the eight and a half weeks between the patient's first visit with Respondent and the patient's death, the patient received ten prescriptions for controlled drugs, six from Respondent, and four from three other physicians, filled at three pharmacies. In addition to more frequent prescriptions, Respondent prescribed larger quantities of opiates.

14. The records for this patient are largely illegible, lack an adequate addiction history, urine toxicology screen, adequate psychiatric history, and did not adequately document the medical indication for the drugs prescribed.

15. Taken altogether, Respondent's treatment of M.F. represents an extreme departure from the standard of care.

Patient B.C.

16. B.C. (or "patient") was a 52-year-old male who treated with Respondent from approximately July 8, 2005 to October, 21, 2011,[7] before his death on October 25, 2011, due to methadone intoxication.[8] The patient had a history of alcohol and drug use since childhood, and he had stopped using heroin ten years before.

17. Respondent diagnosed the patient with chronic pain syndrome, as the main malady. Respondent's initial evaluation of the patient on July 8, 2005 lacks a narrative history, past

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[4] Despite correctly identifying the patient's opioid dependence/addiction, respondent nevertheless prescribed the medications the patient requested.

[5] The CURES drug database was obtained by the Board. A CURES report was not present in the patient's chart, which could have alerted respondent to other drugs the patient was receiving from other sources/physicians.

[6] All dangerous controlled substances/drugs with potential for addiction.

[7] There were infrequent visits in 2007, none in 2008, and two in 2009.

[8] Per the autopsy report, multiple drugs were found in the patient's blood and other organs, especially methadone and benzodiazepines. Prescription medications and a nearly full bottle of vodka were also found at the time of the patient's death.

medical history, family history, social history, or psychiatric or addiction history. The review of systems is brief and inadequate. There were no CURES reports, labs, or imaging in the chart.

18. Throughout his treatment with Respondent, the patient was treated for various maladies such as rheumatoid arthritis, leg, and back pain, and anxiety. Per CURES, spanning the period from February 13, 2011 to October 21, 2011, eight physicians and other providers had written prescriptions for the patient for controlled drugs, which were filled at five different pharmacies. All of the prescriptions were for large amounts of methadone, Klonopin, and Xanax.

19. Respondent's treatment of the patient did not change significantly over six years, except that Respondent appeared to be trying to reduce the dose of the medications the patient was taking. Despite there being no evidence that the benzodiazepines were helpful in treating the patient's chronic pain, Respondent continued to treat the patient with benzodiazepines, especially methadone and Klonopin. Respondent also prescribed medications the patient requested for anxiety, but Respondent never evaluated the patient for addiction or misuse, despite "red flags" that the patient was abusing alcohol and controlled substances. There is no evidence that the patient was ever referred to a rheumatologist or other specialist. Respondent's diagnoses were virtually all a restatement of the patient's symptoms/claims of "chronic pain," without positing an etiology that the opiates being prescribed could help.

20. Taken altogether, Respondent's treatment of B.C. was poor and perfunctory care without the necessary precautions to prevent addiction or abuse. This represents an extreme departure from the standard of care.

Patient R.A.

21. R.A. (or "patient") was a 45-year-old female who treated with Respondent from approximately July 16, 2008 through January 19, 2012, mainly due to the patient's complaints of pain, arthritis, and anxiety. During his treatment of the patient, Respondent prescribed to the patient various controlled substances such as Vicodin, Percocet, Gabapentin, Halcion, and Xanax. During this time period, the patient had been seeing other doctors, who were also prescribing

controlled substances to her.[9] The patient died on January 25, 2012, and the cause of death listed was a drug overdose.

22. Over the course of her care, there was ample evidence that the patient was a drug addict simply manipulating Respondent to obtain the medications she desired. There was never an indication for Xanax, Halcion, or any other benzodiazepine. Respondent never performed an adequate evaluation to determine the cause of the patient's pain.[10] Most of Respondent's diagnoses were for various kinds of "pain." The few additional diagnoses Respondent considered were unsupported by evidence. No good faith effort was made to address the possibility of addiction, despite numerous "red flags" (e.g. missed appointments. "lost/stolen" meds, early refills, etc.).

23. Taken altogether, Respondent's treatment of R.A. represents an extreme departure from the standard of care.

Patient J.A.

24. J.A. (or "patient") was a 32-year-old male who treated with Respondent from approximately February 15, 2007 through November 7, 2012. Per the initial evaluation form, the patient came to see Respondent for pain in his lower back, and "need[ed] prescription for my current meds [Oxycodone and Soma]."[11] During this initial visit, Respondent continued the patient on the medications he requested and added Feldene (an anti-inflammatory). There was no good faith attempt to assess addiction risk. There is no addiction history, psychiatric history, CURES report, or urine toxicology screen, nor is there an adequate review of systems.

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[9] Records indicate that in 2011, the patient had seen a doctor complaining of addiction to OxyContin, and she was also seeing a psychiatrist requesting detox from opiates, benzodiazepines, and alcohol. A CURES report obtained by one of these physicians showed that over a period of seven months, the patient had filled 25 prescriptions from seven different physicians, including Ativan, Xanax, Suboxone, and Klonopin.

[10] For example, respondent had prescribed highly-addictive opiates like Vicodin and Percocet for minor complaints such as "tennis elbow" or minor cervical strain.

[11] There is nothing in this presentation incompatible with a drug addict requesting and receiving the drugs he craves. Prior to 2010, OxyContin was as good a drug of abuse as heroin.

25. After this initial visit on February 15, 2007, the patient was treated by Respondent for approximately 50 more visits from March 2008 through November 2012, with little change in treatment, except for renewing current medications (e.g. OxyContin, Roxicodone, Soma) the patient was using.[12] The patient died from a drug overdose on November 9, 2012. The autopsy diagnosis was acute polydrug intoxication.

26. Per CURES, spanning the period from February 3, 2011 to November 7, 2012, Respondent wrote for the patient approximately 37 prescriptions, mostly for OxyContin, Roxicodone, with a few for Soma, and one for Halcion. Throughout his course of treatment, the patient had no significant physical exam findings and no compelling indication for the strong opiates he received. Respondent never performed an adequate or good faith evaluation to address the possibility of opiate or other drug dependence. No urine toxicology screen, CURES report, addiction history, or review of any outside records was ever performed.

27. Taken altogether, Respondent's treatment of J.A. represents an extreme departure from the standard of care.

Patient M.O.

28. M.O. (or "patient") was a 28-year-old male who treated with Respondent from approximately September 9, 2007 through July 17, 2014. Per the initial evaluation form, the patient came to see Respondent for pain in "all regions of his back and shoulder." M.O. reported that he was taking five to six Norco per day. No initial history was taken. There was no psychiatric history or addiction screening. The physical examination was normal, however a diagnosis of cervicalgia and myositis was rendered, which are symptoms, not diagnoses. Respondent prescribed exercise, Feldene (an anti-inflammatory), Ultram and 150 tablets of Norco.

29. A CURES report run on M.O. from August 1, 2007 to November 19, 2007, indicates that the patient was obtaining large quantities of Norco from five other physicians besides

[12] Similar to the other patients mentioned in this Accusation, respondent seemed to be on "automatic pilot" during the course of this patient's treatment, simply prescribing the same medication over and over, modifying the dose per the patient's wishes. There was no evidence that the patient ever improved with the treatment being provided.

Respondent. After reviewing this CURES report, Respondent nevertheless continued to prescribe Norco to M.O. He did not perform a comprehensive physical examination or history. He did not obtain periodic random urine toxicology screens or run additional CURES reports. On April 1, 2008, Respondent received a letter from Medco listing the drugs M.O. received from eight different physicians over the past three months, for drugs including Percocet, Vicodin, Norco, and Darvocet. The patient stated that he obtained medication from his dentist and orthodontist.

30. Throughout his care with Respondent, M.O. consistently complained of severe pain, but continued to skateboard, snowboard and engaged in other physically strenuous activities, which contradict his physical complaints and need for chronic pain medication. Respondent continued to render a diagnosis of neck, back and ultimately, knee pain, without a thorough physical examination and history and continued to prescribe medically unnecessary controlled substances. For example, on July 17, 2009, M.O. asked to try Opana because the Norco was not helpful. On August 18, 2009, Respondent added Opana 40 mg #30 to M.O.'s prescription regimen, which included Norco and Xanax.

31. M.O. remained on Opana, Norco and Xanax until he stopped treating with Respondent on July 17, 2014. Respondent never exercised appropriate care to avoid prescribing to M.O. He overlooked repeated reports that the patient was receiving drugs from multiple physicians. Because no diagnostic evaluation was performed on M.O. by Respondent, he did not have a valid indication for the pain treatment he prescribed.

32. Taken altogether, Respondent's treatment of M.O. was poor and perfunctory care without the necessary precautions to prevent addiction or abuse. This represents an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - 6 Patients)

33. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care of patients M.F., B.C., R.A., J.A and M.O. The circumstances are as follows:

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34. The facts and circumstances in paragraphs 12 through 32, above, are incorporated by reference as if set forth in full herein.

35. Respondent also committed repeated negligent acts in his care of patient T.T.H. The circumstances are as follows:

Patient T.T.H.

36. T.T.H. (or "patient") was a 47-year-old female who treated with Respondent from approximately May 1, 2009 through March 26, 2012. The patient's diagnosis was pain from severe keloids and abnormal liver enzymes. Per CURES, from February 9, 2011 to March 26, 2012, the patient received 32 prescriptions from four providers that were filled at three pharmacies. Respondent prescribed 21 morphine and MS Contin prescriptions to the patient, and 11 Vicodin prescriptions were from three other providers. The patient died of an acute polydrug intoxication on April 23, 2012.

37. Throughout the course of his treatment of this patient, Respondent never performed an adequate psychiatric or addiction history to manage the patient's pain and depression. There was no CURES report or urine toxicology screen, and no alternative approach was attempted besides treatment with opiates.

38. Taken altogether, Respondent's treatment of T.T.H. represents a simple departure from the standard of care.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Without Exam/Indication-6 Patients)

39. By reason of the facts and allegations set forth in paragraphs 12 through 38 and the First and Second Causes for Discipline above, Respondent is subject to disciplinary action under section 2242 of the Code, in that Respondent prescribed dangerous drugs to patients M.F., B.C., R.A., J.A., T.T.H. and M.O. without an appropriate prior examination or medical indication therefor.

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FOURTH CAUSE FOR DISCIPLINE

(Excessive Prescribing-5 Patients)

40. By reason of the facts and allegations set forth in paragraphs 12 through 27 and 36 through 38, and the First and Second Causes for Discipline above, Respondent is subject to disciplinary action under section 725 of the Code, in that Respondent excessively prescribed dangerous drugs to patients M.F., B.C., R.A., J.A., and T.T.H.

FIFTH CAUSE FOR DISCIPLINE

(Inadequate Records-6 Patients)

41. By reason of the facts and allegations set forth in paragraphs 12 through 38, and the First and Second Causes for Discipline above, Respondent is subject to disciplinary action under section 2266 of the Code, in that Respondent failed to maintain adequate and accurate records of his care and treatment of patients M.F., B.C., R.A., J.A., T.T.H. and M.O.

SIXTH CAUSE FOR DISCIPLINE

(Prescribing to an Addict-5 Patients)

42. Respondent is subject to disciplinary action under section 2241 of the Code in that Respondent prescribed controlled substances to patients M.F., B.C., R.A., J.A. and M.O., who had signs of addiction.

43. The facts and circumstances in paragraphs 13 through 32 are incorporated by reference as if set forth in full herein.

SEVENTH CAUSE FOR DISCIPLINE

(Incompetence-5 Patients)

44. By reason of the facts and allegations set forth 12 through 27 and 36 through 38, and the First and Second Causes for Discipline above, Respondent is subject to disciplinary action under 2234, subdivision (d), of the Code, in that Respondent displayed a lack of knowledge about psychiatric and psychosocial assessment with respect to patients M.F., B.C., R.A., J.A., and T.T.H. The circumstances are as follows:

45. Respondent displayed little interest or skill in assessing the psychiatric history in his patients. Respondent's records with respect to the above patients do not show that Respondent

asked the patients about childhood abuse, prior psychiatric hospitalizations, suicide attempts, eating disorders, or any other behavioral issues aside from "anxiety," depression, or current suicidal ideation. Respondent also never obtained an appropriate Social History that would inquire about marital status, living situation, educational attainment, employment history, and social engagement. These are all crucial issues in treating chronic pain.

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 G 80814, issued to Doanh Andrew Nguyen, M.D.;

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

3. Ordering Doanh Andrew Nguyen, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: May 15, 2017

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

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