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

| | | |
|---|---|---|
| **In the Matter of the Accusation and Petition to Revoke Probation Against:** | ) | |
| **KAIN KUMAR, M.D.** | ) | **Case No. 800-2015-014200** |
| **Physician's and Surgeon's Certificate No. A67882** | ) | |
| **Respondent** | ) | |

## DECISION

**The attached Stipulated Surrender of License and 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 September 30, 2019.**

**IT IS SO ORDERED** August 15, 2019

**MEDICAL BOARD OF CALIFORNIA**

**By:** Kimberly Kirchmeyer
**Kimberly Kirchmeyer**
**Executive Director**

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRIS LEONG
Deputy Attorney General
State Bar No. 141079
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
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E-mail: chris.leong@doj.ca.gov
*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation/Petition to Revoke Probation Against:<br><br>KAIN KUMAR, M.D.<br><br>540 West Palmdale Boulevard, Suite B<br>Palmdale, California 93551<br><br>Physician's and Surgeon's Certificate No. A 67882,<br><br>Respondent. | Case No. 800-2015-014200<br><br>**STIPULATED SURRENDER OF LICENSE AND 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 Chris Leong, Deputy Attorney General.

2. Kain Kumar, M.D. (Respondent) is represented in this proceeding by attorney Peter R Osinoff, of Bonne Bridges, Mueller, O'Keefe & Nichols, 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071.

3. On March 26, 1999, the Board issued Physician's and Surgeon's Certificate No. A 67882 to Kain Kumar, 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/Petition to Revoke Probation No. 800-2015-014200 and will expire on June 30, 2020, unless renewed.

## JURISDICTION

4. An Accusation and Petition to Revoke Probation in Case No. 800-2015-014200 was filed before the Board and is currently pending against Respondent. The Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on March 16, 2018. Respondent filed a timely Notice of Defense contesting the Accusation/Petition to Revoke Probation. A copy of Accusation/Petition to Revoke Probation No. 800-2015-014200 is attached as Exhibit A and is incorporated by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2015-014200. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. 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/Petition to Revoke Probation; 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.

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

## CULPABILITY

8. Respondent understands that the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2015-014200, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation/Petition to Revoke Probation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation/Petition to Revoke Probation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

## CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. 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 Surrender 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.

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

13. 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 Order:

## ORDER

**IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. A 67882, issued to Respondent Kain Kumar, M.D., is surrendered, effective September 30, 2019, at 5:00 p.m., and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation/Petition to Revoke Probation No. 800-2015-014200 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation/Petition to Revoke Probation, No. 800-2015-014200 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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## ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and 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 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 7/29/19

KAIN KUMAR, M.D.
*Respondent*

I have read and fully discussed with Respondent Kain Kumar, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 7/31/19

PETER R. OSINOFF
*Attorney for Respondent*

## ENDORSEMENT

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

DATED: 7/31/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRIS LEONG
Deputy Attorney General
*Attorneys for Complainant*

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# Exhibit A

**Accusation/Petition to Revoke Probation, Case No. 800-2015-014200**

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
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*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 16, 2018
BY [illegible] ANALYST

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

| | |
|---|---|
| In the Matter of the Accusation and Petition to Revoke Probation Against,<br><br>KAIN KUMAR, M.D.<br><br>540 West Palmdale Boulevard, Suite B<br>Palmdale, California 93551<br><br>Physician's and Surgeon's Certificate A 67882,<br><br>Respondent. | Case No. 800-2015-014200<br><br>ACCUSATION AND PETITION TO REVOKE PROBATION |

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board (Board). On or about March 26, 1999, the Board issued Physician's and Surgeon's Certificate Number A 67882 to KAIN KUMAR, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

2. In a disciplinary action entitled *In the Matter of Accusation Against Kain Kumar, M.D.*, Case No. 05-2009-202167, the Board issued a decision, effective July 24, 2014, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was

stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of four (4) years with certain terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

3. This Accusation and Petition to Revoke Probation 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.

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 Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

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

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

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

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

"(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 board and 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."

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5. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption 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 by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. Section 2242 of the Code states:

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

"(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."

7. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

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

9. 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."

10. Section 810 of the Code states:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

"(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

"(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section

14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) "Board," as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) "More than one conviction," as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have "more than one conviction" for the purposes of this subdivision.

"(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

11. Hydrocodone and acetaminophen (brand names Norco, Lortab, Hycodan, Anexsia and Vicodin) is indicated for relief of moderate to severe pain. Hydrocodone is a semi-synthetic opioid and a Schedule II controlled substance. It has high abuse potential and can cause physical dependence and addiction.

12. OxyContin contains oxycodone, is a narcotic similar to morphine, and is used to relieve moderate to severe pain. It has a high abuse potential and long term use can lead to physical dependence and addiction. Oxycodone is a Schedule II controlled substance.

13. Oxycodone and acetaminophen (brand names Percodan, Percocet and Endocet) is indicated for relief of moderate to severe pain. Oxycodone is a semi-synthetic opioid and a Schedule II controlled substance. It has high abuse potential and can cause physical and psychological dependence.

14. Carisoprodol (brand name Soma) is a sedative and muscle relaxant. It is a dangerous drug as defined in section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Dishonesty and Health Care Fraud)

15. Respondent is subject to disciplinary action under Code sections 2234, subdivision (e), 810 and 2261 in that he engaged in health care fraud. The facts and circumstances are as follows.

16. On July 6, 2017, in the United States District Court, for the Central District of California in proceedings entitled *United States of America v. Kain Kumar*, case number CR 16-00364(A)-PSG, a Second Superseding Indictment was filed. Respondent was charged with Health Care Fraud in violation of 18 U.S.C. §§ 1347 and 2 as charged in counts 1 through 11; Conspiracy to Pay and Receive Health Care Referrals in violation of 18 U.S.C. § 371 as charged in count 12; Receiving Illegal Remunerations for Health Care Referrals in violation of 42 U.S.C. § 1320a-7b (b) (1) (A) as charged in counts 13 through 15; Distribution of Hydrocodone and Carisopodol in violation of 21 U.S.C. §§ 841 (a) (1), (b) (1) (c), (b) (1) (E), and 2 (b) as charged in count 17; Aiding and Abetting and Causing an Act to be Done in violation of 21 U.S.C. §§ 841 (a) (1), (b) (2); 18 U.S.C. § 2 (b) as charged in counts 18 and 19; and Criminal Forfeiture in violation of 18 U.S.C. § 982 (a) (7).

THE MEANS TO ACCOMPLISH THE SCHEME TO DEFRAUD

17. The fraudulent scheme operated, in substance, as follows:

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a. As a licensed physician, Respondent prescribed prescription drugs, including controlled substances, without regard to whether the drugs were medically necessary. Respondent caused prescriptions for medically unnecessary drugs to be issued by instructing staff at Respondent's offices to: (1) fill out and sign Respondent's name on prescriptions; and (2) fill out prescriptions that had been pre-signed by Respondent. As a result, Respondent caused prescriptions to be issued for drugs, including controlled substances, when Respondent was not present at his clinic, including when Respondent was travelling outside of the United States.

b. Respondent knew and intended for Medicare beneficiaries to fill prescriptions he had caused to be issued for medically unnecessary drugs at pharmacies, and for pharmacies to then submit false and fraudulent claims to Medicare and Medicare Part D plan sponsors for those medically unnecessary drugs.

c. When Medicare beneficiaries came to Respondent's office, oftentimes Respondent would not personally examine Medicare beneficiaries. Even when Respondent did not personally examine Medicare beneficiaries, Respondent would submit and cause to be submitted false and fraudulent claims for reimbursement to Medicare for physician examinations by him of those Medicare beneficiaries. For example, Respondent submitted false and fraudulent claims to Medicare for physician examinations by him that purportedly occurred when Respondent was travelling outside of the United States and on weekends when Respondent's offices were closed.

d. At other times, Respondent would conduct a brief examination of Medicare beneficiaries, but would submit and cause to be submitted false and fraudulent claims for reimbursement to Medicare for longer physician examinations by him, which were reimbursed to Respondent at a higher rate.

e. Respondent would prescribe services for Medicare beneficiaries, including medical imaging and home health services, that Respondent knew were not medically necessary and would then refer the Medicare beneficiaries to have those medically unnecessary services performed by Medicare providers, including medical imaging and home health companies, including Star Home Health Resources, Inc. (Star). Respondent knew that by

prescribing medically unnecessary services, Respondent was causing the Medicare providers (including Star) to submit false and fraudulent claims to Medicare for such medically unnecessary services.

f. Respondent would profit from prescribing medically unnecessary services to Medicare beneficiaries by receiving kickbacks from the Medicare providers for such referral of Medicare beneficiaries to the Medicare providers. For example, Respondent received kickbacks from medical imaging and home health companies (including Star) for referring to them Medicare beneficiaries for whom Respondent had prescribed medically unnecessary medical imaging and home health services.

EXECUTIONS OF THE FRAUDULENT SCHEME

Home Health Services

18. On or about the dates set forth below, Respondent, together with others, aided and abetted each other, knowingly and willfully executed and attempted to execute the fraudulent scheme described above, by submitting and causing to be submitted to Medicare the following false and fraudulent claims for home health services:

| Count | Beneficiary | Claim No. | Dates | Submitted | Amount |
|---|---|---|---|---|---|
| One | Patient 1 | 21413400143307CAR | 1/22/2014 – 3/12/2014 | 5/14/2014 | $2,605.71 |
| Two | Patient 2 | 21414300008507CAR | 2/3/2014 – 3/26/2014 | 5/23/2014 | $2,787.37 |
| Three | Patient 3 | 21523600257607CAR | 5/2/2015 – 6/26/2015 | 8/24/2015 | $2,059.22 |

19. From in or around February 2011 to in or around June 2016, home health providers submitted claims to Medicare for home health services for Medicare beneficiaries that Respondent referred to the home health providers and Medicare paid approximately $13,456,158 on those claims.

Physician Services

20. On or about the dates set forth below, Respondent, together with others aided and abetting each other, knowingly and willfully executed and attempted to execute the fraudulent scheme described above, by submitting and causing to be submitted to Medicare the following false and fraudulent claims for physician services purportedly provided by Respondent:

| Count | Beneficiary | Claim No. | Date of Service | Submitted | Amount |
|---|---|---|---|---|---|
| Four | Patient 4 | 551114303866840 | 9/28/2014 | 10/30/2014 | $91.93 |
| Five | Patient 5 | 551115020647150 | 12/26/2014 | 1/20/2015 | $91.93 |
| Six | Patient 6 | 551115096441510 | 12/26/2014 | 4/4/2015 | $91.93 |
| Seven | Patient 7 | 551115096444630 | 12/26/2014 | 4/4/2015 | $91.93 |
| Eight | Patient 8 | 551115096442540 | 2/11/2015 | 4/4/2015 | $121.12 |
| Nine | Patient 7 | 551115156826070 | 4/1/2015 | 6/5/2015 | $66.35 |

21. From in or around February 2011 to in or around May 2016, Respondent caused to be submitted claims to Medicare for physician services purportedly provided by Respondent in the amount of $5,488,622 and Medicare paid approximately $2,953,804 on those claims.

Medicare Part D

22. On or about the dates set forth below, Respondent together with others aided and abetted each other, knowingly and willfully executed and attempted to execute the fraudulent scheme described above, by submitting and causing to be submitted to Medicare and Medicare Part D plan sponsors the following false and fraudulent claims for prescription drugs:

| Count | Beneficiary | Claim No. | Date | Drug | Amount |
|---|---|---|---|---|---|
| Ten | Patient 10 | 13731876889100003736459 11 | 11/27/2013 | Hydrocodone/ Acetaminophen | $33.65 |
| Eleven | Patient 11 | 153574698536012999 | 12/23/2015 | Carisoprodol | $8.55 |

23. From in or around February 2011 to in or around May 2016, based on prescriptions from Respondent, pharmacies submitted claims to Medicare and Medicare Part D plan sponsors for prescription drugs and Medicare paid approximately $18,033,137 on those claims.

OBJECTS OF THE CONSPIRACY

24. Beginning no later than in or around August 2012, and continuing through in or around May 2016, Respondent, together with co-conspirators knowingly combined, conspired, and agreed to commit the following offenses:

a. Knowingly and willfully soliciting and receiving remuneration in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item

or service for which payment may be made in whole or in part under a Federal health care program, in violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A); and

b. Knowingly and willfully offering to pay and paying any remuneration to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, in violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A).

THE MANNER AND MEANS OF THE CONSPIRACY

25. The objects of the conspiracy were carried out, and to be carried out, in substance, as follows:

a. Co-conspirators developed relationships with certain physicians, including Respondent, whereby the physicians would refer Medicare beneficiaries to Star to receive home health services, which services Star would then bill to Medicare.

b. In exchange for the Medicare referrals, Star would pay the referring physicians, including Respondent, a kickback of approximately $200-$900 for each Medicare beneficiary referred to Star.

c. Star would also pay a kickback to a co-conspirator for each Medicare beneficiary that certain physicians, including Respondent, referred to Star. Star paid approximately $100-$200 to co-conspirator E. as a kickback for each Medicare beneficiary that these physicians referred to Star.

d. In order to pay the kickbacks to the co-conspirator and Respondent, another co-conspirator would withdraw cash from Star's bank accounts and deposit the cash into the account of co-conspirator C. Co-conspirator C. would keep the portion of the cash that represented her share of the kickback payments and provide the balance of the cash to Respondent.

e. In order to keep track of the kickback payments to co-conspirator C. and Respondent, Star maintained password-protected spreadsheets that listed each Medicare beneficiary referred to Star and the amount paid to co-conspirator C. and Respondent for each

such referral.

f. From in or around August 2012 to in or around May 2016, co-conspirators caused Star to bill Medicare, and on the basis of those bills Medicare paid Star a total amount of approximately $8,951,951 for home health services. Of that amount, at least approximately $4,398,599 was paid based on bills for home health services to Medicare beneficiaries referred to Star as the result of kickback payments to Respondent.

OVERT ACTS

26. On or about the following dates, in furtherance of the conspiracy and to accomplish its objects, Respondent, together with co-conspirators committed and willfully caused others to commit the following overt acts:

Overt Act No. 1: On or about February 28, 2013, co-conspirator C. withdrew $5,000 in cash from her account at Chase Bank to make kickback payments to Respondent.

Overt Act No. 2: On or about March 7, 2013, co-conspirator C. withdrew $5,300 in cash from her account at Chase Bank to make kickback payments to Respondent.

Overt Act No. 3: On or about July 19, 2013, co-conspirator E. withdrew $2,500 in cash from Star's account at Chase Bank to make kickback payments to co-conspirator C. and Respondent.

Overt Act No. 4: On or about March 7, 2014, co-conspirator C. withdrew $3,500 in cash from her account at Chase Bank to make kickback payments to Respondent.

Overt Act No. 5: On or about December 30, 2014, Respondent referred Medicare beneficiary Patient 12 to Star, so that Respondent could receive kickback payments for referring Medicare beneficiary Patient 12 to Star.

27. On or about the dates set forth below, Respondent, together with others knowingly and willfully received remuneration, namely, cash in the amounts identified below, drawn on co-conspirator C.'s account at Chase Bank and provided to Respondent, which constituted kickbacks to Respondent for referring patients to Star for home health services, for which payment could be made in whole and in part under a Federal health care program, namely, Medicare:

| Count | Date | Amount |
|---|---|---|
| Thirteen | February 28, 2013 | $5,000 cash |
| Fourteen | March 7, 2013 | $5,300 cash |
| Fifteen | March 7, 2014 | $3,500 cash |

28. On or about April 29, 2015, Respondent, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally prescribed and distributed, and willfully caused the prescribing and distribution of, 120 pills containing hydrocodone, then a Schedule II controlled substance, to Patient 13.

29. On or about November 8, 2013, Respondent, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally prescribed and distributed, and willfully caused the prescribing and distribution of, 150 pills containing hydrocodone, then a Schedule III controlled substance, to Patient 14.

30. On or about the following dates, Respondent, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally prescribed and distributed, and willfully caused the prescribing and distribution of, the following pills containing Carisoprodol, a Schedule IV controlled substance.

| Count | Patient | Number of Pills | Date |
|---|---|---|---|
| Eighteen | Patient 15 | 120 | April 29, 2015 |
| Nineteen | Patient 16 | 120 | December 7, 2015 |

SECOND CAUSE FOR DISCIPLINE

(Prescribing Without Appropriate Prior Examination)

31. Respondent is subject to disciplinary action under Code section 2242 in that he prescribed controlled substances and dangerous drugs to Patients 13 through 16, without an appropriate prior examination and medical indication. The facts and circumstances alleged in Paragraphs 16 through 31 are incorporated as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Excessive Prescribing)

32. Respondent is subject to disciplinary action under Code section 725 in that he engaged in repeated acts of clearly excessive prescribing of drugs to Patients 13 through 16. The facts and circumstances alleged in Paragraphs 16 through 31 are incorporated as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

33. Respondent is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records relating to the provision of services to Patients 1 through 16. The facts and circumstances alleged in Paragraphs 16 through 32 are incorporated as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

34. Respondent is subject to disciplinary action under Code section 2234 in that he engaged in unprofessional conduct in his care and treatment of Patients 1 through 16. The facts and circumstances alleged in Paragraphs 16 through 33 are incorporated as if fully set forth.

CAUSE TO REVOKE PROBATION

(Obey All Laws)

35. At all times after the effective date of Respondent's probation, Condition 22 stated:

> "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."

36. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 22, referenced above. The facts and circumstances alleged in Paragraphs 16 through 53 are incorporated as if fully set forth.

DISCIPLINE CONSIDERATIONS

37. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 24, 2014, in a prior disciplinary action entitled *In the*

*Matter of the Accusation Against Kain Kumar, M.D.* before the Medical Board of California, in Case No. 05-2009-202167, Respondent's license was revoked. However, the revocation was stayed for four (4) years probation plus terms and conditions, based on allegations of gross negligence, repeated acts of negligence, and failure to maintain adequate and accurate records regarding eight patients. That decision is now final and is incorporated by reference as if fully set forth.

38. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 4, 2007, in a prior disciplinary action entitled "In the Matter of the Accusation Against Kain Kumar, M.D." before the Medical Board of California, in Case No. 05-2003-148991, Respondent's license was publicly reprimanded and he was ordered to take and complete a prescribing course and clinical training program based on allegations of gross negligence, prescribing to an addict, excessive prescribing, and repeated acts of negligence. That decision is now final and is incorporated by reference as if fully set forth.

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## PRAYER

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

1. Revoking the probation that was granted by the Medical Board of California in Case No. 05-2009-202167 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's Certificate No. A 67882 issued to Kain Kumar, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 67882, issued to Kain Kumar, M.D.;

3. Revoking, suspending or denying approval of his authority to supervise physician assistants and nurse practitioners;

4. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring; and

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

DATED: March 16, 2018

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

*Complainant*

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# Exhibit A

**Decision and Order**

**Medical Board of California Case No. 05-2009-202167**

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

| | | |
|---|---|---|
| In the Matter of the Accusation Against: | ) | |
| KAIN KUMAR, M.D. | ) | Case No. 05-2009-202167 |
| Physician's and Surgeon's Certificate No. A-67882 | ) | |
| 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 July 24, 2014.

IT IS SO ORDERED: June 24, 2014.

MEDICAL BOARD OF CALIFORNIA

Barbara Yaroslavsky, Chair
Panel A

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
CHRIS LEONG
Deputy Attorney General
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*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**KAIN KUMAR, M.D.**<br><br>**540 West Palmdale Boulevard, Suite B**<br>**Palmdale, California 93551**<br><br>**Physician's and Surgeon's Certificate No. A 67882**<br><br>Respondent. | Case No. 05-2009-202167<br><br>OAH No. 2012070256<br><br>**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 (Board), 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 First Amended Accusation as well as all other investigations or matters presently known to the Board.

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## PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Board, and brings this action solely in her official capacity. She is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Chris Leong, Deputy Attorney General. Respondent is represented in this matter by Joseph P. Furman, Esq., of Furman Healthcare Law.

2. On or about March 2, 1999, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 67882 to KAIN KUMAR, 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 First Amended Accusation No. 05-2009-202167 and will expire on June 30, 2014, unless renewed.

## JURISDICTION

3. Accusation No. 05-2009-202167 was filed before the Board. The Accusation and all other statutorily required documents were properly served on Respondent on April 5, 2012. First Amended Accusation No. 05-2009-202167 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 17, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

4. A copy of First Amended Accusation No. 05-2009-202167, is attached as Exhibit A and is incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. 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.

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

CULPABILITY

7. Respondent understands and agrees that the charges and allegations in the First Amended Accusation No. 05-2009-202167, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

8. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the First Amended Accusation, and that Respondent hereby gives up his right to contest those charges.

9. 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.

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 Accusation 05-2009-202167 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.

CONTINGENCY

11. 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.

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

13. 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 67882 issued to Respondent KAIN KUMAR, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

14. 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.

15. 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.

16. 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.

17. CLINICAL TRAINING PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). 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 program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, 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, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical training 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 training program have been completed. If the Respondent did not successfully complete the clinical training 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.

Within 60 days after Respondent has successfully completed the clinical training program, Respondent shall 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, which shall include 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, or until the Board or its designee determines that further participation is no longer necessary.

18. 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.

19. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine, except as noted below. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location. This provision prohibiting respondent from engaging in the solo practice of medicine will not apply to Respondent's practice locations in the cities of Ridgecrest and Rosamond, in Kern County, which are geographically remote practice locations that serve a medically underserved population.

With respect to Respondent's remaining practice locations apart from the one's in Ridgecrest and Rosamond, if Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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 practice until an appropriate practice setting is established.

20. 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.

21. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants, except at his practice locations in the cities of Ridgecrest and in Rosamond, in Kern County, which are geographically remote practice locations that serve a medically underserved population.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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, Joseph P. Furman, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5/22/14

KAIN KUMAR, M.D.
Respondent

I have read and fully discussed with Respondent Kain Kumar, 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: May 23, 2014

JOSEPH P. FURMAN, ESQ.
Attorney for Respondent

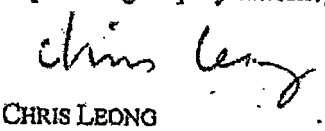
ENDORSEMENT

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

Dated: 5/23/2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General



CHRIS LEONG
Deputy Attorney General
*Attorneys for Complainant*

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**Exhibit A**

**First Amended Accusation No. 05-2009-202167**

KAMALA D. HARRIS
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*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 17, 2013
BY _____ ANALYST

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

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| In the Matter of the Accusation Against: | Case No. 05-2009-202167 |
| **KAIN KUMAR, M.D.** | OAH No. 2012070256 |
| **540 West Palmdale Boulevard, Suite B**<br>**Palmdale, California 93551** | **FIRST AMENDED ACCUSATION** |
| **Physician's and Surgeon's Certificate**<br>**No. A 67882** | |
| Respondent. | |

Complainant alleges:

PARTIES

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

2. On or about March 26, 1999, the Board issued Physician's and Surgeon's Certificate Number A 67882 to Kain Kumar, 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 June 30, 2014, unless renewed.

## JURISDICTION

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

4. Section 2227 of the Code states that a licensee who is found guilty of a violation of the Medical Practice Act (Bus. & Prof. Code, § 2000 et seq.), or who has entered into a stipulation for disciplinary action with the Board, may have his license revoked; suspended for a period not to exceed one year; placed on probation and required to pay the costs of probation monitoring; or have any other action taken in relation to discipline as the Board may deem proper.

5. Section 2234 of the Code states:

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

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(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."

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

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence - Patient A.C.)

7. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he committed multiple acts and/or omissions constituting gross negligence in his care and treatment of patient AC. The circumstances are as follows:

8. On a Friday morning, December 14, 2007, 16-month-old patient A.C. was brought to the Antelope Valley Hospital emergency department with a fever and congestion. A.C. was shaking and having a difficult time standing or holding her head up. At around 1100, about an hour after arriving at the emergency department, A.C. had a focal seizure. She was placed on oxygen and given Ativan to control the seizure. At around 1300, A.C. had a second seizure. Once controlled, an emergency room physician ordered a full septic workup, including a head CT scan prior to a lumbar puncture. The emergency room physician's differential diagnosis was: meningitis, hydrocephalus, and sepsis. His clinical impression was: rule out meningitis, febrile seizure, pneumonia, and upper respiratory infection.

9. Respondent accepted the admission of A.C. via telephone. At around 2030 on December 14, 2007, A.C. was admitted to the pediatric floor, and at around 2040, Respondent called in admission orders, including the antibiotic Rocephin and Ativan as needed for seizures. The following morning at around 0700 hours on Saturday, December 15, 2007, Respondent saw A.C. for the first time. His diagnosis was febrile syndrome secondary to gastroenteritis, even though there had been no complaint of vomiting or diarrhea at this time. In his history and physical exam, Respondent failed to mention A.C.'s two focal seizures in the emergency room, the patient's inability to stand or correctly posture, and the fact that she had a hard time holding

her head up. Respondent placed a consult order for a neurologist who, unbeknownst to Respondent, was not on call that weekend.

10. At 0810 on December 15, 2007, A.C. had another focal seizure and vomited. This was followed by two more seizures at 0820 and 0855. At 0905 Respondent ordered Ativan to be given and seizure precautions to remain in place. Despite five seizures in less than 24 hours, discharge orders and a final progress note had been written. A.C. continued to be febrile, up to 104.7 degrees. Respondent was updated on the patient's condition around 1310, and at around 1330, Respondent cancelled the discharge. From 1330 into the evening, A.C. remained lethargic and irritable.

11. At 2030 Respondent called in by telephone and was updated on the patient's status. For the first time, Respondent was informed that the neurologist on call that weekend had refused to see the patient. However, no action regarding this issue was taken. A.C. continued to show symptoms of lethargy, fever, and irritability through the night.

12. The following Sunday morning, December 16, 2007, A.C.'s mental status deteriorated to the point where she could only grimace to painful stimuli and not open her eyes. Respondent called in by telephone and indicated that he would arrive at the hospital around 0900. At 0930, Respondent ordered the patient to be transferred to a tertiary care facility for higher level of care. At 1140, upon the paramedics' arrival to transport A.C. to Miller Children's Hospital, A.C. had another focal seizure. Respondent was called to reassess the patient due to concerns raised by the transport team. However, Respondent refused to evaluate the patient. Miller Children's Hospital was contacted about this situation. They indicated that they would send their own physician-led transport team to bring the patient to the Children's Hospital. For the following three hours or so until the Miller transport team arrived, A.C. had two more seizures and a fever up to 103.1 degrees. Prior to the transport team's arrival, no further seizure medication was given. Prior to being transported, A.C. received Dilatin, Ativan, and Acyclovir. At 1550, A.C. left Antelope Valley Hospital with the Miller transport team.

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13. Respondent failed to examine or otherwise evaluate A.C. after seeing her at 0930 on December 16, 2007, despite her worsening condition and the three hour delay in her transfer to Miller Children's Hospital.

14. Later testing found that A.C.'s cerebrospinal fluid tested positive for herpes simplex virus type 1. The patient incurred neurologic deficits as a result of herpes simplex virus encephalitis and related seizures.

15. Respondent was grossly negligent in diagnosing a "febrile seizure syndrome secondary to gastroenteritis" despite numerous symptoms and observations which indicated a much more serious central nervous system infection. The most critical consideration in evaluating a child with a febrile seizure is to rule out a central nervous system infection. By failing to recognize the difference between a relatively benign condition and a much more serious neurological infection, Respondent endangered patient A.C. and delayed effective treatment.

16. Respondent was grossly negligent in failing to recognize clear signs and symptoms of sepsis. A.C.'s initial vital signs, including her pulse, respiratory rate, temperature, and weight, combined with the finding of a high proportion of white blood cells, indicated sepsis. Her five seizures, combined with a continued high fever, indicated a central nervous system infection as the cause of sepsis. By failing to recognize the clear signs and symptoms of sepsis, Respondent failed to treat A.C. appropriately and failed to more promptly transfer her to a higher level of care.

17. Respondent was grossly negligent in failing to diagnose or even consider a central nervous system infection in his treatment of A.C. Respondent failed to properly identify a neurologic infection despite numerous indications such as laboratory test results of the patient's cerebral spinal fluid sample, together with the patient's repeated seizures, increasing lethargy, fever, and ataxia. The emergency room physician had made a differential diagnosis of meningitis and sepsis. The patient had five witnessed focal seizures in the first 24 hours of her admission. Her condition continued to worsen, with a Glasgow Coma Scale of 8, indicating significant brain injury. The patient had 3 more seizures prior to her transfer. By failing to diagnose a neurologic infection, Respondent failed to provide sufficient antibiotic treatment and anti-viral medication.

18. Respondent was grossly negligent in prescribing Reglan, or Metaclopramide, presumably to treat episodes of vomiting associated with A.C.'s seizures. Reglan is never used to treat gastroenteritis, which was Respondent's diagnosis. Reglan can precipitate seizures and cause or aggravate diarrhea. There was no acceptable indication for its use, and its known adverse effects could have been harmful to a child who was already significantly ill.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient A.C.)

19. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient A.C. The circumstances are as follows:

20. The facts and allegations in paragraphs 7 through 13, inclusive, are hereby incorporated by reference.

21. Respondent was negligent in diagnosing a "febrile seizure syndrome secondary to gastroenteritis" despite numerous symptoms and observations which indicated a much more serious central nervous system infection. The most critical consideration in evaluating a child with a febrile seizure is to rule out a central nervous system infection. By failing to recognize the difference between a relatively benign condition and a much more serious neurological infection, Respondent endangered patient A.C. and delayed effective treatment.

22. Respondent was negligent in failing to recognize clear signs and symptoms of sepsis. A.C.'s initial vital signs, including her pulse, respiratory rate, temperature, and weight, combined with the finding of a high proportion of white blood cells, indicated sepsis. Her five seizures, combined with a continued high fever, indicated a central nervous system infection as the cause of sepsis. By failing to recognize the clear signs and symptoms of sepsis, Respondent failed to treat A.C. appropriately and failed to more promptly transfer her to a higher level of care.

23. Respondent was negligent in failing to diagnose or even consider a central nervous system infection in his treatment of A.C. Respondent failed to properly identify a neurologic infection despite numerous indications such as laboratory test results of the patient's cerebral spinal fluid sample, together with the patient's repeated seizures, increasing lethargy, fever, and

ataxia. The emergency room physician had made a differential diagnosis of meningitis and sepsis. The patient had five witnessed focal seizures in the first 24 hours of her admission. Her condition continued to worsen, with a Glasgow Coma Scale of 8, indicating significant brain injury. The patient had 3 more seizures prior to her transfer. By failing to diagnose a neurologic infection, Respondent failed to provide sufficient antibiotic treatment and anti-viral medication.

24. Respondent was negligent in prescribing Reglan, or Metaclopramide, presumably to treat episodes of vomiting associated with A.C.'s seizures. Reglan is never used to treat gastroenteritis, which was Respondent's diagnosis. Reglan can precipitate seizures and cause or aggravate diarrhea. There was no acceptable indication for its use, and its known adverse effects could have been harmful to a child who was already significantly ill.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient A.C.)

25. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records relating to the provision of services to patient A.C. The circumstances are as follows:

26. The facts and allegations in paragraphs 7 through 13, inclusive, are hereby incorporated by reference.

27. Respondent failed to maintain adequate and accurate records relating to the provision of services to patient A.C. Many of his entries are illegible. Moreover, he documents "11 white count and 899 WBCs" in his history and physical entry, but this is inaccurate and in fact a combination of two separate central spinal fluid samples. This inaccurate entry fails to reflect that an 11 white blood cell count and a 5 red blood cell count were present in sample #4, which indicates a central nervous system infection.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient R.M.)

28. Respondent is subject to disciplinary action under section Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient R.M. The circumstances are as follows:

29. Patient R.M., a 98-year-old female, had a history of congestive heart failure, ejection fraction 15-20%, severe aortic stenosis, hypertension, urinary retention, urinary tract infections, total knee and hip replacements, and a cholecystectomy. The patient's first visit with Respondent was on April 15, 2011. She had shortness of breath, wheezing and back pain. Respondent's diagnosis included hypertensive cardiovascular disease, pyelonephritis, congestive heart failure, and osteoarthritis. Her next office visit was on April 19, 2011. The patient's chief complaint was frequent urination and pain. Respondent's diagnosis included overactive bladder, cardiomyopathy, congestive heart failure, chronic urinary tract infection, and vaginal cystocele/prolapse. An echocardiogram on April 20, 2011, was abnormal. A CT of the abdomen and pelvis on April 22, 2011, revealed thickening of the pericardium, left pleural effusion, atherosclerotic vascular disease of the aorta, degenerative spine changes, and diverticulosis of the colon. Her next office visit was on April 26, 2011. The vital signs were incomplete. Respondent's diagnosis included diabetes, coronary artery disease, and hypoglycemia. A chest CT revealed pleural effusion and pericardial effusion. Respondent diagnosed severe atherosclerotic disease. At her next visit on May 4, 2011, Patient R.M. complained of worsening shortness of breath. She had an abnormal pulmonary examination, and her pulse oximeter reading was 88%. Respondent diagnosed pericardial effusion and pleural effusion. Respondent's progress notes were often poorly documented, illegible, and were missing key components such as complete vital signs, medication lists, and complete problem lists.

30. On May 4, 2011, Respondent directly admitted R.M. to Antelope Valley Hospital (AVH) under his care. After taking Patient R.M.'s history and physical examination, Respondent impressions included pleural and pericardial effusions, congestive heart failure, chest discomfort, urinary tract infections and shortness of breath. He ordered laboratory tests, CXR, echocardiogram, and a Foley catheter. He ordered treatment with intravenous diuretics, bronchodilators, intravenous corticosteroids, respiratory therapy, and supplemental oxygen. The patient's medications included Lisinopril, Coreg, Nitrofurantoin, Naproxen, and Ambien, which was recently started.

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31. The nursing notes at 0800 on May 5, 2011, document that the patient was alert and screaming in bed, stating she feels like urinating. She was assisted to a bed pan, and instructed to call for help using the call lights and not yell. A Foley catheter was inserted. At 0845, Respondent discontinued intravenous steroids, and initiated treatment with Ativan, Haldol, and Zoloft. He requested psychiatric, cardiology and urology consultations. The nursing notes indicated that at 1130, the patient was yelling and screaming as she tried to get out of bed. The patient was administered a benzodiazepine.

32. The patient developed an acute confusional state consistent with delirium. Respondent did not properly manage the patient's delirium. He did not initially attempt to use non-pharmacologic supportive care, including use of a bedside sitter. He did not properly evaluate the patient for metabolic derangements, infection, and toxicity from recently initiated drugs, including steroids and Ambien. The patient's behavior on May 4, 2011, did not justify Respondent's treatment with multiple psychotropic agents on May 5, 2011.

33. Respondent ordered multiple psychotropic medications for the patient without obtaining informed consent, including discussion of the risks, benefits, side effects, and other treatment options, from the patient or a family member.

34. The nursing notes at 0805 on May 6, 2011, document that the patient was confused as to date and time. A psychiatrist performed a psychiatric consultation, and diagnosed the patient with dementia and depression. The patient's thought processes were coherent with no evidence of psychosis. The psychiatrist recommended continuation of antidepressant therapy and reduction of benzodiazepine doses. At 1530, the patient was noted to be very anxious, saying that she has to urinate.

35. The nursing notes at 0530 on May 7, 2011, indicate that the patient was kicking and combative with staff, and was give Haldol IV as ordered. Respondent also ordered Risperidone, Aricept, and Namenda.

36. On May 9, 2011, the patient refused all medications and food. Respondent ordered her discharged home, and discontinuation of the Foley catheter. On May 10, 2011, Respondent ordered her discharged home.

37. On May 11, 2011, the patient's daughter reported the patient had increased sedation. The psychiatrist recommended discontinuation of all psychotropic medications. The patient was transferred to a healthcare center.

38. On May 12, 2011, Respondent dictated a discharge summary, which was incomplete. He did not include the reason for the patient's hospitalization, significant findings, procedures, treatment provided, consultations, hospital course including complications, and a reconciliation of the patient's medications.

39. Respondent was negligent in that he failed to properly manage the patient's delirium. He failed to use non-pharmacologic supportive care, including use of a bedside sitter. He failed to properly evaluate the patient for metabolic derangements, infection, and toxicity from recently initiated drugs, including steroids and Ambien. On May 5, 2011, he negligently treated the patient with multiple psychotropic agents which were not justified by the patient's behavior on May 4, 2011.

40. Respondent was negligent in that he failed to obtain informed consent from the patient or a family member for the multiple psychotropic medications he ordered.

41. Respondent was negligent in that many of his entries in the patient's records were illegible.

42. Respondent was negligent in that the patient's discharge summary was incomplete. He failed to include the reason for the patient's hospitalization, significant findings, procedures, treatment provided, consultations, hospital course including complications, and a reconciliation of the patient's medications.

## FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient R.M.)

43. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records relating to the provision of services to patient R.M. The facts and allegations in the Fourth Cause for Discipline are hereby incorporated by reference.

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## SIXTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient G.A.)

44. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient G.A. The circumstances are as follows:

45. Patient G.A., an 83-year-old male, had a history of benign prostatic hypertrophy, previous cystitis, low back pain, chronic obstructive pulmonary disease, hypertension, and osteoporosis. Respondent saw the patient for only one office visit on January 26, 2011. The patient' symptoms included back pain, respiratory and gastrointestinal symptoms, and he required oxygen. Respondent's diagnosis included COPD, abdominal pain, and coronary artery disease. His plan included physical therapy and diagnostic studies. Respondent did not document in the records the status of the diagnostic studies he ordered. There was no documentation regarding a missed follow-up appointment. Respondent's office note for the patient was illegible.

46. Patient G.A. presented to Palmdale Regional Medical Center on May 12, 2011, after a mechanical fall. He suffered a right hip fracture, and was admitted under Respondent's care. Respondent performed a history and physical examination. The patient had an orthopedic consultation, and underwent right hip surgery on May 13, 2011. The patient experienced post-operative complications and passed away on May 26, 2011.

47. Respondent did not sign the patient's death certificate within 15 hours of death as required. Log sheets from Chapel of the Valley Mortuary indicate that beginning on May 27, 2011, attempts were made to have Respondent sign the death certificate. The case was referred to the Coroner's Office on June 2, 2011, and the death certificate was signed by the Deputy Coroner on June 3, 2011. Funeral services for the patient were delayed.

48. Respondent was negligent in that he failed to document in the records the status of the diagnostic studies he ordered. He failed to document the missed follow-up appointment.

49. Respondent was negligent in that his office note for the patient was illegible, and his hospital records were difficult to interpret.

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50. Respondent was negligent in that he failed to sign the patient's death certificate in a timely manner.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient G.A.)

51. Respondent is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records relating to the provision of services to patient G.A. The facts and allegations in the Sixth Cause for Discipline are hereby incorporated by reference.

EIGHTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient M.B.)

52. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient M.B. The circumstances are as follows:

53. Patient M.B., a 77-year-old female, had a history of diabetes, dementia, urinary tract infections, seizures, arthritis, stroke, chronic pain, hypothyroidism, anemia, hypertension, functional decline, and decubitus ulcers. She was seen in Respondent's office on June 30, 2011. Office staff noted the patient had decreased oral intake, was lethargic, and poorly responsive. Her blood glucose was 92, her temperature was 101, and no urine was obtainable. Respondent's diagnosis was urinary tract infection, decubitus ulcer stage 4, and sepsis.

54. On June 30, 2011, Patient M.B. was evaluated in the emergency room (ER) at AVH, where she was noted to have an elevated white blood cell count, abnormal kidney function tests, and was diagnosed with a UTI, chronic renal failure, failure to thrive, and hyperglycemia. Her laboratory values were sodium 151, BUN 92, creatinine of 1.7, and glucose of 347. A brief interpretation of the EKG by the ER physician was normal except for a fast heart rate. She was admitted to AVH under Respondent's care.

55. In his history and physical, Respondent noted the patient has "fever, chills, as well as stage 4 decubitus ulcer worsened, and her generalized functional status has declined." He noted the patient was placed on IV antibiotics, and various consultations were requested. He recorded laboratory values of BUN 23, creatinine of 1.1, and glucose of 147. These numbers recorded by

Respondent are markedly different from those noted in the ER record. Respondent's impression was severe septic shock with acute myocardial infarction and acute renal failure. He did not mention the patient's EKG, which is the primary modality for initial diagnosis of an acute myocardial infarction. The initial EKG done on June 30, 2011, was interpreted as age indeterminate, not an acute infarction. Respondent did not recognize that the laboratory markers of heart muscle damage were abnormal, falling into the range the laboratory called indeterminate on June 30, 2011, and on July 1, 2011. Respondent noted a diagnosis of diabetes, and his only plan included every four hour sugar checks, with no specific medication regimen.

56. On July 5, 2011, a surgeon debrided the patient's stage 4 decubitus ulcer. On July 10, 2011, another physician placed a percutaneous feeding tube because of the patient's difficulty in swallowing and malnourishment. The patient was discharged on July 19, 2011, to a long-term care nursing facility.

57. Respondent was negligent in that he failed to include important details of the debridement of the decubitus ulcer and placement of the feeding tube in the patient's history and physical and discharge summary.

58. Respondent was negligent in that there were errors in his history and physical regarding laboratory values. He failed to provide in the history and physical details of specific treatments, such as a planned medication for diabetes, and for "multiple other medical issues" and "continued on home medications." He failed to recognize that the abnormal cardiac enzymes indicated possible acute myocardial damage.

59. Respondent was negligent in that his progress notes were illegible, making it almost impossible to analyze his ongoing assessments, findings, thinking and analysis of the patient's medical condition.

NINTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient M.B.)

60. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records relating to the provision of services to patient

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M.B. The facts and allegations in the Eighth Cause for Discipline are hereby incorporated by reference.

TENTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient R.B.)

61. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient R.B. The circumstances are as follows:

62. Patient R.B., a 55-year-old female, was seen in Respondent's office on May 5, 2011, and was admitted that date. Respondent's history and physical indicates the patient had complaints of right leg numbness progressing to severe right leg weakness and pain, right leg cellulitis, possible ischemia of the right leg, a diagnosis of peripheral vascular disease of the right leg, inability to ambulate, and incontinence. She had prior lumbar surgery.

63. The patient had a vascular surgery consultation on May 6, 2011, with another physician who noted the patient's right leg had poor pulses distally, poor blood perfusion, and an occluded right leg blood vessel. The patient had a neurosurgery consultation on May 10, 2011, with another physician who noted the patient had a near complete right foot drop, decreased sensation and decreased reflexes indicating damage to the nerve and the need for urgent surgery. The patient had surgery that day. Respondent's May 15, 2011, discharge summary does not include a neurologic or motor examination of the right leg/foot which would be important to document should the patient develop recurrent symptoms. All of Respondent's progress notes are essentially illegible.

64. Respondent was negligent in that he failed to include in the discharge summary a pertinent physical examination of the motor and neurologic status of the patient's right leg.

65. Respondent was negligent in that his progress notes were illegible.

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ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient R.B.)

66. Respondent is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records relating to the provision of services to patient R.B. The facts and allegations in the Tenth Cause for Discipline are hereby incorporated by reference.

TWELFTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient B.D.)

67. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient B.D. The circumstances are as follows:

68. Patient B.D., a 74-year-old female, was seen in Respondent's office and Palmdale Medical Center, but the time frame is not specified in the patient's record. The patient was admitted urgently to Palmdale Medical Center for severe hypoxemia (inadequate oxygenation) due to chronic obstructive pulmonary disease and decompensated heart failure. Respondent's progress notes were illegible. Respondent's dictated and transcribed history and physical was incomplete with multiple blanks. Examples of missing information were that Respondent stated the patient was "seen in the urgent care of Palmdale ... a few days prior ... they wanted to admit her, but she left and was seen by me in the office about a week or so prior to this admission ... And then she came with urine infection ... and shortness of breath." She was transferred by a family member in a private vehicle rather than an ambulance, because "ambulance will take her to the closest hospital, which is Palmdale ..." In the waiting area she was described as "when she talks she desats and the nursing supervisor panicked and ... admitted her to the PCU." Respondent's physical examination records a saturation of 88 on room air (time not specified), lungs having "occasional wheezing as well as rales ... and 2+ edema up to the knee." His assessment is that the patient "is admitted with severe lung fibrosis with extreme shortness of breath, and ... palpitations, and chronic obstructive pulmonary disease exacerbation." The blanks in the dictated history and physical do not give a complete picture of Respondent's assessment of the patient.

69. Respondent was negligent in that he failed to record legible progress notes.

70. Respondent was negligent in that his incomplete medical records failed to provide a complete assessment of the patient.

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient B.D.)

71. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records relating to the provision of services to patient B.D. The facts and allegations in the Twelfth Cause for Discipline are hereby incorporated by reference.

FOURTEENTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient M.M.)

72. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient M.M. The circumstances are as follows:

73. Patient M.M., a 70-year-old male, was seen in Respondent's office in November 2010, with respiratory distress, and was started on Zithromax. On November 26, 2010, the patient became worse, and went to Ridgecrest Regional Hospital with severe hypotension. He was evaluated at Ridgecrest Regional Hospital on November 27, 2010, with complaints of severe left-sided pain, malaise, left pleuritic chest pain, and difficulty breathing. He had a history of COPD, was blind, and had hypertension, thyroid disease, and spinal stenosis. His blood pressure at 1440 was 69/56. He was given a bolus of intravenous fluid and the vasopressor medication dopamine was started. The dopamine was increased due to persistent hypotension. The ED physician's assessment included pneumonia, severe sepsis, hypotension, and decreased urine output.

74. Due to sepsis and hypotension requiring "pressors," the patient was transferred via paramedic transport to AVH on November 27, 2010. The ED physician noted, "Discussed with Dr. Kumar, wished to continue dopamine at 8 micrograms/kg/minute." Respondent admitted the patient to telemetry, a cardiac monitored non-ICU level. Respondent's notes indicate "titrate

dopamine 10-20 mcg/min to MAP (mean arterial pressure)>60, and set-rate dopamine to 8 mcg/kg/min." Respondent's history and physical dated November 27, 2010, indicate, "The patient has been placed on PCU care and renal dose dopamine has been continued."

75. The nursing notes for November 28, 2010, indicate that at 0800 the dopamine drip was changed to 4mcg. At 0900, the dopamine drip was increased back to 8 mcg per MD order due to the patient's dizziness. Throughout November 28 and 29, the nursing notes indicate the dopamine dose was titrated according to blood pressure changes. Respondent ordered the dopamine stopped on November 30, 2010.

76. Dopamine used as a blood pressure support medication needs to be administered in a setting in which frequent blood pressure assessments can be made, and the dosage adjusted up or down rapidly. This is generally administered in an ICU setting in order to maintain an adequate perfusion pressure, and not expose the patient to the potential cardiac toxicities of the drug. Renal-dose dopamine is generally considered less than 5 mcg/kg/minute. Respondent's prescribed fixed dose of 8 mcg/kg/minute did not meet the criteria of low or renal-dose administration. The nursing staff was titrating the dose to the blood pressure response. Since the patient was hemodynamically unstable at Ridgecrest and for the first few days at AVH, the patient should have been admitted to ICU upon admission, at least until the blood pressure was truly stable off dopamine.

77. Respondent was negligent in that he failed to admit a hemodynamically unstable patient to ICU.

78. Respondent was negligent in that he failed to meet the criteria of low or renal-dose dopamine administration when he prescribed a fixed dose of 8 mcg/kg/minute.

79. Respondent was negligent in that his records were illegible.

FIFTEENTH CAUSE FOR DISCIPLINE

(Incompetence - Patient M.M.)

80. Respondent is subject to disciplinary action under Code section 2234, subdivision (d), in that he was incompetent in his care and treatment of patient M.M. The facts and allegations in the Fourteenth Cause for Discipline are hereby incorporated by reference.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient M.M.)

81. Respondent is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records relating to the provision of services to patient M.M. The facts and allegations in the Fourteenth Cause for Discipline are hereby incorporated by reference.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient L.H.)

82. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he committed multiple acts and/or omissions constituting repeated negligent acts in his care and treatment of patient L.H. The circumstances are as follows:

83. Patient L.H., a 54-year-old female, was seen by Respondent on February 14, 2011, with complaints of severe anemia, respiratory distress, chronic obstructive pulmonary disease, hypoxia, hypokalemia, dehydration, vomiting and chest pain. Respondent noted in the history and physical that the patient had advanced metastatic ovarian cancer. The other consultants' notes indicated the patient had metastatic breast cancer. In the impression section of the history and physical, Respondent denoted metastatic cancer with pancytopenia. He also noted the patient had metastases to her brain, bones, and spine, and has been unable to eat, vomiting, and was complaining of shortness of breath and chest pain. The patient had no improvement in her well-being, and was admitted to AVH. Respondent's plans included blood transfusion, multiple consultations, and to start inhaled bronchodilators and empiric antibiotics. The patient succumbed to her cancer on March 1, 2011.

84. Respondent was negligent in that his records were illegible.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patient L.H.)

85. Respondent is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records relating to the provision of services to patient L.H.

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The facts and allegations in the Seventeenth Cause for Discipline are hereby incorporated by reference.

DISCIPLINE CONSIDERATIONS

86. To determine the degree of discipline to be imposed on Respondent, Complainant alleges that on or about June 4, 2007, in a prior disciplinary action before the Medical Board of California in Case Number 05-2003-148991, a Decision was made ordering the issuance of a public letter of reprimand upon Respondent's completion of (1) a prescribing practices course; and (2) a clinical training or education program equivalent to the PACE program. That Decision is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 67882, issued to Kain Kumar, M.D.;

2. Revoking, suspending or denying approval of Kain Kumar, M.D.'s authority to supervise physician's assistants pursuant to Code section 3527;

3. Ordering Kain Kumar, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and

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

DATED: May 17, 2013

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

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