

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

**In the Matter of the First
Amended Accusation Against:**

Mahyar Okhovat, M.D.

Case No. 800-2017-038106

**Physician's and Surgeon's
Certificate No. A 85646**

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 November 8, 2019.

IT IS SO ORDERED: October 9, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 
**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 CHRISTINE R. FRIAR
Deputy Attorney General
4 State Bar No. 228421
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 269-6472
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation
13 Against:

14 MAHYAR OKHOVAT, M.D.

15 29525 Canwood Street, Suite 109
16 Agoura Hills, California 91301

17 Physician's and Surgeon's Certificate
18 No. A 85646,

Respondent.

Case No. 800-2017-038106

OAH No. 2018120076

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Christine R. Friar,
26 Deputy Attorney General.

27 2. Respondent Mahyar Okhovat, M.D. (Respondent) is represented in this proceeding by
28 attorney Peter Osinoff of Bonne, Bridges, Mueller, O'Keefe & Nichols, 355 South Grand

1 Avenue, Suite 1750, Los Angeles, California 90071-1562.

2 3. On January 9, 2004, the Board issued Physician's and Surgeon's Certificate No. A
3 85646 to Respondent. That certificate was in full force and effect at all times relevant to the
4 charges brought in First Amended Accusation No. 800-2017-038106, and will expire on
5 September 30, 2019, unless renewed.

6 **JURISDICTION**

7 4. First Amended Accusation No. 800-2017-038106 was filed before the Board, and is
8 currently pending against Respondent. The First Amended Accusation and all other statutorily
9 required documents were properly served on Respondent on July 26, 2019. Respondent timely
10 filed his Notice of Defense contesting the First Amended Accusation.

11 5. A copy of First Amended Accusation No. 800-2017-038106 is attached as Exhibit A
12 and is incorporated herein by reference.

13 **ADVISEMENT AND WAIVERS**

14 6. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in First Amended Accusation No. 800-2017-038106. Respondent has
16 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
17 Settlement and Disciplinary Order.

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

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

27 ///

28 ///

1 CULPABILITY

2 9. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in First
4 Amended Accusation No. 800-2017-038106 and that he has thereby subjected his license to
5 disciplinary action.

6 10. Respondent agrees that if an accusation is ever filed against him before the Board, all
7 of the charges and allegations contained in First Amended Accusation No. 800-2017-038106 shall
8 be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or
9 any other licensing proceeding involving Respondent in the State of California.

10 11. Respondent agrees to be bound by the Board's imposition of discipline as set forth in
11 the Disciplinary Order below.

12 CONTINGENCY

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

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

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

1 **DISCIPLINARY ORDER**

2 **A. PUBLIC REPRIMAND.**

3 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. A 85646,
4 issued to Mahyar Okhovat, M.D., shall be and is hereby publicly reprimanded pursuant to
5 California Business and Professions Code section 2227, subdivision (a)(4). This public
6 reprimand, which is issued in connection with Respondent's care and treatment of Patient A as set
7 forth in First Amended Accusation No. 800-2017-038106, is as follows:

8 "In 2011 and 2012, you failed to adequately provide or legibly document treatment to
9 Patient A in violation of the Business and Professions Code, as more fully described in First
10 Amended Accusation No. 800-2017-038106."

11 **B. PRESCRIBING PRACTICES COURSE.**

12 **IT IS FURTHER ORDERED THAT** within sixty (60) calendar days of the effective date
13 of this Decision, Respondent shall enroll in a course in prescribing practices approved in
14 advance by the Board or its designee. Respondent shall provide the approved course provider
15 with any information and documents that the approved course provider may deem pertinent.
16 Respondent shall participate in and successfully complete the classroom component of the
17 course not later than six (6) months after Respondent's initial enrollment. Respondent shall
18 successfully complete any other component of the course within one (1) year of enrollment. The
19 prescribing practices course shall be at Respondent's expense and shall be in addition to the
20 Continuing Medical Education (CME) requirements for renewal of licensure.

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

26 If Respondent fails to enroll, participate in, or successfully complete the prescribing
27 practices course within the designated time period, Respondent shall receive a notification from
28 the Board or its designee to cease the practice of medicine within three (3) calendar days after

1 being so notified. Respondent shall not resume the practice of medicine until enrollment or
2 participation in the prescribing practices course has been completed. Failure to successfully
3 complete the prescribing practices course outlined above shall constitute unprofessional conduct
4 and is grounds for further disciplinary action.

5 **C. MEDICAL RECORD KEEPING COURSE.**

6 **IT IS FURTHER ORDERED THAT** within sixty (60) calendar days of the effective date
7 of this Decision, Respondent shall enroll in a course in medical record keeping approved in
8 advance by the Board or its designee. Respondent shall provide the approved course provider
9 with any information and documents that the approved course provider may deem pertinent.
10 Respondent shall participate in and successfully complete the classroom component of the course
11 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
12 complete any other component of the course within one (1) year of enrollment. The medical
13 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
14 Medical Education (CME) requirements for renewal of licensure.

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

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

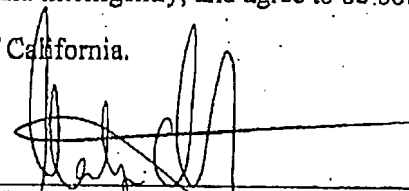
23 If Respondent fails to enroll, participate in, or successfully complete the medical record
24 keeping course within the designated time period, Respondent shall receive a notification from
25 the Board or its designee to cease the practice of medicine within three (3) calendar days after
26 being so notified. Respondent shall not resume the practice of medicine until enrollment or
27 participation in the medical record keeping course has been completed. Failure to successfully
28 complete the medical record keeping course outlined above shall constitute unprofessional

1 conduct and is grounds for further disciplinary action.

2 ACCEPTANCE

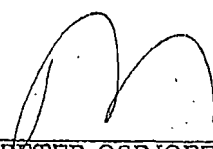
3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Peter Osinoff. I understand the stipulation and the effect it will
5 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
6 Disciplinary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

8
9 DATED: 7/31/2019


10 MAHYAR OKHOVAT, M.D.
11 Respondent

12 I have read and fully discussed with Respondent Mahyar Okhovat, M.D. the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15 DATED: 7/31/19


16 PETER OSINOFF
17 Attorney for Respondent

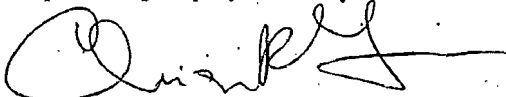
18 ENDORSEMENT

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

21 DATED: 8-1-2019

22 Respectfully submitted,

23 XAVIER BECERRA
24 Attorney General of California
25 E. A. JONES III
26 Supervising Deputy Attorney General



27 CHRISTINE R. FRIAR
28 Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation No. 800-2017-038106

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 26 2019
BY: Patricia A. Smith ANALYST

1 XAVIER BECERRA
Attorney General of California
2 E.A. JONES III
Supervising Deputy Attorney General
3 CHRISTINE R. FRIAR
Deputy Attorney General
4 State Bar No. 228421
California Department of Justice
5 300 South Spring Street, Suite 1702
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6 Telephone: (213) 269-6472
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

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15 29525 Canwood Street, Suite 109
16 Agoura Hills, California 91301

17 Physician's and Surgeon's Certificate
18 No. A 85646,

19 Respondent.

OAH No. 2018120076

Case No. 800-2017-038106

FIRST AMENDED ACCUSATION

20
21 Complainant alleges:

22 **PARTIES**

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

26 2. On January 9, 2004, the Board issued Physician's and Surgeon's Certificate Number
27 A 85646 to Mahyar Okhovat, M.D. (Respondent). That license was in full force and effect at all
28 times relevant to the charges brought herein and will expire on September 30, 2019, unless

1 renewed.

2 **JURISDICTION**

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

6 4. Section 2227 of the Code provides that a licensee who is found guilty under the
7 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
8 one year, placed on probation and required to pay the costs of probation monitoring, or such other
9 action taken in relation to discipline as the Board deems proper.

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

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

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

16 "...

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

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

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

27 "...

28 ///

1 6. Section 2266 of the Code states:

2 "The failure of a physician and surgeon to maintain adequate and accurate records relating
3 to the provision of services to their patients constitutes unprofessional conduct."

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Repeated Negligent Acts)**

6 7. Respondent is subject to disciplinary action under Code section 2234, subdivision
7 (c), in that he committed repeated negligent acts in his care and treatment of Patient A.¹ The
8 circumstances are as follows:

9 8. During the relevant time period, Respondent was the primary neurologist and pain
10 specialist at the Pain Management & Injury Relief Medical Center (PMIR) located in Santa
11 Monica and Thousand Oaks, California.

12 9. On October 14, 2008, Patient A, a 37-year-old female, presented to PMIR for pain
13 management of chronic lower back and bilateral lower extremity pain. Nine years prior, Patient
14 A had gastric bypass surgery and four months prior, she had thigh surgery. Patient A also had
15 been diagnosed with chronic anxiety, depression and severe sleep disorders.

16 10. At PMIR, Patient A was treated by Respondent who managed her pain medication
17 and symptoms. Patient A was concurrently being prescribed medications for her anxiety,
18 depression and insomnia by other providers.

19 11. In December 2008, Patient A was hospitalized at Simi Valley Hospital after
20 overdosing on Ambien (a Schedule V sleep medication).

21 12. From the time she first presented to PMIR through March 2009, Respondent acted as
22 Patient A's pain management specialist. During that time period, he prescribed her both oral and
23 topical pain medication. The medications Respondent prescribed to Patient A included Percocet²

24 ¹ In this First Amended Accusation, the patient is referred to as "Patient A" to protect her
25 right of privacy. The patient's full name was disclosed to Respondent during the course of Board
26 Investigation No. 800-2017-038106 and will be disclosed to Respondent again when discovery is
provided pursuant to Government Code section 11507.6.

27 ² Percocet is the brand name for oxycodone with acetaminophen, a Schedule II opiate
28 narcotic.

1 (10/325) and Lyrica.³

2 13. Respondent did not see Patient A between March 2009 through November 2009, at
3 which point she was referred back to Respondent. During this time period, another treating
4 physician had prescribed her Fentanyl⁴ 50 mcg/hr patch and Norco⁵ 10/325. Patient A had also
5 reportedly had a reversal of her gastric bypass.

6 14. Between November 2009 and October 2011, Respondent managed Patient A's pain
7 medication and symptoms.

8 15. In February 2011, Patient A had lost a significant amount of weight and her pain was
9 stable on her current medication regime. Respondent's plan was to wean her off of Fentanyl.
10 Respondent started her on Savella (a selective serotonin and norepinephrine reuptake inhibitor
11 (SNRI)) for her fibromyalgia and depression.

12 16. In May 2011, Patient A reported severe pain in her lower extremities. Respondent
13 restarted her on Fentanyl 25 mcg/hr.

14 17. In July 2011, Patient A reported abdominal symptoms, including nausea and
15 vomiting. Respondent referred Patient A to her bariatric surgeon. Respondent also refilled her
16 Fentanyl and Norco prescriptions, among others.

17 18. In September 2011, Patient A planned to have another gastric surgery. Respondent
18 recommended discontinuing Fentanyl prior to her surgery and because she was experiencing
19 nausea and vomiting.

20 19. In October 2011, Patient A's gastric surgery was reportedly postponed. Respondent
21 restarted her on Fentanyl.

22 20. In November 2011, Respondent again planned to decrease her Fentanyl dosage prior
23 to her gastric surgery.

24 ///

25 ³ Lyrica, a Schedule V medication, is used to treat chronic pain, such as that associated
26 with fibromyalgia.

27 ⁴ Fentanyl is a Schedule II opiate narcotic, typically prescribed in patch form.

28 ⁵ Norco is a brand name for hydrocodone and acetaminophen, a Schedule II opiate
narcotic.

1. 21. In December 2011, Patient A was post abdominal surgery. While her abdominal pain
2 had improved, she continued to complain of severe bilateral lower extremity pain and new onset
3 neck pain that was myofascial. Respondent gave Patient A trigger point injections in the office,
4 increased her Fentanyl dosage and refilled her prescriptions.

5 22. Respondent's last visit with Patient A was on December 10, 2012.

6 23. Patient A died on June 2, 2013.

7 24. During the relevant time period, the applicable standard of care in the medical
8 community required that a medical history and physical examination be conducted of a patient
9 that includes an assessment of the pain; physical and psychological function; a substance abuse
10 history; history of prior pain treatment; an assessment of underlying or coexisting diseases or
11 conditions; and documentation of the presence of a recognized medical indication for the use of a
12 controlled substance.

13 25. During the relevant time period, the applicable standard of care in the medical
14 community required that a treatment plan, informed consent, periodic review and consultations be
15 reflected in a patient's medical record.

16 26. During the course of Respondent's care and treatment of Patient A, information
17 pertaining to Patient A's treatment plans and objectives and evidence of informed consent,
18 periodic review and consultations are either frequently, or entirely, missing from her medical
19 record. These deficiencies in Patient A's medical record on the part of Respondent constitute
20 simple departures from the standard of care.

21 27. The applicable standard of care in the medical community requires that a medical
22 provider's notes in a patient's medical record be legible.

23 28. Respondent's handwritten medical notes detailing Patient A's examinations are
24 consistently illegible. This constitutes a simple departure from the standard of care.

25 29. During the relevant time period, the applicable standard of care in the medical
26 community required that when a patient is suspected of having made a suicide attempt that
27 evidence of appropriate medication use is required. Urine testing is the standard method.

28 ///

1 30. During the course of Respondent's care and treatment of Patient A, there is no
2 evidence that Patient A was ever drug tested, including but not limited to through urine analysis,
3 even though she had overdosed on Ambien in December 2008. Respondent's failure to drug test
4 Patient A to ensure that she was taking her medications as prescribed and not abusing other
5 substances is a simple departure from the standard of care.

6 31. Respondent's acts and/or omissions as set forth in paragraphs 9 through 30, inclusive
7 above, whether proven individually, jointly, or in any combination thereof, constitute repeated
8 negligent acts in violation of section 2234, subdivision (c), of the Code. As such, cause for
9 discipline exists.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Inadequate Record Keeping)**

12 32. Respondent is subject to disciplinary action under Code sections 2234, subdivision
13 (a), and 2266, in that he failed to maintain adequate and accurate records for Patient A. The
14 circumstances are as follows:

15 33. Paragraphs 8 through 30 are incorporated by reference and re-alleged as if fully set
16 forth herein.

17 34. Respondent's acts and/or omissions as set forth in paragraphs 8 through 29 and 32,
18 above, whether proven individually, jointly, or in any combination thereof, constitute the failure
19 to maintain adequate and accurate records pursuant to section 2266 of the Code. As such, cause
20 for discipline exists.

21 **PRAYER**

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

24 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 85646,
25 issued to Mahyar Okhovat, M.D.;

26 2. Revoking, suspending or denying approval of Mahyar Okhovat, M.D.'s authority to
27 supervise physician assistants and advanced practice nurses;

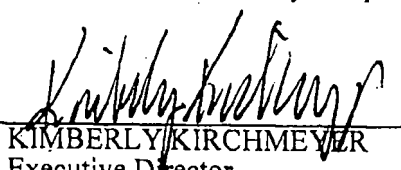
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3. If placed on probation, ordering Mahyar Okhovat, M.D. to pay the Board the costs of probation monitoring; and

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

DATED: July 26, 2019



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

Complainant