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7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2017-034227

13 **JAMES CONRAD GARDNER, M.D.**
14 599 Sir Frances Drake Blvd. #203
Greenbrae, CA 94904

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Physician's and Surgeon's Certificate No. G
60562

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

20 **PARTIES**

21 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
22 Board of California (Board). This action was brought and maintained solely in the official
23 capacity of the Board's Executive Director, who is represented in this matter by Xavier Becerra,
24 Attorney General of the State of California, by Jane Zack Simon, Supervising Deputy Attorney
25 General.

26 2. Respondent James Conrad Gardner, M.D. (Respondent) is represented in this
27 proceeding by attorney Albert J. Garcia, 2000 Powell Street Suite 1290, Emeryville, CA 94608.
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3. On July 6, 1987, the Board issued Physician's and Surgeon's Certificate No. G 60562 to James Conrad Gardner, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-034227, and will expire on March 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-034227 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent, who timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-034227 is attached as Exhibit A.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-034227. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary 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; 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 and agrees that the charges and allegations in Accusation No. 800-2017-034227, 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 without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

1 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
2 those charges.

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

6 **CONTINGENCY**

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

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

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

23 **DISCIPLINARY ORDER**

24 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 60562 issued
25 to Respondent James Conrad Gardner, M.D. is revoked. However, the revocation is stayed and
26 Respondent is placed on probation for three (3) years on the following terms and conditions.

27 1. **Controlled Substances - Maintain Records And Access To Records And**
28 **Inventories.** Respondent shall maintain a record of all controlled substances ordered, prescribed,

1 dispensed, administered, or possessed by Respondent, and any recommendation or approval
2 which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the
3 personal medical purposes of the patient within the meaning of Health and Safety Code section
4 11362.5, during probation, showing all of the following: 1) the name and address of the patient;
5 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications
6 and diagnosis for which the controlled substances were furnished.

7 Respondent shall keep these records in a separate file or ledger, in chronological order. All
8 records and any inventories of controlled substances shall be available for immediate inspection
9 and copying on the premises by the Board or its designee at all times during business hours and
10 shall be retained for the entire term of probation.

11 **2. Education Course.** Within 60 calendar days of the effective date of this Decision,
12 Respondent shall submit to the Board or its designee for its prior approval an educational
13 program(s) or course(s) which shall not be less than 40 hours. The educational program will be
14 required only for the first year of probation, and shall be aimed at correcting any areas of
15 deficient practice or knowledge and shall be Category I certified. The educational program(s) or
16 course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical
17 Education (CME) requirements for renewal of licensure. Following the completion of each
18 course, the Board or its designee may administer an examination to test Respondent's knowledge
19 of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40
20 hours were in satisfaction of this condition.

21 **3. Prescribing Practices Course.** Within 60 calendar days of the effective date of this
22 Decision, and as a condition precedent to prescribing controlled substances for the treatment of
23 chronic pain, Respondent shall enroll in a course in prescribing practices approved in advance by
24 the Board or its designee. Respondent shall provide the approved course provider with any
25 information and documents that the approved course provider may deem pertinent. Respondent
26 shall participate in and successfully complete the classroom component of the course not later
27 than six (6) months after Respondent's initial enrollment. Respondent shall successfully
28 complete any other component of the course within one (1) year of enrollment. The prescribing

1 practices course shall be at Respondent's expense and shall be in addition to the Continuing
2 Medical Education (CME) requirements for renewal of licensure.

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

8 Respondent shall submit a certification of successful completion to the Board or its
9 designee not later than 15 calendar days after successfully completing the course, or not later than
10 15 calendar days after the effective date of the Decision, whichever is later.

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

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

25 Respondent shall submit a certification of successful completion to the Board or its
26 designee not later than 15 calendar days after successfully completing the course, or not later than
27 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

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

26 The monitor(s) shall submit a quarterly written report to the Board or its designee which
27 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
28 are within the standards of practice of medicine, and whether Respondent is practicing medicine

1 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
2 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
3 preceding quarter.

4 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
5 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
6 name and qualifications of a replacement monitor who will be assuming that responsibility within
7 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
8 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
9 notification from the Board or its designee to cease the practice of medicine within three (3)
10 calendar days after being so notified. Respondent shall cease the practice of medicine until a
11 replacement monitor is approved and assumes monitoring responsibility.

12 In lieu of a monitor, Respondent may participate in a professional enhancement program
13 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
14 review, semi-annual practice assessment, and semi-annual review of professional growth and
15 education. Respondent shall participate in the professional enhancement program at Respondent's
16 expense during the term of probation.

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

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

26 **7. Supervision of Physician Assistants and Advanced Practice Nurses.** During
27 probation, Respondent is prohibited from supervising physician assistants and advanced practice
28 nurses.

1 **8. Obey All Laws.** Respondent shall obey all federal, state and local laws, all rules
2 governing the practice of medicine in California and remain in full compliance with any court
3 ordered criminal probation, payments, and other orders.

4 **9. Quarterly Declarations.** Respondent shall submit quarterly declarations under
5 penalty of perjury on forms provided by the Board, stating whether there has been compliance
6 with all the conditions of probation.

7 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
8 of the preceding quarter.

9 **10. General Probation Requirements.**

10 Compliance with Probation Unit

11 Respondent shall comply with the Board's probation unit.

12 Address Changes

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

18 Place of Practice

19 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
20 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
21 facility.

22 License Renewal

23 Respondent shall maintain a current and renewed California physician's and surgeon's
24 license.

25 Travel or Residence Outside California

26 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
27 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
28 (30) calendar days.

1 In the event Respondent should leave the State of California to reside or to practice
2 ,Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
3 departure and return.

4 **11. Interview With the Board or Its Designee.** Respondent shall be available in person
5 upon request for interviews either at Respondent's place of business or at the probation unit
6 office, with or without prior notice throughout the term of probation.

7 **12. Non-Practice While On Probation.** Respondent shall notify the Board or its
8 designee in writing within 15 calendar days of any periods of non-practice lasting more than 30
9 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
10 defined as any period of time Respondent is not practicing medicine as defined in Business and
11 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
12 patient care, clinical activity or teaching, or other activity as approved by the Board. If
13 Respondent resides in California and is considered to be in non-practice, Respondent shall
14 comply with all terms and conditions of probation. All time spent in an intensive training
15 program which has been approved by the Board or its designee shall not be considered non-
16 practice and does not relieve Respondent from complying with all the terms and conditions of
17 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
18 on probation with the medical licensing authority of that state or jurisdiction shall not be
19 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
20 period of non-practice.

21 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
22 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
23 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
24 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
25 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

28 Periods of non-practice for a Respondent residing outside of California will relieve

Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

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

14. Violation of Probation. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

16. Probation Monitoring Costs. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and

1 delivered to the Board or its designee no later than January 31 of each calendar year.

2
3 ACCEPTANCE

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

9 DATED: 01/19/2020 James C. Gardner, M.D.
10 JAMES CONRAD GARDNER, M.D.
Respondent

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

14 DATED: 1-19-20 Albert J. Garcia
15 ALBERT J. GARCIA
Attorney for Respondent

16 ENDORSEMENT

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

19 DATED: 1/21/2020

20 Respectfully submitted,

21 XAVIER BECERRA
22 Attorney General of California

23 Jane Zack Simon
24 JANE ZACK SIMON
25 Supervising Deputy Attorney General
26 Attorneys for Complainant

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 30 20 19
BY K. Voong ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
10 DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 800-2017-034227

14 **James Conrad Gardner, M.D.**
15 **599 Sir Francis Drake Blvd. #203**
16 **Greenbrae, CA 94904**

A C C U S A T I O N

17 **Physician's and Surgeon's Certificate**
18 **No. G 60562,**

Respondent.

21
22 Complainant alleges:

23 **PARTIES**

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

27 2. On or about July 6, 1987, the Medical Board issued Physician's and Surgeon's
28 Certificate Number G 60562 to James Conrad Gardner, M.D. (Respondent). The Physician's and

1 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
2 herein and will expire on March 31, 2021, unless renewed.

3 JURISDICTION

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

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 "(b) Gross negligence.

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
21 for 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 "(d) Incompetence.

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

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

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

8 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
9 participate in an interview by the board. This subdivision shall only apply to a certificate holder
10 who is the subject of an investigation by the board.”

11 6. Section 2242 of the Code states, in pertinent part:

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

15 7. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
16 adequate and accurate records relating to the provision of services to their patients constitutes
17 unprofessional conduct.”

18 8. Section 725 of the Code states:

19 “(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering
20 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
21 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
22 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
23 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language
24 pathologist, or audiologist.

25 “(b) Any person who engages in repeated acts of clearly excessive prescribing or
26 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
27 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
28

1 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
2 imprisonment.

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

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

8 **PERTINENT CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

9 9. Oxycodone is an opioid analgesic. It is a dangerous drug as defined in Business and
10 Professions Code section 4022 and a Schedule II controlled substance and narcotic. It is a more
11 potent pain reliever than morphine or hydrocodone.

12 10. Chlordiazepoxide is a sedative and hypnotic medication of the benzodiazepine class;
13 it is used to treat anxiety, insomnia and withdrawal symptoms from alcohol and/or drug abuse. It
14 is classified as a Schedule IV controlled substance.

15 11. Risperidone is an antipsychotic medication belonging to the chemical class of
16 benzisoxazole derivatives that can be used to treat schizophrenia or bipolar disorder.

17 12. Olanzapine is an antipsychotic medication that can be used to treat schizophrenia and
18 bipolar disorder.

19 13. Vraylar is an antipsychotic medication that can be used to treat schizophrenia and
20 bipolar disorder.

21 14. Ritalin is an amphetamine-like central nervous system stimulant used to treat
22 attention-deficit hyperactivity disorder (ADHD). It is classified as a Schedule II controlled
23 substance.

24 15. Adderall is a stimulant medication used to treat symptoms of ADHD. It is classified
25 as a Schedule II controlled substance.

26 16. Dilaudid is an opioid medication used to help relieve moderate to severe pain. It is
27 classified as a Schedule II controlled substance.
28

1 17. Suboxone is a trade name for a combination of buprenorphine hydrochloride and
2 naloxone hydrochloride. It is indicated for the treatment of opioid addiction. Buprenorphine is
3 an opioid similar to morphine, codeine, and heroin; however, it produces less euphoria and
4 therefore may be easier to stop taking; it is a Schedule V controlled substance under Health and
5 Safety Code section 11058(d). Buprenorphine is used for maintenance during or after opiate
6 withdrawal. Naloxone blocks the effects of opioids such as morphine, codeine, and heroin
7 (opioid agonist) and therefore blocks the effects of buprenorphine withdrawal.

8 18. Percocet is a trade name for a combination of Oxycodone and Acetaminophen. It is
9 classified as a Schedule II controlled substance.

10 19. Phentermine is a stimulant similar to an amphetamine that acts as an appetite
11 suppressant by affecting the central nervous system. It is a Schedule IV controlled substance as
12 defined by section 11057, subdivision (f)(4) of the Health and Safety Code and is a dangerous
13 drug as defined in Business and Professions Code section 4022.

14 20. Alprazolam (Xanax) is a psychotropic triazolo analog of the benzodiazepine class of
15 central nervous system-active compounds. Xanax is used for the management of anxiety
16 disorders or for the short-term relief of the symptoms of anxiety. It is a Schedule IV controlled
17 substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety
18 Code, and a Schedule IV controlled substance as defined by Section 1308.14 (c) of Title 21 of the
19 Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code
20 section 4022. Xanax has a central nervous system depressant effect and patients should be
21 cautioned about the simultaneous ingestion of alcohol and other CNS depressant drugs during
22 treatment with Xanax.

23 21. Clonazepam is a medication used to treat panic disorder and is a tranquilizer of the
24 benzodiazepine class. It is a Schedule IV controlled substance and a dangerous drug as defined in
25 Business and Professions Code section 4022.

26 22. OxyContin is a trade name for oxycodone hydrochloride controlled released tablets.
27 Oxycodone is a dangerous drug as defined in Business and Professions Code section 4022 and a
28 Schedule II controlled substance. It is a more potent pain reliever than morphine or hydrocodone.

1 23. Morphine is an opioid analgesic and a dangerous drug as defined in Business and
2 Professions Code section 4022 and a Schedule II controlled substance. It is used for relief from
3 moderate to severe pain.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct: Gross Negligence and/or Repeated Negligent Acts and/or**
6 **Incompetence and/or Prescribing without Appropriate Prior Exam/Medical Indication**
7 **and/or Excessive Prescribing re Patient P-1¹ and Inadequate Medical Recordkeeping)**

8 24. Respondent is subject to disciplinary action for unprofessional conduct under sections
9 2234(b), 2234(c) and/or 2234(d), and/or 2242, and/or 725, and/or 2266, in that Respondent's
10 overall conduct, acts and omissions, with regard to Patient P-1 constitutes gross negligence and/or
11 repeated negligent acts and/or incompetence and/or excessive prescribing and/or prescribing
12 without an appropriate prior examination and a medical indication, and inadequate medical
13 recordkeeping, as more fully described herein below.

14 25. From 2013-2017, Respondent saw Patient P-1, a male born in June 1962,
15 approximately 60 times. Respondent prescribed to Patient P-1, a monthly combination of
16 controlled substances such as opioids, tranquilizers, antipsychotics, CNS stimulants,
17 antidepressants, and Suboxone. Respondent prescribed these controlled substances in large
18 quantities and doses, and without an appropriate physical examination, diagnoses, or pain
19 assessment.

20 26. For example, on or about December 1, 2014, Respondent prescribed oxycodone 10
21 mg tablets of 360 with order of three tablets to be taken four times per day. On or about
22 December 11, 2014, Respondent prescribed oxycodone 30 mg tablet quantity 120 with order of
23 one tablet four times per day. Within this 10-day period, Respondent prescribed 480 pills of
24 oxycodone to the patient, which is the equivalent of 10,800 mg of morphine, or a daily dose of
25 348 mg of morphine. This constitutes an extremely high morphine equivalent daily dose.

26
27 ¹ The patients are designated in this document as Patients P-1 through P-3 to protect their
28 privacy. Respondent knows the names of the patients and can confirm their identities through
discovery.

1 Respondent did not document his clinical reasoning, or that he calculated, or was cognizant of the
2 milligrams equivalent to morphine, that he was prescribing to Patient P-1.

3 27. Respondent consistently prescribed high doses and high quantities of narcotics to
4 Patient P-1 and did not consult with or refer the patient to a pain management specialist.

5 28. Most of Respondent's progress notes regarding Patient P-1 lack documentation of the
6 patient's vital signs, health history, physical examination, chief complaint of present illness, and
7 differential diagnosis. The majority of the progress notes do not contain a pain assessment or
8 psychological evaluation or a reference to objective findings or responses to therapy with respect
9 to follow up visits. The notes also consistently lack explanation of clinical reasoning, indication
10 for therapy, and specific diagnosis.

11 29. Respondent prescribed dangerous combinations of controlled substances to Patient P-
12 1. For example, on December 11, 2014, Respondent prescribed 30 tablets of Chlordiazepoxide
13 10 mg (tranquilizer) and simultaneously prescribed 120 tablets of Oxycodone (narcotic) 30
14 mg/tablet. The combination of opioids and tranquilizers and/or sedatives has the potential risk of
15 respiratory suppression that can lead to death.

16 30. Respondent also prescribed antipsychotic medications (Risperidone, Olanzapine, and
17 Vraylar) without conducting a detailed evaluation and assessment of Patient P-1's behavior,
18 mental, and psychological fitness. Respondent did not make any reasonable psychiatric diagnosis
19 to justify prescribing antipsychotic medications.

20 31. On one occasion, Respondent documented that Patient P-1 had suicidal ideation but
21 Respondent continued to prescribe high doses of narcotics, including Hydrocodone, Dilaudid
22 Oxycodone, and long acting morphine (Oramorphine-SR).

23 32. Respondent prescribed Central Nervous System (CNS) stimulants (Ritalin and
24 Adderall) without completing a detailed clinical and emotional evaluation and diagnosis of
25 Patient P-1. Prescribing these medications without proper evaluation and clinical diagnosis puts
26 patients at risk for various side effects, including agitation, seizures, and tremors.

27 33. Although Respondent was prescribing large quantities of different opioids to Patient
28 P-1, Respondent did not take appropriate steps to prevent an overdose or divergence of

1 medication. For example, Respondent did not check Patient P-1's urine for narcotic metabolites,
2 did not conduct a narcotic pill count, or review CURES reports. Additionally, on January 20,
3 2017, Respondent's staff noticed that 107 tablets of 4 mg Dilaudid were missing when Patient P-1
4 brought pills back to the office to dispose as waste. Respondent did not take/or document that he
5 took any action other than to prescribe 120 more tablets of 30 mg Oxycodone to Patient P-1.

6 34. Respondent prescribed Suboxone on several occasions to Patient P-1. For example,
7 on November 23, 2016, Respondent prescribed Suboxone to Patient P-1. However, during the
8 relevant time period, Respondent did not have a waiver to prescribe Suboxone.

9 35. Respondent's overall conduct, acts and/or omissions, with regard to Patient P-1, as set
10 forth in paragraphs 24 through 34 herein, constitute unprofessional conduct and is therefore
11 subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct
12 through gross negligence, and/or repeated negligent acts, and/or incompetence, and/or excessive
13 prescribing and/or prescribing without an appropriate prior examination/medical indication,
14 and/or inadequate and inaccurate medical recordkeeping with regard to Patient P-1 as follows:

15 a. Respondent prescribed large quantities of controlled substances to Patient P-1 without
16 clinical reasoning/medical indication, evaluations, and specific diagnosis, and/or without referring
17 or consulting with a pain specialist for assistance.

18 b. Respondent's prescribing of controlled substances to Patient P-1 constitutes repeated
19 excessive prescribing.

20 c. Respondent failed to document appropriate examinations and/or medical indications
21 to support his prescribing of combinations of controlled substances on a chronic basis to Patient
22 P-1.

23 d. Respondent failed to properly evaluate and consider Patient P-1's risk factors for
24 opioid-related harms, e.g., mental health conditions, suicidal ideation, substance abuse
25 disorder/addiction, and/or taking other tranquilizers with opioids.

26 e. Respondent failed to properly evaluate and assess Patient P-1's mental condition
27 before prescribing antipsychotic medications.

1 f. Respondent prescribed CNS stimulants to Patient P-1 without an appropriate
2 evaluation and specific and reasonable diagnosis.

3 g. Respondent failed to monitor Patient P-1, who was being prescribed opioids on a
4 long-term basis, by conducting drug tests, pill counting, and review of CURES reports.

5 h. Respondent improperly prescribed Suboxone to Patient P-1 without having a waiver.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct: Gross Negligence and/or Repeated Negligent Acts and/or**
8 **Incompetence and/or Prescribing without Appropriate Prior Exam/Medical Indication**
9 **and/or Excessive Prescribing re Patient P-2 and Inadequate Medical Recordkeeping)**

10 36. Respondent is subject to disciplinary action for unprofessional conduct under sections
11 2234(b), 2234(c) and/or 2234(d), and/or 2242, and/or 725, and/or 2266, in that Respondent's
12 overall conduct, acts and omissions, with regard to Patient P-2 constitutes gross negligence and/or
13 repeated negligent acts and/or incompetence and/or excessive prescribing and/or prescribing
14 without an appropriate prior examination and a medical indication, and inadequate medical
15 recordkeeping, as more fully described herein below.

16 37. From 2013-2017, Respondent saw Patient P-2, a female born in September 1946.
17 Respondent prescribed large quantities and doses of Percocet to Patient P-2 without an
18 appropriate physical examination, diagnoses, or pain assessment.

19 38. For example, in April 2013, Respondent prescribed 180 tablets of 10 mg Percocet,
20 which is a daily dosage of 60 mg of Percocet, to Patient P-2. This daily dosage is the equivalent
21 of 90 mg of morphine, which is a high morphine equivalent daily dose.

22 39. Most of Respondent's progress notes regarding Patient P-2 lack documentation of the
23 patient's vital signs, health history, physical examination, chief complaint of present illness, and
24 differential diagnosis. The majority of the progress notes do not contain a pain assessment or
25 psychological evaluation or a reference to objective findings or responses to therapy with respect
26 to follow up visits. The notes also consistently lack explanation of clinical reasoning, indication
27 for therapy, and specific diagnosis.

1 40. Although Respondent was prescribing large quantities of Percocet to Patient P-2,
2 Respondent did not take appropriate steps to prevent an overdose or divergence of medication.
3 For example, Respondent did not check Patient P-2's urine for narcotic metabolites, did not
4 conduct a narcotic pill count, or review CURES reports.

5 41. Respondent's overall conduct, acts and/or omissions, with regard to Patient P-2, as set
6 forth in paragraphs 36 through 40 herein, constitute unprofessional conduct and is therefore
7 subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct
8 through gross negligence, and/or repeated negligent acts, and/or incompetence, and/or excessive
9 prescribing, and/or prescribing without an appropriate prior examination/medical indication,
10 and/or inadequate and inaccurate medical recordkeeping with regard to Patient P-2 as follows:

11 a. Respondent prescribed large quantities of controlled substances to Patient P-2 without
12 clinical reasoning/medical indication, evaluations, and specific diagnosis, and/or without referring
13 or consulting with a pain specialist for assistance.

14 b. Respondent's prescribing of controlled substances to Patient P-2 constitutes repeated
15 excessive prescribing.

16 c. Respondent failed to document appropriate examinations and/or medical indications
17 to support his prescribing of controlled substances on a chronic basis to Patient P-2.

18 d. Respondent failed to monitor Patient P-2, who was being prescribed Percocet on a
19 long-term basis, by conducting drug tests, pill counts, and review of CURES reports.

20 e. Respondent failed to properly evaluate and consider Patient P-2's risk factors for
21 opioid-related harms, e.g., mental health conditions and substance abuse disorder/addiction.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct: Gross Negligence and/or Repeated Negligent Acts and/or**
24 **Incompetence and/or Prescribing without Appropriate Prior Exam/Medical Indication**
25 **and/or Excessive Prescribing re Patient P-3 and Inadequate Medical Recordkeeping)**

26 42. Respondent is subject to disciplinary action for unprofessional conduct under sections
27 2234(b), 2234(c) and/or 2234(d), and/or 2242, and/or 725, and/or 2266, in that Respondent's
28 overall conduct, acts and omissions, with regard to Patient P-3 constitutes gross negligence and/or

1 repeated negligent acts and/or incompetence and/or excessive prescribing and/or prescribing
2 without an appropriate prior examination and a medical indication, and inadequate medical
3 recordkeeping, as more fully described herein below.

4 43. From 2012-2018, Respondent saw Patient P-3, a female born in November 1961.
5 Respondent prescribed large quantities and doses of Oxycodone, Adderall, phentermine,
6 Alprazolam, and Clonazepam to Patient P-3 without an appropriate physical examination,
7 diagnoses, or pain assessment.

8 44. For example, on September 3, 2014, Respondent prescribed 90 tablets of 80 mg
9 Oxycodone, three times a day to Patient P-3 (daily dose of 240 mg of oxycodone). This dosage is
10 the equivalent of 360 mg of morphine a day, which is an extremely high morphine equivalent
11 daily dose.

12 45. On October 1, 2014, Respondent prescribed another 90 tablets of 80 mg Oxycodone,
13 three times a day to Patient P-3.

14 46. Respondent consistently prescribed high doses and high quantities of narcotics to
15 Patient P-3 and did not consult with or refer the patient to a pain management specialist.

16 47. Most of Respondent's progress notes regarding Patient P-3 lack documentation of the
17 patient's vital signs, health history, physical examination, chief complaint of present illness, and
18 differential diagnosis. The majority of the progress notes do not contain a pain assessment or
19 psychological evaluation or a reference to objective findings or responses to therapy with respect
20 to follow up visits. The notes also consistently lack explanation of clinical reasoning, indication
21 for therapy, and specific diagnosis.

22 48. Although Respondent was prescribing large quantities of Oxycodone to Patient P-3,
23 Respondent did not take appropriate steps to prevent an overdose or divergence of medication.
24 For example, Respondent did not check Patient P-3's urine for narcotic metabolites, did not
25 conduct a narcotic pill count, or review CURES reports.

26 49. Respondent repeatedly prescribed a CNS stimulant (Adderall) without completing a
27 detailed clinical and emotional evaluation and diagnosis of Patient P-3. Prescribing stimulants
28

1 without proper evaluation and clinical diagnosis puts patients at risk for various side effects,
2 including agitation, seizures, and tremors.

3 50. Respondent prescribed phentermine 30 mg a day without conducting an appropriate
4 evaluation of Patient P-3. For example, Respondent did not order a cardiovascular evaluation for
5 Patient P-3. Prescribing phentermine without proper evaluation puts patients at risk for increased
6 heart rate, suicidal ideation, and depression. Respondent also failed to document Patient P-3's
7 weight, height, and body mass index (BMI), and response to phentermine in the patient's medical
8 records.

9 51. Respondent prescribed dangerous combinations of controlled substances to Patient P-
10 3. For example, on September 3, 2014, Respondent prescribed 60 tablets of Alprazolam
11 (tranquilizer) 2 mg tablets twice per day and on that same day, prescribed 90 tablets of OxyContin
12 (opioid). The combination of opioids and tranquilizers and/or sedatives has the potential risk of
13 respiratory suppression that can lead to death.

14 52. Respondent prescribed Suboxone on several occasions to Patient P-3. For example,
15 on September 7, 2016, Respondent prescribed Suboxone to Patient P-3. However, during the
16 relevant time period, Respondent did not have a waiver to prescribe Suboxone.

17 53. Respondent's overall conduct, acts and/or omissions, with regard to Patient P-3, as set
18 forth in paragraphs 42 through 52 herein, constitute unprofessional conduct and is therefore
19 subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct
20 through gross negligence, and/or repeated negligent acts, and/or incompetence, and/or excessive
21 prescribing without an appropriate prior examination/medical indication, and/or inadequate and
22 inaccurate medical recordkeeping with regard to Patient P-3 as follows:

23 a. Respondent prescribed large quantities of controlled substances to Patient P-3 without
24 clinical reasoning/medical indication, evaluations, and specific diagnosis, and/or without referring
25 or consulting with a pain specialist for assistance.

26 b. Respondent's prescribing of controlled substances to Patient P-3 constitutes repeated
27 excessive prescribing.
28

1 c. Respondent failed to document appropriate examinations and/or medical indications
2 to support his prescribing of controlled substances on a chronic basis to Patient P-3.

3 d. Respondent failed to properly evaluate and consider Patient P-3's risk factors for
4 opioid-related harms, e.g., substance abuse disorder/addiction, and/or taking other tranquilizers
5 with opioids.

6 e. Respondent prescribed CNS stimulants and phentermine to Patient P-3 without an
7 appropriate evaluation and specific and reasonable diagnosis.

8 f. Respondent failed to monitor Patient P-3, who was being prescribed opioids on a
9 long-term basis, by conducting drug tests, pill counting, and review of CURES reports.

10 g. Respondent improperly prescribed Suboxone to Patient P-3 without having a waiver.

11 **PRAYER**

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

14 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 60562,
15 issued to Respondent;

16 2. Revoking, suspending or denying approval of Respondent's authority to supervise
17 physician assistants and advanced practice nurses;

18 3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation
19 monitoring; and

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

21
22 DATED:

23 January 30, 2019

24 
25 KIMBERLY KIRCHMEYER
26 Executive Director
27 Medical Board of California
28 Department of Consumer Affairs
State of California
Complainant