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

In the Matter of the Accusation Against **Ako Alimayou Jacintho, M.D.** **Physician's and Surgeon's Certificate No. A 70786** **Respondent.**	**Case No. 800-2017-035906**

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 May 22, 2020.

IT IS SO ORDERED: April 22, 2020.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising 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: **AKO ALIMAYOU JACINTHO, M.D.** **Healthright 360** **1563 Mission Street** **San Francisco, CA 94103** **Physician's and Surgeon's Certificate No. A 70786** Respondent.	Case No. 800 2017 035906 OAH No. 2019090835 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Christine J. Lally (Complainant) is the Interim 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 Mary Cain-Simon, Supervising Deputy Attorney General.

2. Respondent Ako Alimayou Jacintho, M.D. (Respondent) is represented in this proceeding by attorney Michael A. Dubin, whose address is: 275 Battery Street, Suite 2000 San Francisco, CA 94111

3. On February 4, 2000, the Board issued Physician's and Surgeon's Certificate No. A 70786 to Ako Alimayou Jacintho, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800 2017 035906, and will expire on November 30, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800 2017 035906 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 18, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800 2017 035906 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800 2017 035906. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 800 2017 035906.

10. Respondent agrees the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.1, serves to protect the public interest.

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

CONTINGENCY

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 70786 issued to Respondent Ako Alimayou Jacintho, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully

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

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

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

3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later

than 15 calendar days after the effective date of the Decision, whichever is later.

4. MONITORING - PRACTICE/BILLING. 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 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, 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 shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices

are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

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

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

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

6. 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.

7. 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.

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

9. 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.

10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than

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

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

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

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

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

11. 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.

12. 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.

13. 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 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.

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael A. Dubin. 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: 3/12/2020

AKO ALIMAYOU JACINTHO, M.D.
Respondent

I have read and fully discussed with Respondent Ako Alimayou Jacintho, 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: 3/12/2020

MICHAEL A. DUBIN
Attorney for Respondent

ENDORSEMENT

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

DATED: March 13, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

MARY CAIN-SIMON
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800 2017 035906

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 18 2019
BY R. Vuong ANALYST

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

In the Matter of the Accusation Against: **Ako Alimayou Jacintho, M.D.** **Healthright 360** **1563 Mission Street** **San Francisco, CA 94103** **Physician's and Surgeon's Certificate No. A 70786,** Respondent.	Case No. 800 2017 035906 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about February 4, 2000, the Medical Board issued Physician's and Surgeon's Certificate Number A 70786 to Ako Alimayou Jacintho, 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 November 30, 2019, unless renewed.

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JURISDICTION

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

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."

5. 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."

6. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption 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."

7. 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."

8. 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."

9. Section 2262 of the Code states:

"Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

"In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars ($500) for a violation of this section."

10. 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."

DRUG INFORMATION

11. Methadone:

Methadone hydrochloride is a synthetic opioid analgesic with multiple actions quantitatively similar to those of morphine. Methadone may be administered as an injectable liquid or in the form of a tablet, disc, or oral solution. It is a Schedule II controlled substance as defined by section 11055, subdivision (c) of the Health and Safety Code, and by Section 1308.12 (c) of Title 21 of the Code of Federal Regulations, and is a dangerous drug as defined in Business

and Professions Code section 4022. Methadone can produce drug dependence of the morphine type and, therefore, has the potential for being abused. Methadone should be used with caution and in reduced dosage in patients who are concurrently receiving other opioid analgesics.

12. Adderall:

Adderall, a trade name for mixed salts of a single-entity amphetamine product (dextroamphetamine sulphate, dextroamphetamine saccharate, amphetamine sulfate, amphetamine aspartate), is a dangerous drug as defined in section 4022 and a schedule II controlled substance as defined by section 11055 of the Health and Safety Code. Adderall is indicated for Attention Deficit Disorder with Hyperactivity and Narcolepsy. It is contraindicated for patients with advanced arteriosclerosis, symptomatic cardiovascular disease, moderate to severe hypertension, hyperthyroidism, known hypersensitivity or idiosyncrasy to the sympathomimetic amines, glaucoma, agitated states, a history of drug abuse, and patients who have taken monoamine oxidase inhibitors during or within 14 days or administration. Administration of amphetamine to psychotic children may exacerbate symptoms of behavior disturbance and thought disorder. Caution is to be exercised in prescribing amphetamines for patients with even mild hypertension. The least amount feasible should be prescribed or dispensed at one time in order to minimize the possibility of overdosage. Amphetamines have been extensively abused. Tolerance, extreme psychological dependence, and severe social disability have occurred. There are reports of patients who have increased the dosage to many times that recommended. For Attention Deficit Disorder with Hyperactivity, only in rare cases will it be necessary to exceed a total of 40 mg per day. For Narcolepsy, the usual dose is 5 mg to 60 mg per day in divided doses depending on individual patient response.

13. Dextrostat:

Dextrostat, a trade name for dextroamphetamine sulfate, is indicated for the treatment of narcolepsy and attention deficit disorder with hyperactivity; it is an amphetamine. Amphetamines have been extensively abused. Tolerance, extreme psychological dependence, and severe social disability have occurred with its abuse. Dextrostat is a dangerous drug as defined in section 4022

of the Code and a Schedule II controlled substance under Health and Safety Code section 11055(d)(1).

14. Hydrocodone:

Hydrocodone w/APAP (hydrocodone with acetaminophen) tablets are produced by several drug manufacturers under trade names such as Vicodin, Norco or Lortab. Hydrocodone bitartrate is semisynthetic narcotic analgesic, a dangerous drug as defined in section 4022 of the Business and Professions Code, and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (e) of the Health and Safety Code. Repeated administration of hydrocodone over a course of several weeks may result in psychic and physical dependence. The usual adult dosage is one tablet every four to six hours as needed for pain. The total 24-hour dose should not exceed 6 tablets.

FACTS

15. Beginning in around 2002, Respondent undertook the care for Patient A[1], then a 28-year old man, for general primary care issues, such as his obesity, occasional sinusitis and colds. In June, 2009, Respondent referred Patient A for an orthopedic consultation. The orthopedic physician documented a number of symptoms that were not mentioned in Respondent's chart for Patient A, including that Patient A had severe low back pain, limiting his sleep and daily activities, and that he had a hard time finding a comfortable position. The orthopedist reviewed a lumbar series that had been done in April 2009, and found that it showed evidence of disc degeneration as well as a grade 1 spondylolisthesis at the L5/S1 level. (Spondylolisthesis is the forward displacement of a lumbar vertebra on the one below it and especially of the fifth lumbar vertebra on the sacrum producing pain by compression of nerve roots.) An MRI done June 26, 2009 showed a 4 mm herniation of the L4/5 disc with crowding of right-greater-than-left subarticular gutters, and 3 mm broad-based disc protrusion with mild left foraminal narrowing.

16. From April 2009 through September 2011, Respondent wrote prescriptions for Hydrocodone, while during this same time period, Patient A also obtained prescriptions for opiate

[1] The patient in this case is referred to as Patient A for the purpose of guarding the privacy of his surviving family. The identity of Patient A is known to Respondent.

medications from the orthopedic medical group and other medical providers. In October 2011, the other medical providers ceased prescribing opiate medications for Patient A, and Respondent fully assumed the medication management for Patient A. Respondent wrote in his chart that Patient A had some question of drug-seeking behavior. Respondent wrote a note "Opiate Addiction" but at some point, crossed out "Addiction" and wrote "Dependence." Respondent had Patient A sign a pain contract and also had Patient A agree to allow Patient A's wife to dispense all of his medications.

17. On November 1, 2011, Respondent prescribed methadone 10 mg to Patient A, (20 pills) beginning with one tablet, twice per day. Patient A reported that his pain had been reduced from 8 on a scale of 10, to 4 on a scale of 10. On November 9, 2011, without any discussion in the medical record to say why it was necessary, and even though Patient A reported pain relief with the lower dose, Respondent doubled Patient A's methadone dose to 20 mg, twice a day. Respondent recorded a cursory note of history and examination; and created a medical note that a discussion of the risks and benefits of methadone was done, but the note is cursory and does not detail what was explained to Patient A during this discussion. In November 2011, Patient A had a nerve block procedure that "worked," but Respondent continued the methadone prescription, even though Patient A had a successful nerve block. Respondent created a cursory note to continue the methadone and to "see med contract." In December 2011, Respondent had a telephone call from Patient A, that Respondent did not note in the medical record, in which Respondent approved increasing Patient A's methadone dose to 40 mg daily. On December 28, 2011, Patient A reported increased pain and sciatica, and Respondent wrote that he warned patient A not to increase his dose further without medical advice, and that Patient A's wife was to dispense medications.

18. Patient A underwent a radio-frequency ablation procedure on January 10, 2012, after which Patient A reported a resolution to his pain. However, Patient A refilled his Methadone 10 mg and obtained 100 pills on January 19, 2012. On January 24, 2012, Patient A expressed a desire to taper off of methadone.

19. At the next medical visit with Respondent, on February 2, 2012, Patient A was having withdrawal symptoms at 40 mg of methadone per day, and was controlling his back pain with

ibuprofen. Respondent prescribed clonazepam (with a note that Patient A had situational anxiety over his in-laws) and again instructed Patient A to taper off of methadone. At the February 16 visit, Patient A reported to Respondent that he was off of methadone, but asked Respondent to prescribe Adderall for anxiety and depression. Respondent did so, with a note stating that he had discussed the risks and benefits of Adderall. The note is cursory and does not state in detail what was discussed with Patient A. Respondent diagnosed ADD but did not utilize available tools such as the Connors scale to assist in diagnosing Patient A or evaluating his need for medication, and did not utilize clinical evaluative tools to assess Patient A's depression.

20. During an office visit on February 28, 2012, Patient A reported to Respondent that his back pain had returned, and he had resumed taking 40 mg of methadone per day. Patient A also requested longer acting ADD medicine, because the effect of the Adderall only lasted around 4 or 5 hours. The report of symptoms section of the chart reflects that Patient A had back pain, depression and anxiety. Respondent prescribed and Patient A filled Dextrostat SR 15, 1 daily. The methadone was continued.

21. Patient A's last visit was on March 20, 2012. Patient A was having problems with reflux. Patient A reported symptoms of fatigue, abdominal pain, nausea, back pain, depression and anxiety. Respondent prescribed medicine for the reflux, and also prescribed, and Patient A filled, methadone, 10 mg., 4 pills twice per day. After filling that prescription, Patient A went home and died in his sleep. Patient A died of morphine and diphenhydramine toxicity.

22. For the duration of Respondent's care of Patient A, culminating in the final visit of March 20, 2012, Respondent displayed a lack of medical knowledge and competence. Respondent did not address Patient A's significant health issues, such as his obesity, borderline to mild hypertension, and other conditions indicated by his symptoms of pain, depression and anxiety. Respondent maintained Patient A on methadone without adequate medical cause. Despite Patient A's final visit presenting with symptoms of reflux, abnormal vital signs, and other risk factors, Respondent did not reasonably consider cardiac etiologies, order an EKG, consider pulmonary etiologies, order a stat complete blood count, or laboratory testing to rule out conditions such as pancreatitis or hepatitis; and Respondent did not direct Patient A to go to the

Emergency Department based on the severity of his symptoms. Instead of addressing these serious medical concerns, Respondent gave Patient A a month's supply of methadone at 80 mg daily, and medicine for acid reduction. Respondent thus demonstrated an inadequate appreciation for Patient A's concerns, symptoms and vital signs up to and culminating in the March 20, 2012 visit.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence; and/or Repeated Negligent Acts; and/or Prescribing Without an Appropriate Medical Examination /Medical Indication; and/or Inadequate Medical Record Keeping in the Care Provided to Patient A)

23. Respondent is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or 2242(a) and/or 2266 in that Respondent engaged in unprofessional conduct and/or was grossly negligent and/or committed repeated acts of negligence and/or failed to maintain adequate medical records for Patient A. The circumstances are as follows:

24. Complainant incorporates the allegations in paragraphs 15 through 22, as if fully set forth. Complainant alleges in addition, that after having established a pattern of prescribing opiates to Patient A, in tandem with the orthopedic physician and pain specialists, even when aware of their prescribing, Respondent did not take reasonable precautions of checking CURES reports before prescribing for Patient A, including Patient A's last visit on March 20, 2012; Respondent did not question Patient A regarding his use of other medicines; Respondent did not act on or consider Patient A's past history of drug-seeking behavior; Respondent assigned the role of dispensing medications to Patient A's wife without regard to Patient A's inclination to comply with that safeguard; Respondent prescribed methadone on March 20, 2012 without adhering to the pain medicine contract he had required from Patient A; Respondent prescribed Adderall to Patient A at Patient A's request without an adequate examination or diagnosis; Respondent prescribed and maintained Patient A on Dextrostat without an adequate examination or diagnosis; Respondent prescribed 240 methadone tablets on March 20, 2012 without an adequate examination or diagnosis; and created either modified or falsified notes by crossing out and modifying portions of the medical record for the last five notes created for Patient A.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence; and/or Repeated Negligent Acts; and/or Incompetence; and/or Excessive Prescribing ; and/or Prescribing Without an Appropriate Medical Examination /Medical Indication; and/or Inadequate Medical Record Keeping in the Care Provided to Patient A)

25. Respondent is subject to disciplinary action under sections 2234, and/or 2234(b), and/or 2234(c), and/or 2234(d), and/or 2266 of the Code in that Respondent committed unprofessional conduct amounting to gross negligence and/or repeated negligent acts and/or incompetence in the care and treatment of Patient A, and/or failed to maintain adequate and accurate records for Patient A. Respondent is also subject to disciplinary action under sections 2242(a) and 725 of the Code in that Respondent excessively prescribed to Patient A without proper medical examination or indication. The circumstances are as follows:

26. Complainant incorporates the allegations in paragraphs 15 through 22 and 24 as if fully set forth. The medical records do not reflect that Respondent was aware of the significant difficulties and risks associated with the use of methadone; Respondent summarily doubled the prescription dose of methadone to Patient A and then negligently maintained Patient A on an unsafe dosage of methadone (80 mg daily). Respondent's records regarding his visits with Patient A and prescribing for Patient A do not adequately explain his rationale for his prescribing of methadone to Respondent.

THIRD CAUSE FOR DISCIPLINE

(Altering or Modifying Medical Record or Creating a False Medical Record)

27. Respondent is subject to disciplinary action under section 2261 and/or 2262 in that Respondent altered or modified the medical records for Patient A, or created false records, in regard to his treatment of Patient A. The circumstances are as follows:

28. Complainant incorporates the allegations in paragraphs 15 through 22, 24 and 26 as if fully set forth. Complainant additionally alleges that Respondent's medical note for the March 20, 2012 visit reflects that Respondent wrote that Patient A should go to the Emergency Department "if worsens." Respondent crossed out "if worsens" and wrote "Now" above the cross out, without dating or initialing this change. Respondent furthermore wrote (in a different pen, as established

by forensic examination) that he had a long discussion with the patient about the severity of his symptoms and history of stricture. Respondent did not date or initial this addition to the record.

29. For the last five medical visits documented, Respondent wrote entries using various different inks. Respondent has stated that his practice was to write additions and modifications to his records the same day, however, Respondent did not initial, date, or explain the reasons for any of the modifications he made to Patient A's records.

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 70786, issued to Ako Alimayou Jacintho, M.D.;

2. Revoking, suspending or denying approval of Ako Alimayou Jacintho, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Ako Alimayou Jacintho, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: March 18, 2019

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

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