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

In the Matter of the Accusation Against: Floyd Huen, M.D. Physician's and Surgeon's Certificate No. G 41373 Respondent.	MBC File # 800-2017-030682

ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "DISCIPLINARY ORDER" PORTION OF DECISION

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a clerical error in the "Disciplinary Order" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the Disciplinary Order will conform to the Board's issued Decision.

IT IS HEREBY ORDERED that the Decision in the above-entitled matter be and hereby is amended and corrected nunc pro tunc to add probation conditions: "Condition 7 – Notification, Condition 8 - Obey All Laws, Condition 9 - Quarterly Declarations, and Condition 10 - General Probation Requirements". All subsequent probation conditions are renumbered in sequential order.

July 31, 2020

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

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

In the Matter of the Accusation Against: Floyd Huen, M.D. Physician's and Surgeon's Certificate No. G 41373 Respondent.	Case No. 800-2017-030682

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 30, 2020.

IT IS SO ORDERED: June 30, 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
State Bar No. 113083
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3884
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against:	Case No. 800-2017-030682
FLOYD HUEN, M.D. **2181 Braemar Rd.** **Oakland, CA 94602-2003**	OAH No. 2020010721
Physician's and Surgeon's Certificate No. G 41373	**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**
Respondent.	

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). This action was brought solely in the official capacity of the Board's Executive Director, who 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 Floyd Huen, M.D. (Respondent) is represented in this proceeding by attorney Alan Yee, whose address is: 475 14th Street, Suite 500, Oakland, California 94612.

3. On January 7, 1980, the Board issued Physician's and Surgeon's Certificate No. G 41373 to Floyd Huen, 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. 800-2017-030682, and will expire on May 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-030682 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 May 29, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-030682 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. 800-2017-030682. 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.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2017-030682, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that the charges and allegations in Accusation No. 800-

2017-030682, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate. Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2017-030682 shall be deemed true, correct, and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California

CONTINGENCY

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. G 41373 issued to Respondent FLOYD HUEN, 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. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 25 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge, shall be Category I certified, and shall include courses addressing prescribing and medical records documentation. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 50 hours of CME of which 25 hours were in satisfaction of this condition.

2. 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.

3. 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.

4. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision, Accusation,

and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

The following language shall be included in this condition unless Option #1 is included: If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal

relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision 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(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the

name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

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

6. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an

appropriate practice setting is established.

STANDARD CONDITIONS

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

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., 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 delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Alan Yee. 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: 7/24/20

FLOYD HUEN, M.D.
Respondent

I have read and fully discussed with Respondent Floyd Huen, 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: 7-24-20

ALAN YEE
Attorney for Respondent

ENDORSEMENT

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

DATED: July 27, 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

SF2018202086
Final Huen corrected stipulation.docx

Exhibit A

Accusation No. 800-2017-030682

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
CAROLYNE EVANS
Deputy Attorney General
State Bar No. 289206
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3448
Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 29 20 19
BY K. Vong ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2017-030682
Floyd Huen, M.D. **2181 Braemar Rd.** **Oakland, CA 94602-2003** **Physician's and Surgeon's Certificate No. G 41373,** Respondent.	**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 January 7, 1980, the Medical Board issued Physician's and Surgeon's Certificate Number G 41373 to Floyd Huen, 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 May 31, 2021, unless renewed.

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

5. Section 2234 of the Code states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

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

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

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

7. 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."

8. Section 725 of the Code states:

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

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

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts, Prescribing without Appropriate Prior Exam re Patient P-1[1] and Inadequate Medical Recordkeeping)

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

10. From 2006-2013, Respondent treated Patient P-1, a male born in April 1946, for a variety of issues, including arthritis, hepatitis C, Bell's Palsy, and abdominal pain. Patient also had a history of being an intravenous drug user.

11. From 2008 through 2013, Respondent treated Patient P-1 for back and shoulder pain with Toradol[2] injections and Norco[3] prescriptions. Respondent's notes regarding the Toradol injections and Norco prescriptions are handwritten and difficult to read, but primarily say "back

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[1] The patients are designated as Patients P-1 through P-3 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

[2] Toradol is a nonsteroidal anti-inflammatory drug that is used to treat pain.

[3] Hydrocodone bitartrate with acetaminophen, which is known by the trade names Norco or Vicodin, is a semi-synthetic opioid analgesic. It is a schedule II controlled substance as defined by section 11055, subdivision (b) of the Health and Safety Code, and is a Schedule II controlled substance as defined by section 1308.13(e) of Title 21 of the Code of Federal Regulations, and is a dangerous drug as defined in Business and Professions Code section 4022.

or shoulder pain" with plan "toradol shot and refill meds." There is little to no physical exam or other recommendations documented.

12. Patient P-1's urine toxicology dated August 3, 2009 was positive for marijuana but negative for opiates. Respondent did not mention the urine toxicology results in Patient P-1's medical chart and did not take any action regarding the results, such as stopping the opiate prescriptions due to likely diversion.

13. On February 12, 2013, Respondent noted in the medical records that Patient P-1 had a cough, arthritis and a positive stool test. Respondent's noted physical exam was one handwritten line that was illegible. The noted assessment was to continue Toradol injections every three weeks and return in six weeks. In 2013, Respondent was prescribing 240 Norco (5 mg hydrocodone) per month to Patient P-1.

14. On March 24, 2013, Patient P-1 complained of decreased energy and joint pain. Respondent did not document a physical exam. Respondent documented that the plan was to increase Salsalate[4], continue Vicodin, and get records from the Veterans Administration regarding a colonoscopy.

15. On April 23, 2013, Respondent documented in Patient P-1's medical chart that the patient had hay fever and was not eating well and that the patient had lost 30 pounds over the last two years. Respondent noted in the exam section that the patient appeared well and that the plan was to follow up with a colonoscopy. Respondent did not perform or document a physical exam in the medical records.

16. On July 23, 2013, Respondent saw Patient P-1 for a follow up and also ordered a urine toxicology. The urine toxicology showed marijuana in the patient's system but no opiates. Respondent did not document the urine toxicology results in Patient P-1's medical chart and did not stop prescribing opiates despite the fact that the toxicology report indicated a diversion of opiates.

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[4] Salsalate is a nonsteroidal anti-inflammatory drug (NSAID). Salsalate belongs in a group of drugs called salicylates, which are used to reduce pain, swelling, and joint stiffness caused by arthritis.

17. On December 13, 2013, Respondent refilled 240 Vicodin tablets for Patient P-1. Respondent did not check a CURES report in 2013 to make sure the patient was not getting opiates from multiple providers.

18. Respondent's overall conduct, acts, and/or omissions, with regard to Patient P-1, as set forth in paragraphs 10 through 17 herein, constitute unprofessional conduct and is therefore subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct through gross negligence, and/or repeated negligent acts, and/or prescribing without an appropriate prior examination, and/or inadequate medical recordkeeping with regard to Patient P-1 as follows:

a. Respondent prescribed large quantities of controlled substances to Patient P-1 without regular physical exams.

b. Respondent continued prescribing large amounts of opioids to Patient P-1 despite the patient's negative opiates toxicology tests, that indicated that Patient P-1 was diverting opiates.

c. Respondent failed to adequately monitor Patient P-1, who was being prescribed large amounts of opioids on a long term basis, and who had a history of intravenous drug use, by reviewing a CURES reports to ensure that Patient P-1 was not obtaining opiates from other providers.

d. Respondent failed to document physical exams in the medical records and failed to maintain legible notes regarding his care of Patient P-1.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts, Prescribing without Appropriate Prior Exam re Patient P-2, Excessive Prescribing, and Inadequate Medical Recordkeeping)

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

20. From 2012-2014, Respondent treated Patient P-2, a male born on February 2, 1940. Patient P-2 had a history of diabetes, renal insufficiency, hypertension, chronic pain, Hepatitis C and memory issues. Patient P-2 was also a smoker with a history of substance and alcohol abuse.

21. On or about June 4, 2012, Respondent prescribed 60 Temazepam[5] (15 mg) and 240 pills of hydrocodone (7.5 mg). However, Respondent did not document these prescriptions in Patient P-2's medical record. Respondent did not document any type of treatment plan or objective for opiate use, or prior medical examination.

22. During the year 2013, Respondent regularly prescribed 240 Norco (7.5 mg), 120 Dilaudid[6] (4 mg), and 30 Temazepam (25 mg).

23. On or about June 17, 2013, a different medical provider, who worked at the same clinic as Respondent, noted in Patient P-2's medical chart that the patient was seen in the emergency room at Kaiser on June 6, 2013 because the patient was found unresponsive. The medical doctor ordered that Patient P-2 see Respondent in 1 month.

24. On or about July 16, 2013, Respondent ordered a urine toxicology for Patient P-2. Patient P-2's urine toxicology came back negative for opiates. Respondent ordered another urine toxicology on August 19, 2013, which also came back negative for opiates.

25. On or about September 16, 2013, a different medical provider other than Respondent noted in Patient P-2's chart that the patient's September 2013 urine toxicology screen had come back negative for opiates. The provider noted that Patient P-2 explained that the reason that the urine screen had come back negative for opiates was because he had run out of them. Subsequently, the provider issued refills to Patient P-2 for Dilaudid, Norco, and Temazepam. The provider noted that the refills were to treat back and neck pain.

26. On or about October 11, 2013, Patient P-2 saw Respondent for depression and benign prostatic hyperplasia (BPH).[7] Respondent noted in the medical chart that he was going to

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[5] Temazepam is a benzodiazepine, that is generally used to treat insomnia.

[6] Hydromorphone, which is known by the trade name of Dilaudid, is a potent Schedule II opioid.

[7] BPH is enlargement of the prostate gland.

prescribe Celexa (an anti-depressant) to treat Patient P-2's depression and that the patient's BPH was to be monitored. Patient P-2 was to return in 3 weeks.

27. On or about October 30, 2013, Patient P-2's urine toxicology results came back as positive for hydrocodone but negative for hydromorphone (Dilaudid).

28. On or about November 2, 2013, Respondent ordered a urine toxicology screen for Patient P-2. On November 13, 2013, Respondent met with Patient P-2 and noted the following in the medical chart: "told about contract. Need to be consistent. Reviewed UTOX in past, which showed July 2013 and neg opiates; when on diluadid and vicodin; and then more recently when alleges was OUT of dilaudid for the week before the test but WAS taking vicodin. Told that NO MORE OPIATES until this gets clarified." In the assessment and plan section of the chart, Respondent wrote: "Suspicious for drug diversion; will get another UTOX but [Patient P-2] said does not have time; will recheck in am... Next visit to do UTOX."

29. On or about November 14, 2013, Patient P-2's urine toxicology came back as positive for hydrocodone and Dilaudid.

30. On or about January 2, 2014, Respondent dispensed 240 hydrocodone (7.5 mg) to Patient P-2. Respondent did not document in the medical chart a functional status or even the reason that Patient P-2 was being prescribed opiates. Respondent did not document any type of treatment plan or objective for opiate use.

31. On or about May 6, 2014, Patient P-2 saw Respondent. Respondent stated that he was no longer looking for narcotics but that he was having left shoulder pain. Respondent prescribed naproxen (500 mg) and gabapentin (100 mg). Respondent also issued a physical therapy referral to Patient P-2 and advised another follow up appointment in 6 weeks.

32. On or about June 17, 2014, Patient P-2 saw Respondent for a diabetes follow up. Respondent noted that Patient P-2 was off of opiates.

33. Respondent's overall conduct, acts, and/or omissions, with regard to Patient P-2, as set forth in paragraphs 20 through 32 herein, constitute unprofessional conduct and is therefore subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct through gross negligence, and/or repeated negligent acts, and/or excessive prescribing, and/or

prescribing without an adequate prior medical examination, and/or inadequate medical recordkeeping with regard to Patient P-2 as follows:

a. Respondent prescribed a high risk combination of opiates to Patient P-2, including 2 short acting opiates, which would increase the risk of side effects.

b. Respondent routinely prescribed more than 90 MME (morphine milligram equivalents) to Patient P-2. Respondent prescribed approximately 156 MME per day to the patient. Respondent also inappropriately prescribed benzodiazepines to the patient in conjunction with the opiates, which greatly increases the lethal risk to the patient.

c. Respondent did not document any treatment plan or objectives for opiate use.

d. Respondent did not document a functional status or provide any reason to justify the opioid prescriptions that he was prescribing to Patient P-2.

e. Respondent continued to prescribe large amounts of opiates to Patient P-2 despite the fact that the patient's urine toxicology reports were strongly consistent with diversion of opiates. During 2013, Respondent was regularly prescribing opiates to Patient P-2. However, Patient P-2's July 16, 2013 and August 19, 2013 toxicology results tested negative for opiates and the patient's October 30, 2013 toxicology results only showed hydrocodone and no hydromorphone.

f. Respondent failed to adequately monitor Patient P-2, who was regularly being prescribed large amounts of opioids, and who had a history of substance abuse and negative opiate toxicology reports, indicating diversion of prescribed medications, by reviewing CURES reports to ensure that Patient P-2 was not obtaining opiates from other providers.

g. Respondent failed to adequately document physical exams for Patient P-2 in the medical records and failed to maintain legible notes regarding his care of Patient P-2.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Inadequate Medical Recordkeeping with Respect to Patient P-3)

34. Respondent is subject to disciplinary action for unprofessional conduct under section 2266, in that Respondent failed to maintain adequate and accurate medical recordkeeping with respect to Patient P-3, as more fully described herein below.

35. From 2007-2013, Respondent treated Patient P-3, a female born on October 19, 1927, for neck pain, hand pain, and Chronic Obstructive Pulmonary Disease (COPD).

36. During Patient P-3's first visit with Respondent on May 1, 2007, Respondent failed to perform and/or document a physical exam. Respondent documented: "COPD and Pulmonary function testing" in the assessment and plan section of the medical chart. However, most of Respondent's notes are illegible.

37. Respondent saw Patient P-3 on April 2 and 25, 2009, but his recordkeeping regarding these visits is largely illegible and there are no physical exams documented other than the patient's vitals.

38. Respondent saw Patient P-3 on various other dates including: June 18, 2009, April 20, 2010, May 25, 2010, August 19, 2010, August 23, 2011, March 20, 2012, and February 26, 2013. Respondent's notes related to these visits are mostly illegible.

39. Respondent saw Patient P-3 on September 19, 2013 and documented in the medical records that the patient was generally doing well but did not document a physical exam.

40. Respondent's overall conduct, acts, and/or omissions, with regard to Patient P-3, as set forth in paragraphs 34 through 39 herein, constitute unprofessional conduct and is therefore subject to disciplinary action. More specifically, Respondent is guilty of unprofessional conduct in that he failed to document appropriate physical examinations and failed to maintain legible notes in the patient's medical chart.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 41373, issued to Respondent;

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

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

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

DATED: May 29, 2019

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