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

In the Matter of the Accusation Against: **Eugene Tachuk, M.D.** **Physician's and Surgeon's Certificate No. A 36884,** **Respondent.**	**Case No. 800-2017-029530**

DECISION

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

This Decision shall become effective at 5:00 p.m. on November 25, 2020.

IT IS SO ORDERED: October 30, 2020.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
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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: **EUGENE TACHUK, M.D.** **P.O. Box 90258** **San Diego, CA 92169** **Physician's and Surgeon's Certificate No. A 36884** Respondent.	Case No. 800-2017-029530 OAH No. 2020020194 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Jason J. Ahn, Deputy Attorney General.

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2. Respondent Eugene Tachuk, M.D. (Respondent) is represented in this proceeding by attorney William Burgener, Esq., whose address is: 1775 Hancock St., Ste. 180, San Diego, CA 92110.

3. On or about June 22, 1981, the Board issued Physician's and Surgeon's Certificate No. A 36884 to Eugene Tachuk, 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. 800-2017-029530, and will expire on December 30, 2020, unless renewed.

JURISDICTION

4. On January 7, 2020, Accusation No. 800-2017-029530 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 January 7, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-029530 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2017-029530. Respondent has also carefully read, fully discussed with his counsel, and fully 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. 800-2017-029530.

10. 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

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

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2017-029530 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

ADDITIONAL PROVISIONS

13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final, and exclusive embodiment of the agreements of the parties in the above-entitled matter.

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14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree the Board may, without further notice to or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 36884 issued to Respondent Eugene Tachuk, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

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

2. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to

the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. 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.

4. 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.

5. 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(s), Accusation(s), 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.

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.

~~6. 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(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role

of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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

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

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

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

In lieu of a monitor, Respondent may participate in a professional enhancement program 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.

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

9. 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.

10. 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.

11. 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, subdivision (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.

12. 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.

13. 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; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

14. 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.

15. 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.

16. 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.

17. 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.

18. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2017-029530 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict a license.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William R. Burgener, Esq. I fully 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 fully agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 7/6/2020

EUGENE TACHUK, M.D.
Respondent

I have read and fully discussed with Respondent Eugene Tachuk, 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: 9/8/2020

William R. Burgener
Attorney for Respondent

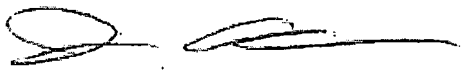
ENDORSEMENT

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

DATED: September 22, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



JASON J. AHN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-029530

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JAN. 7 2020
BY A. ESCRIMA ANALYST

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

In the Matter of the Accusation Against: **Eugene Tachuk, M.D.** **P.O. Box 90258** **San Diego, CA 92169** **Physician's and Surgeon's Certificate No. A 36884,** Respondent.	Case No. 800-2017-029530 **ACCUSATION**

PARTIES

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

2. On or about June 22, 1981, the Medical Board issued Physician's and Surgeon's Certificate Number A 36884 to Eugene Tachuk, 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 September 30, 2020, 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 (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 2234 of the Code, states, in pertinent part:

> 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.

6. Section 2266 of the Code states:

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

7. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. A 36884 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

9. On or about July 5, 2001[2], Respondent began treating Patient A, when she was fifty-three (53) years of age. Patient A weighed 148 pounds, with a height of 5 feet five inches, Body Mass Index (BMI) of 25 kg / m^2, and blood pressure of 136/89.

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[1] References to "Patient A" are used to protect patient privacy.

[2] Conduct occurring more than seven (7) years from the filing date of this Accusation is for informational purposes only and is not alleged as a basis for disciplinary action.

10. On or about January 8, 2013, Patient A presented to Respondent's medical office. Patient A's blood pressure was 153/85. Patient A was dispensed #28 Phentermine[3] 30 mg and an unknown dosage of Hydrochlorothiazide.[4] Respondent failed to document a history of present illness, review of systems, physical examination, assessment, diagnosis, or treatment plan. Patient A's weight is not noted in the medical records. Respondent failed to conduct and/or failed to document having conducted a physician evaluation of Patient A. Respondent failed to perform and/or request and/or order any laboratory studies.

11. On or about January 15, 2013, Patient A presented to Respondent's medical office. Patient A's blood pressure was 145/71. Patient A was dispensed #28 Phentermine 30 mg. Respondent failed to document a history of present illness, review of systems, physical examination, assessment, diagnosis, or treatment plan. Patient A's weight is not noted in the medical records. Respondent failed to conduct and/or failed to document having conducted a physician evaluation of Patient A. Respondent failed to perform and/or request and/or order any laboratory studies.

12. Between January 16, 2013 through December 31, 2016, Patient A continued to present to Respondent's medical office and was seen by Respondent's Medical Assistant, instead of Respondent, except for one visit in February 2015 (see below). Phentermine was dispensed to Patient A on numerous occasions during this time period. Patient A's blood pressure was often elevated during this time period. Respondent failed to conduct and/or failed to document having conducted a physical examination of Patient A. Respondent failed to order and/or failed to document having ordered laboratory studies. Respondent failed to and/or failed to regularly measure Patient A's weight.

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[3] Phentermine HCL (Lonamin®, Fastin®, Adipex®), an anorectic, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated phentermine HCL is used as a short term adjunct in a regiment of weight reduction based on exercise, behavioral modification, and caloric restriction. According to the DEA fact sheet for anorectic drugs, phentermine can produce amphetamine-like effects and is frequently encountered on the illicit market.

[4] Hydrochlorothiazide is a thiazide diuretic (water pill) that can be used to treat high blood pressure and fluid retention (edema).

13. On or about February 18, 2015, Patient A presented to Respondent's medical office due to an elevated blood pressure of 170/104 and 160/94. Respondent personally saw Patient A. Patient A denied chest pain or shortness of breath. Respondent did not prescribe Phentermine because of Patient A's elevated blood pressure.

14. On or about February 21, 2015, Patient A returned to Respondent's medical office for an elevated blood pressure of 140/90. Patient A was seen by Respondent's Medical Assistant. Phentermine was dispensed during this visit.

15. On or about December 31, 2016 through January 6, 2017, Patient A was hospitalized at Scripps Mercy hospital for acute sepsis,[5] multi-organ failure, congestive heart failure,[6] encephalopathy,[7] liver failure, paranoid schizophrenia,[8] renal failure,[9] alcohol use, and hypertension. Patient A's BMI at the time of admission was 18 kg / m^2. Patient A was found to have a cardiac ejection fraction of 27%, which the cardiologist believed was related to Patient A's phentermine abuse.

16. On or about March 15, 2017, Patient A presented to Respondent, who personally saw her. Patient A's height is incorrectly noted as "6' 2."" Patient A's blood pressure was noted as 152/90. Patient A was dispensed Hydrochlorothiazide.

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[5] Sepsis is a potentially life-threatening condition caused by the body's response to an infection.

[6] Congestive heart failure (CHF) is a chronic progressive condition that affects the pumping power of your heart muscles.

[7] Encephalopathy refers to brain disease, damage, or malfunction.

[8] Paranoid schizophrenia is characterized by predominantly positive symptoms of schizophrenia, which is a severe mental disorder that can result in hallucinations, delusions, and extremely disordered thinking and behavior.

[9] Renal failure is a condition in which the kidneys lose the ability to remove waste and balance fluids.

17. On or about May 4, 2017, Patient A was admitted to the Emergency Room of the Scripps Mercy Hospital. The medical records for this visit indicate, among other things, that Patient A's past medical history included paranoid schizophrenia, congestive heart failure (CHF), hypertension, and alcoholic cirrhosis[10] and alcohol abuse.

18. On or about May 11, 2017, Patient A returned to Respondent, who personally saw her. Patient A reported no dizziness or chest pain. Patient A's blood pressure was 147/89, pulse of 82, regular rate and rhythm, and 2/6 systolic murmur.[11] The assessment was borderline hypertension[12] and the plan included 12.5 mg of Hydrochlorothiazide every morning. Respondent advised Patient A to follow up with an internal medicine physician for evaluation of Patient A's blood pressure and murmur.

19. On or about June 3, 2017, Patient A presented to Respondent, who personally saw her. The medical records for this visit states, among other things, "patient [A] requested weight loss medication because [she] has a past history of being over-weight and was no longer on Phentermine." Patient A's history of heart murmur, kidney and heart problems and liver failure are also noted. Patient A stated that she had not seen a primary care physician since her last visit with Respondent. Respondent advised Patient A that she should no longer consume Phentermine but that Respondent is willing to replace with Vitamin shots and Fiber pills for Patient A's weight management and that Patient A should see a primary care physician to follow up on her medical issues. The medical records also noted, among other things, that Patient A was pleasant, cooperative, with a height of 5'6", weight of 140 pounds, BMI of 23, and blood pressure of 166/101. Respondent prescribed Hydrochlorothiazide 14 tablets 25 mg each, with directions to consume ½ tablet per every morning and Fiber tablets #28. Respondent administered a

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[10] Alcoholic cirrhosis occurs after years of excessive alcohol consumption and is an advance form of alcohol-induced liver disease.

[11] A systolic murmur is a murmur that begins during or after the first heart sound and ends before or during the second heart sound. A murmur is a series vibrations of variable duration, audible with a stethoscope at the chest wall, that emanates from the heart or great vessels.

[12] Hypertension, also known as high blood pressure, is a condition in which the force of the blood against the artery walls is too high.

complementary "Lipotonix" shot.[13]

20. On or about May 8, 2018, Patient A expired at Scripps Mercy Hospital at age seventy (70). The cause of death was noted as cardiopulmonary arrest[14] with the underlying causes of acute myocardial infarction,[15] septic shock polymicrobial,[16] and necrotizing pneumonia.[17] Patient A was also noted to have chronic obstructive pulmonary disease.

Quantity of Phentermine Prescribed

21. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent prescribed 28 tablets at a time, an excessive amount. Respondent failed to maintain accurate and/or consistent records regarding his prescribing of Phentermine to Patient A, making it difficult to ascertain the exact amount of Phentermine prescribed to Patient A. Respondent failed to and/or failed to document having conducted pill counts. Respondent failed to and/or failed to document having checked CURES reports.[18]

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[13] Lipotropic injections, including Lipotonix, are supplements used for fat loss.

[14] Cardiac arrest refers to a sudden, unexpected loss of heart function, breathing, and consciousness.

[15] Acute myocardial infarction, also known as a heart attack, is a blockage of blood flow to the heart muscle.

[16] Septic shock refers to a widespread infection causing organ failure and dangerously low blood pressure.

[17] Necrotizing pneumonia is a rare and severe complication of bacterial community acquired pneumonia (CAP).

[18] CURES is the Controlled Substances Utilization Review and Evaluation System (CURES), a database of schedule II, III, and IV controlled substance prescriptions dispensed in California, serving the public health, regulatory oversight agencies, and law-enforcement.

Prescribing Phentermine Long-Term for Weight Loss to a Non-Obese Patient

22. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent failed to consider and/or failed to document having considered safer alternatives to Phentermine such as Orlistat,[19] Bupropion,[20] or a structured weight loss program. Respondent failed to discuss and/or failed to document having discussed with Patient A diet, exercise, weight loss support groups or other behavioral modifications for weight loss. From 2012 through 2016, Respondent failed to measure and/or failed to document having measured Patient A's weight during any of Patient A's visits to Respondent's medical office. Respondent prescribed Phentermine to Patient A for weight loss on a long-term basis without a clear medical indication. Respondent failed to discontinue prescribing Phentermine to Patient A for weight loss even after Patient A had an unhealthy weight and/or an elevation of blood pressure.

Prescribing Medications without Physician Evaluation

23. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent prescribed and dispensed controlled substances to Patient A without regular physician evaluation.

Prescribing a Stimulant to a Patient with Hypertension

24. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent failed to consider discontinuing and/or failed to document having considered discontinuing Phentermine even though Patient A's blood pressure was often elevated. Respondent failed to consider and/or failed to document having considered changing Phentermine to alternative weight loss medications that

[19] Orlistat is a weight loss medication which can help patients reach and maintain a healthy weight.

[20] Bupropion is an antidepressant medication which can be used to treat depression, help people quit smoking by reducing cravings, and for other purposes.

are safer to patients with elevated blood pressure, such as Orlistat, Lorcaserin,[21] or Topiramate.[22] Respondent failed to recommend and/or failed to document having recommended Patient A to seek blood pressure management by another physician until Patient A was hospitalized in the intensive care unit.

Prescribing Controlled Substances

25. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent failed to conduct CURES reviews. Respondent failed to adequately discuss with Patient A and/or failed to document having adequately discussed with Patient A risks and benefits of and alternatives to consuming controlled substances. Respondent failed to maintain accurate and/or complete documentation of the controlled substances prescribed or dispensed. Respondent prescribed one or more controlled substances in excessive amount(s).

Treatment of Hypertension

26. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent failed to adequately treat Patient A's elevated blood pressure. Respondent continued to prescribe Patient A medication(s), which exacerbated Patient A's hypertension. Respondent failed to order and/or failed to document having ordered laboratory studies.

Lab Monitoring

27. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent failed to perform and/or request and/or order laboratory studies and/or failed to document having performed and/or requested and/or ordered laboratory studies even though Patient A was an elderly patient with hypertension, who was using Phentermine and Hydrochlorothiazide long-term.

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[21] Lorcaserin is a weight-loss drug which is used together with diet and exercise to treat obesity.

[22] Topiramate is a nerve pain medication which can be used to prevent epilepsy, migraines, and for other purposes.

Self-Prescribing of Controlled Substances

28. From on or about January 1, 2019 through May 13, 2019, Respondent prescribed testosterone[23] to himself on one or more occasions.

Reporting Prescriptions of Controlled Substances to CURES

29. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent prescribed and or dispensed controlled substances to Patient A but failed to comply with the reporting requirements under California Health and Safety Code section 11190, subdivision (c)(2)(A).

Medical Documentation

30. During the course of his care and treatment of Patient A, approximately from on or about January 1, 2013 through on or about June 3, 2017, Respondent's medical record-keeping documenting his care and treatment of Patient A failed to include a history of present illness, physical examination, assessment, diagnosis, or plan, other than information regarding medications, if any. Respondent failed to adequately document telephonic consultations and/or conversations with Patient A and/or Patient A's family member(s). Many of the handwritten notes are illegible and/or incomplete. Most pages do not have identifying information such as birth date or chart number, other than Patient A's name.

31. Respondent committed gross negligence in his care and treatment of Patient A, which included, but was not limited to, the following:

(a) Respondent prescribed excessive quantities of Phentermine to Patient A;

(b) Respondent prescribed Phentermine to Patient A for weight loss, without a clear medical indication or adequate monitoring;

(c) Respondent prescribed controlled substances to Patient A without regular physician evaluation;

(d) Respondent prescribed Phentermine to Patient A, a non-obese patient with hypertension, without considering safer alternatives and/or more effectively treating her

[23] Testosterone is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (f)(30), and a dangerous drug pursuant to Business and Professions Code section 4022.

blood pressure;

(e) Respondent failed to adequately perform and/or request and/or order laboratory studies; and

(f) Respondent failed to maintain adequate documentation of his care and treatment of Patient A.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

32. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 36884 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A as more particularly alleged herein:

33. Paragraphs 8 through 31, above, are hereby incorporated by reference and realleged as if fully set forth herein;

(a) Respondent prescribed excessive quantities of Phentermine to Patient A;

(b) Respondent prescribed Phentermine to Patient A for weight loss, without a clear medical indication or adequate monitoring;

(c) Respondent prescribed controlled substances to Patient A without regular physician evaluation;

(d) Respondent prescribed Phentermine to Patient A, an obese patient with hypertension, without considering safer alternatives and/or more effectively treating her blood pressure;

(e) Respondent failed to adequately perform and/or request and/or order laboratory studies;

(f) Respondent failed to maintain adequate documentation of his care and treatment of Patient A;

(g) Respondent failed to properly prescribe controlled substances to Patient A; and

(h) Respondent inadequately treated Patient A's hypertension.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

34. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 36884 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records regarding his care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 31, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

35. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 36884 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 8 through 34, above, which are hereby incorporated by reference as if fully set forth herein.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 36884, issued to Eugene Tachuk, M.D.;

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

3. Ordering Eugene Tachuk, 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: JANUARY 7, 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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