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

In the Matter of the Accusation and Petition to Revoke Probation Against: **Kwang Poung Chiu, M.D.** **Physician's and Surgeon's Certificate No. C 37989,** **Respondent.**	**Case No. 800-2017-031376**

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

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

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
JOSHUA M. TEMPLET
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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 and Petition to Revoke Probation Against: **Kwang Poung Chiu, M.D.** **477 Cabral Peak Street** **Las Vegas, NV 89138-1140** **Physician's and Surgeon's Certificate No. C 37989,** Respondent.	Case No. 800-2017-031376 OAH No. 2020040175 **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, via Joshua M. Templet, Deputy Attorney General.

2. Respondent Kwang Poung Chiu, M.D. (Respondent) is represented in this proceeding by Michael S. Biggs, Biggs Laws Office, A.P.C., 319 Lennon Lane, Walnut Creek, CA 94598.

3. On May 16, 1978, the Board issued Physician's and Surgeon's Certificate No. C 37989 to Kwang Poung Chiu, M.D. (Respondent). The certificate was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 800-2017-031376, and will expire on August 31, 2021, unless renewed. Said certificate was the subject of disciplinary action, on March 6, 2002, in Medical Board of California Case Number 12-2000-107216, *In the Matter of the Accusation Against Kwang Poung Chiu, M.D.* In that case, the Board revoked Respondent's certificate, but stayed the order of revocation and placed Respondent on probation for ten years, with terms and conditions.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. 800-2017-031376 ("Accusation and Petition to Revoke Probation") was filed before the Board, and is currently pending against Respondent. The Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent, on February 7, 2020. Respondent timely filed his Notice of Defense contesting the Accusation and Petition to Revoke Probation.

5. A copy of the Accusation and Petition to Revoke Probation is attached as Exhibit A and incorporated herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the Accusation and Petition to Revoke Probation. Respondent has also carefully read, fully discussed with his 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 and Petition to Revoke Probation; 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 the Accusation and Petition to Revoke Probation, if proven at a hearing, constitute cause for imposing discipline on his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the Accusation and Petition to Revoke Probation, and that he hereby gives up his right to contest those charges.

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

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board 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. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an Accusation or Petition to Revoke Probation is filed against him before the Board, all of the charges and allegations contained in the Accusation and Petition to Revoke Probation 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.

14. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 37989, issued to Respondent Kwang Poung Chiu, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for two years, which shall be served consecutive to Respondent's remaining term of probation in Medical Board of California Case No. 12-2000-107216. The terms and conditions of probation in Medical Board of California Case No. 12-2000-107216 remain in effect, and the following additional terms are hereby ordered:

1. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT. Within 60 calendar days of the effective date of this Decision, Respondent shall provide documentary proof to the Board or its designee that Respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, Respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

This term shall be exempt from the "Tolling Provision" condition in Medical Board of California Case No. 12-2000-107216 and shall apply immediately upon the effective date of this Decision and Order.

2. 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 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or 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.

3. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, from any other health care licensing agency in the State of California, all of the charges and allegations contained in the Accusation and Petition to Revoke Probation 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 such license or certification.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael S. Biggs. 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: 9-3-2020

KWANG POUNG CHIU, M.D.
Respondent

I have read and fully discussed with Respondent Kwang Poung Chiu, 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: 9-3-2020

MICHAEL S. BIGGS
Biggs Laws Office, A.P.C.
Attorney for Respondent

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ENDORSEMENT

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

DATED: September 3, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

Joshua M. Templet

JOSHUA M. TEMPLET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation and Petition to Revoke Probation No. 800-2017-031376

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO
BY
2020
ANALYST

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **Kwang Poung Chiu, M.D.** **477 Cabral Peak St.** **Las Vegas, NV 89138-1140** **Physician's and Surgeon's Certificate No. C 37989,** Respondent.	Case No. 800-2017-031376 **ACCUSATION AND PETITION TO REVOKE PROBATION**

PARTIES

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

2. On May 16, 1978, the Board issued Physician's and Surgeon's Certificate Number C 37989 to Kwang Poung Chiu, 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 August 31, 2021.

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DISCIPLINARY HISTORY

3. In a disciplinary action entitled "In the Matter of Accusation Against Kwang Poung Chiu, M.D.," Case No. 12-2000-107216, the Board issued a decision, effective March 6, 2002, revoking Respondent's Physician's and Surgeon's Certificate based on allegations of gross negligence in the quality of his care of three obstetrics patients. The decision stayed the revocation and placed Respondent's Physician's and Surgeon's Certificate on probation for ten years with certain terms and conditions.

JURISDICTION

4. This Accusation and Petition to Revoke Probation 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.

5. Section 2004 of the Code provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

6. Section 2227 of the Code authorizes the Board to take action against a licensee who has been found guilty under the Medical Practice Act by revoking his or her license, suspending the license for a period not to exceed one year, placing the license on probation and requiring payment of costs of probation monitoring, or taking such other action as the Board deems proper.

STATUTORY PROVISIONS

7. 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.

. . . .

8. Section 2238 of the Code states:

A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

9. Section 2242, subdivision (a), of the Code states:

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

. . . .

10. Section 2266 of the Code states:

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

FACTUAL ALLEGATIONS

On or about March 28, 2016, Respondent prescribed 100 Valium[1] 10 mg tablets to his sister-in-law, a three-month supply based on the prescribed dosage of one tablet per day. Respondent did not take the medical history or conduct a physical examination of his sister-in-law. Nor did he establish a working diagnosis or treatment plan for her, or obtain her informed consent for treatment with Valium. Respondent did not create any medical records regarding his prescription or treatment of his sister-in-law.

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[1] Valium is a trade name of diazepam, a benzodiazepine. It is a psychotropic drug used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in Code section 4022 and a Schedule IV controlled substance pursuant to Health and Safety Code, section 11057, subdivision (d)(9).

CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligence, Inappropriate Prescribing, Inadequate Records)

11. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts), of the Code in that Respondent engaged in the conduct described above including but not limited to the following:

A. Respondent failed to obtain a history of his sister-in-law.

B. Respondent failed to perform a physical examination of his sister-in-law.

C. Respondent failed to establish a working diagnosis and treatment plan for his sister-in-law.

D. Respondent failed to obtain informed consent from his sister-in-law for treatment with Valium.

E. Respondent prescribed a three-month quantity of Valium in a single prescription.

F. Respondent failed to exclude his sister-in-law's concurrent opioid use and to warn her about the danger of the use of Valium with opioid medication.

12. In addition, Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2238 (violation of drug statute) and 2242 (prescribing dangerous drug without appropriate prior examination and medical indication) of the Code in that Respondent engaged in the conduct described above including but not limited to the following:

A. Respondent prescribed Valium to his sister-in-law without an appropriate prior examination.

B. Respondent prescribed Valium to his sister-in-law without a medical indication.

13. In addition, Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2266 (inadequate record keeping) of the Code in that Respondent failed to maintain adequate and accurate records relating to his prescription of Valium to his sister-in-law, including but not limited to the following:

A. Respondent failed to document obtaining a history of his sister-in-law.

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B. Respondent failed to document performing a physical examination of his sister-in-law.

C. Respondent failed to document a working diagnosis and treatment plan for his sister-in-law.

D. Respondent failed to document obtaining informed consent for treatment of his sister-in-law with Valium.

CAUSE TO REVOKE PROBATION

(Failure to Obey Medical Practice Act in Violation of Probation)

14. At all times after the effective date of Respondent's probation, Term D of his probation stated:

> 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 or other orders.

15. Respondent's probation is subject to revocation because he failed to comply with Term D, in that he violated Business and Professions Code, sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts) of the Code; sections 2238 (violation of drug statute) and 2242 (prescribing dangerous drug without appropriate prior examination and medical indication) of the Code; and section 2266 (inadequate record keeping) of the Code, as pleaded in the Cause for Discipline.

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 the probation that the Medical Board of California granted in Case No. 12-2000-107216 and imposing the stayed disciplinary order, thereby revoking Physician's and Surgeon's Certificate Number C 37989 issued to Kwang Poung Chiu, M.D.;

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

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3. Ordering Kwang Poung Chiu, M.D., if placed on further probation, to pay the Board the costs of probation monitoring; and

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

DATED: FEB 0 7 2020

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

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