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

In the Matter of the Accusation Against: Benjamin Graham, Jr., M.D. Physician's & Surgeon's Certificate No. G 35252 Respondent.	Case No. 800-2018-043785

DECISION

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand 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 December 4, 2020.

IT IS SO ORDERED November 5, 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 Against: **BENJAMIN GRAHAM, JR., M.D.** **P.O. Box 129** **Mendocino, CA 95460-0129** **Physician's and Surgeon's Certificate No. G 35252** Respondent.	Case No. 800-2018-043785 OAH No. 2020060247 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER FOR PUBLIC REPRIMAND**

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 Benjamin Graham, Jr., M.D. (Respondent) is represented in this proceeding by attorney Adam G. Slote, Slote, Links & Boreman, LLP, One Embarcadero Center, Suite 400, San Francisco, CA 94111.

3. On August 9, 1977, the Board issued Physician's and Surgeon's Certificate No. G 35252 to Benjamin Graham, Jr., M.D. (Respondent). The certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2018-043785, and will expire on March 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-043785 (Accusation) was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent, on March 26, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of the Accusation 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 the Accusation. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reprimand.

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 the Accusation, if proven at a hearing, constitute cause for imposing discipline upon 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 Respondent 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 imposition of discipline 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 for Public Reprimand, the Stipulated Settlement and Disciplinary Order for Public Reprimand 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 an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in the Accusation shall be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, 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:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent Benjamin Graham, Jr., M.D., holder of Physician's and Surgeon's Certificate No. G 35252, is **publicly reprimanded**, pursuant to Business and Professions Code section 2227. This Public Reprimand is issued as a result of the following conduct by Respondent as set forth in the Accusation:

> Regarding his treatment of three patients between 2011 and 2015, Respondent failed to reduce the dosages of or create a tapering schedule for the narcotics that he prescribed patient P-1, and he failed to document an indication for prescribing promethazine to patients P-1, P-2, and P-3.

1. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT. Within 60 calendar days of the effective date of this Decision, Respondent must 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.

2. SUBMISSION OF DISABLED PHYSICIAN APPLICATION. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee a Disabled Physician Application to convert his Physician's and Surgeon's Certificate into disabled status. The application shall include certification of Respondent's disability by his physician.

3. 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 agency in the State of California, all of the charges and allegations contained in the Accusation 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.

4. VIOLATION OF ORDER. Any violation of the terms of this order shall constitute unprofessional conduct and grounds for further disciplinary action.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reprimand and have fully discussed it with my attorney, Adam G. Slote. 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 for Public Reprimand voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 08 / 23 / 2020

Benjamin Graham, jr MD

BENJAMIN GRAHAM, JR., M.D.
Respondent

I have read and fully discussed with Respondent Benjamin Graham, Jr., M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reprimand. I approve its form and content.

DATED: 08 / 23 / 2020

Adam Slote

ADAM G. SLOTE
Attorney for Respondent

ENDORSEMENT

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

DATED: August 23, 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 No. 800-2018-043785

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

In the Matter of the Accusation Against: **Benjamin Graham, Jr., M.D.** **P.O. Box 129** **Mendocino, CA 95460-0129** **Physician's and Surgeon's Certificate No. G 35252,** Respondent.	Case No. 800-2018-043785 **A C C U S A T I O N**

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).

JURISDICTION

2. On August 9, 1977, the Board issued Physician's and Surgeon's Certificate Number G 35252 to Benjamin Graham, Jr., M.D. (Respondent). The certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2021, unless renewed.

STATUTORY PROVISIONS

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

5. 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.

6. Section 2234 of the Code states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
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> . . . .
>
> (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.
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FACTUAL ALLEGATIONS

Respondent's treatment of patient P-1

Respondent assumed care of patient P-1[1] in approximately June 2012 and treated him for chronic pain stemming from a failed back surgery through the patient's death, in August 2014. Respondent prescribed P-1 several medications for his pain, including fentanyl[2] 150 mcg/hr and hydrocodone[3] 120 pills per month. The patient's treatment also included promethazine[4] among other medications. Respondent's records do not document an indication for prescribing the patient promethazine.

P-1 had a history of overdosing on his medications, including on July 12, 2012, and August 27, 2013. P-1 had visited the emergency room several times for narcotic misuse and, at various times in 2012, the emergency room removed fentanyl, Norco,[5] and other medications from his medication list.

Respondent's treatment of patients P-2 and P-3

Respondent treated patient P-2 for failed back syndrome for two decades, through approximately June 2015. Respondent prescribed P-2 seven fentanyl lozenges per day, 40 mg of methadone[6] per day, and 960 mg of oxycodone[7] per day. Respondent also prescribed P-2 promethazine. Respondent's records do not document an indication for prescribing the patient promethazine.

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[1] The three patients at issue in this document are designated as patients P-1, P-2, and P-3 to protect their privacy. Respondent knows their names and can confirm their identity through discovery.

[2] Fentanyl is an opioid analgesic used primarily for anesthesia and sedation.

[3] Hydrocodone/acetaminophen, an opioid analgesic, is a combination of hydrocodone bitartrate, an opioid, and acetaminophen, an analgesic. It is used to treat pain.

[4] Promethazine is an antihistamine and antiemetic. It is used to treat allergies, nausea, and anxiety before and after surgery.

[5] Norco is a brand name of hydrocodone/acetaminophen.

[6] Methadone is an opioid used to treat pain, as maintenance therapy, and to help with tapering in patients with opioid dependence.

[7] Oxycodone/acetaminophen, an opioid analgesic, is a combination of oxycodone, an opioid, and acetaminophen, an analgesic. It is used to treat pain.

Respondent treated patient P-3 for chronic back pain, between approximately March 2011 and June 2015. Respondent prescribed P-3 600 methadone tablets per month, among other medications, including hydromorphone[8] and promethazine.

Respondent's records do not document an indication for his long-term prescribing of promethazine to the patient. A single entry in Respondent's records, for P-1's September 23, 2013 office visit, states that the patient was using promethazine for reflux esophagitis. Promethazine is not an appropriate medication for the long term treatment of reflux esophagitis.

CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

7. Respondent's conduct described above and summarized as follows constitutes unprofessional conduct in violation of Code section 2234, subdivision (c) (repeated negligent acts):

A. Respondent's failure to reduce the dosages of or create a tapering schedule for the narcotics that he prescribed P-1 despite P-1's history of overdosing on his medications was a departure from the standard of care.

B. Respondent's prescribing of promethazine without indication to patients P-1, P-2, and/or P-3 was a departure from the standard of care. Promethazine has a history as a well-recognized substance of abuse when mixed with narcotics, and Respondent was concurrently prescribing each of these patients significant dosages of narcotics.

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 35252, issued to Benjamin Graham, Jr., M.D.;

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

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[8] Hydromorphone is an opioid. It is used to treat pain.

3. Ordering Benjamin Graham, Jr., 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: MAR 2 6 2020

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

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