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

In the Matter of the Accusation Against: Yaroslav Kushnir, M.D. Physician's and Surgeon's License No. G24238 Respondent.	Case No. 800-2017-034874

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 March 3, 2021.

IT IS SO ORDERED: February 1, 2021.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
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: **YAROSLAV KUSHNIR, M.D.** **709 Third Avenue** **Chula Vista, CA 91910-5803** **Physician's and Surgeon's Certificate No. G 24238,** Respondent.	Case No. 800-2017-034874 OAH No. 2020070325 **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). Christine J. Lally[1] brought this action solely in her official capacity, as the Interim Executive Director of the Board. They have been represented in this matter by Xavier

[1] On October 28, 2019, Christine J. Lally became the Interim Executive Director of the Medical Board when former Executive Director, Kimberly Kirchmeyer, became the Director of the Department of Consumer Affairs. On June 15, 2020, William Prasifka became the Executive Director of the Medical Board.

Becerra, Attorney General of the State of California, by Karolyn M. Westfall, Deputy Attorney General.

2. Respondent Yaroslav Kushnir, M.D. (Respondent) is represented in this proceeding by attorney Gastone Bebi, Esq., whose address is: The Law Offices of Gastone Bebi, 501 West Broadway, Suite 1340, San Diego, CA 92101.

3. On or about April 4, 1973, the Board issued Physician's and Surgeon's Certificate No. G 24238 to 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. 800-2017-034874, and will expire on February 28, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-034874 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 28, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-034874 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. 800-2017-034874. 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; 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.

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8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2017-034874.

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. 800-2017-034874 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.

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.

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14. 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. G 24238 issued to Respondent, Yaroslav Kushnir, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years from the effective date of the Decision on the following terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, 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 four (4) hours. The educational program(s) or course(s) shall be aimed at the issue of Informed Consent, 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. Respondent shall provide proof of attendance to the Board or its designee not later than 15 calendar days after successfully completing the course, and the Board or its designee may administer an examination to test Respondent's knowledge of the course.

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

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

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

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

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

4. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of Respondent's competency, mental health

and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate Respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six (6) months after Respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on Respondent's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with program recommendations. At the completion of the program, Respondent shall submit to a final evaluation. The program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

The program has the authority to determine whether or not Respondent successfully completed the program.

A professional boundaries 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.

If Respondent fails to complete the program within the designated time period, Respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that Respondent failed to complete the program.

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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.]

Within 60 days after Respondent has successfully completed the clinical competence assessment program, Respondent shall participate in a professional enhancement program approved in advance by the Board or its designee, which shall include 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, or until the Board or its designee determines that further participation is no longer necessary.

6. 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(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 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.

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.

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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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gastone Bebi, Esq. 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: 12-2-20

YAROSLAV KUSHNIR, M.D.
Respondent

I have read and fully discussed with Respondent Yaroslav Kushnir, 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: 12-2-2020

GASTONE BEBI, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 12/2/20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-034874

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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: **YAROSLAV KUSHNIR, M.D.** **709 Third Avenue** **Chula Vista, CA 91910-5803** **Physician's and Surgeon's Certificate No. G 24238,** Respondent.	Case No. 800-2017-034874 **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).

2. On or about April 4, 1973, the Medical Board issued Physician's and Surgeon's Certificate No. G 24238 to Yaroslav Kushnir, 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 February 28, 2022, 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 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:
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> ...
>
> (b) Gross negligence.
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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.
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> ...
>
> (d) Incompetence.
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> ...

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

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.

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. G 24238 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he was grossly negligent in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

9. Between in and around 2004, through in and around 2017, Respondent worked as a psychiatrist at Alvarado Parkway Institute (API). Throughout that time, API received numerous complaints from staff and patients regarding Respondent's disruptive behavior and/or sexually inappropriate comments.

10. On or about February 1, 2017, Patient A, a then twenty-one year old female patient was brought to API by her father, seeking emergency psychiatric admission due to her increased suicidal ideation and psychiatric behavior. Patient A had a psychiatric history that included diagnoses of bipolar disorder, occupational defiant disorder, and mood disorder, as well as multiple prior hospitalizations and contacts with law enforcement. During her initial evaluation, Patient A was noted to be floridly psychotic, responding to internal stimuli, making bizarre movements, and rambling incoherently. Patient A admitted to using methamphetamines the day prior, and her urine drug screen was positive for methamphetamine and benzodiazepines. Patient A was admitted to API on a voluntary basis under the psychiatric care of Respondent. On that same date, Respondent evaluated the patient and diagnosed her with schizoaffective disorder, bipolar type, and stimulant dependence (methamphetamine).

11. Between on or about February 1, 2017, through on or about May 10, 2017, Respondent evaluated Patient A several times each week. Throughout that time period, Respondent's notes in the patient's chart are short, repetitive, and difficult to read, consist of mostly checked boxes on a preexisting form, and contain no discussion regarding the patient's progress or reference to her treatment plan.

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[1] To protect the privacy of the patient involved, the patient's name has not been included in this pleading. Respondent is aware of the identity of the patient referred to herein.

12. On or about February 2, 2017, Respondent evaluated Patient A and determined her to be loud, disruptive, and with no insight. The patient informed Respondent that she wanted to go home. Respondent then restarted the patient on her prior medications, which included but was not limited to Cogentin,[2] trazadone,[3] Zyprexa,[4] Lamictal,[5] Haldol,[6] and Clozaril.[7] Respondent and Patient A both signed a "Patient Consent to Receive Psychotropic Medications" form on that date for these medications, but Respondent did not include any documentation in the patient's chart regarding her capacity to give consent for these medications.

13. On or about February 3, 2017, Respondent evaluated Patient A and determined her to be loud, psychotic, and with no insight. The patient again informed Respondent that she wanted to go home.

14. On or about February 7, 2017, after K.C., M.S.W. (K.C.) informed Respondent that another patient at API wanted to remain under his care after discharge, Respondent stated, "that's what happens when you sleep with your patients."

15. On or about February 7, 2017, after A.M, R.N. (A.M.) asked Respondent if he wanted to update K.C. on another patient she was covering for P.P., M.S.W. (P.P.), Respondent replied,

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[2] Cogentin (brand name for benztropine) is used to treat symptoms of Parkinson's disease or involuntary movements due to the side effects of certain psychiatric drugs (antipsychotics such as chlorpromazine/haloperidol). Benztropine belongs to a class of medication called anticholinergics, and is a dangerous drug pursuant to Business and Professions Code section 4022.

[3] Trazodone is an antidepressant that belongs to a group of drugs called selective serotonin reuptake inhibitors. It is used to treat depression, and is a dangerous drug pursuant to Business and Professions Code section 4022.

[4] Zyprexa (brand name for olanzapine) is an antipsychotic medication used to treat schizophrenia and the symptoms of mood disorders such as bipolar disorder, and is a dangerous drug pursuant to Business and Professions Code section 4022.

[5] Lamictal (brand name for lamotrigine) is an anticonvulsant medication used to delay mood episodes in adults with bipolar disorder, and is a dangerous drug pursuant to Business and Professions Code section 4022.

[6] Haldol (brand name for haloperidol) is an antipsychotic medicine used to treat schizophrenia, and is a dangerous drug pursuant to Business and Professions Code section 4022.

[7] Clozaril (brand name for clozapine) is an antipsychotic medicine used to treat schizophrenia, and is a dangerous drug pursuant to Business and Professions Code section 4022.

"No, [P.P.] is like my wife and [K.C.] is like my mistress. There are certain things that wives do and certain things that mistresses do. My mistress doesn't need to know this."

16. On or about February 8, 2017, Respondent evaluated Patient A and determined her to be child-like, with poor judgement, and having no insight. On that same date, Respondent referred the patient for an LPS Conservatorship.[8]

17. On or about February 9, 2017, Respondent evaluated Patient A and determined her to be hyper, labile, and with no attention span. Respondent then prescribed the patient Adderall[9] 10 mg because she was highly agitated and hyperactive. Respondent and Patient A both signed a "Patient Consent to Receive Psychotropic Medications" form on that date for this medication, but Respondent did not include any documentation in the patient's chart regarding her capacity to give consent for this medication.

18. On or about February 12, 2017, Patient A submitted a formal request for a change of physician.

19. On or about February 13, 2017, Respondent evaluated Patient A and determined her to be labile, hyperactive, with no insight, and preoccupied with discharge home.

20. On or about February 14, 2017, Respondent evaluated Patient A and determined her to be gravely disabled, and unable to plan for food, clothing, or shelter for herself.

21. On or about February 17, 2017, Respondent evaluated Patient A and determined her to be loud and labile with no insight. On that date, Respondent increased the patient's Adderall prescription to 20 mg.

22. On or about February 24, 2017, Respondent evaluated Patient A and determined her to have no insight. Patient A demanded to be discharged and requested another doctor.

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[8] The Mental Health Conservatorship is part of the Lanterman-Petris-Short (LPS) Act 1967. An LPS Conservatorship is the legal term used in California that gives one adult (the conservator) the responsibility for overseeing the comprehensive medical (mental) treatment for an adult (conservatee) who has a serious mental illness. Guidelines for the involuntary mental health treatment are under the California Welfare and Institutions Codes 5200.

[9] Adderall (brand name for dextroamphetamine and amphetamine) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an amphetamine salts used for attention-deficit hyperactivity disorder and narcolepsy.

23. On or about February 26, 2017, Patient A informed Respondent again that she wanted another doctor.

24. On or about March 1, 2017, Respondent evaluated Patient A and determined her be labile and agitated. On that date, Respondent decreased the patient's Adderall to 10 mg.

25. On or about March 4, 2017, Respondent evaluated Patient A and determined her be loud, hyper, labile, and with no insight. On that date, Respondent discontinued the patient's Adderall prescription.

26. On or about March 7, 2017, Respondent evaluated Patient A and determined her be loud, with no insight, and preoccupied with discharge. Patient A informed Respondent again that she wanted another doctor.

27. On or about March 11, 2017, Patient A submitted another formal request for a change of physician.

28. On or about March 13, 2017, Patient A submitted to a psychological evaluation and testing at API, which revealed a finding of severe intellectual impairment.

29. On or about March 13, 2017, Respondent attended a meeting with API executive staff regarding complaints they had received about his inappropriate comments towards staff. During this meeting, Respondent did not deny telling a staff member one week earlier that he thinks API should not hire women with children.

30. Sometime between on or about February 1, 2017, and on or about March 16, 2017, Respondent asked Patient A for a hug at the conclusion of his evaluation. After doing so, Respondent then turned to a female employee, F.Z., and asked her to turn around so he and Patient A could "make out." Patient A was visibly uncomfortable by the comment and left the room. Later that day, Respondent patted his knee and told F.Z. to come sit on his lap.

31. On or about March 28, 2017, Respondent agreed to a corrective action plan with API executive staff.

32. On or about May 9, 2017, Patient A reported to her assigned social worker that she was no longer comfortable with receiving treatment from Respondent and claimed he had made multiple inappropriate comments and gestures towards her.

33. On or about May 10, 2017, Patient A refused to be seen by Respondent and submitted another formal request for a change of physician.

34. On or about May 11, 2017, Patient A began to receive psychiatric care and treatment from another physician at API until she was discharged on or about June 7, 2017.

35. Between in and around October 2016, and in and around May 2017, on multiple occasions, Respondent intentionally poured his own urine down the elevator shaft at API.

36. On or about July 7, 2017, Respondent resigned from API.

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

(A) Engaging in sexually inappropriate comments and behavior towards the patient;

(B) Prescribing amphetamine to a patient who was floridly psychotic from methamphetamine use;

(C) Writing illegible, chaotic, and incomplete chart notes for the patient; and

(D) Obtaining informed consent for psychotropic medications from a patient who lacked capacity to give informed consent.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

38. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24238 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 in paragraphs 8 through 37, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

39. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24238 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 37, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

40. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24238 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code, in that he has demonstrated incompetence in his care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 37, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

41. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24238 to disciplinary action under sections 2227 and 2234, as defined by section 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 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 37, above, which are hereby incorporated by reference and re-alleged 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 No. G 24238, issued to Respondent, Yaroslav Kushnir, M.D.;

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

3. Ordering Respondent, Yaroslav Kushnir, 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: MAY 28 2020

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

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