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: Richard Frederick Buss, M.D. Physician's & Surgeon's Certificate No. G 52995 Respondent.	Case No. 800-2020-063778

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 4, 2021.

IT IS SO ORDERED: February 2, 2021.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
JOHN S. GATSCHET
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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/Petition to Revoke Probation Against: **RICHARD FREDERICK BUSS, M.D.** 19620 State Highway 88 Pine Grove, CA 95665 Physician's and Surgeon's Certificate No. G 52995 Respondent.	Case No. 800-2020-063778 OAH No. 2020040533 **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 John S. Gatschet, Deputy Attorney General.

2. Respondent Richard Frederick Buss, M.D. ("Respondent") is represented in this proceeding by attorney John H. Dodd, whose address is: Craddick, Candland & Conti 2420 Camino Ramon, Ste. 202, San Ramon, CA 94583.

3. On or about July 12, 1984, the Board issued Physician's and Surgeon's Certificate No. G 52995 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation/Petition to Revoke Probation No. 800-2020-063778, and will expire on January 31, 2022, unless renewed.

JURISDICTION

4. Accusation/Petition to Revoke Probation No. 800-2020-063778 was filed before the Board, and is currently pending against Respondent. The Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on February 25, 2020. Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke Probation.

5. A copy of Accusation/Petition to Revoke Probation No. 800-2020-063778 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/Petition to Revoke Probation No. 800-2020-063778. 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/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.

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8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2020-063778, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2020-063778, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 52995 to disciplinary action.

11. Respondent agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. 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

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action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. 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/Petition to Revoke Probation No. 800-2020-063778 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.

15. 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.

16. 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 52995 issued to Respondent Richard Frederick Buss, 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. TERMINATION OF PROBATION. Upon the effective date of the Decision and Order in Case No. 800-2020-063778, the Decision and Order in MBC Case No. 02-2010-206541 shall be superseded by the new Decision and Order in Case No. 800-2020-063778, and the previously ordered probation shall terminate.

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. 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, 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, 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.

4. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician with any information and documentation that the evaluating physician may deem pertinent. In particular, the Board requests evaluation and treatment of Respondent's hearing loss.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment that the Board or its designee deems necessary.

If, prior to the completion of probation, Respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the

Board determines that Respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), 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. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

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

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

6. THIRD PARTY CHAPERONE. During probation, Respondent shall have a third party chaperone present while consulting, examining or treating female patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

If Respondent fails to obtain approval of a third party chaperone 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 chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient

medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

Respondent is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

If the third party chaperone resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If Respondent fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or unavailability of the chaperone, 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 chaperone is approved and assumes monitoring responsibility.

There are no allegations that indicate Respondent has engaged in sexual misconduct with any patients.

7. PROHIBITED PRACTICE. During probation, Respondent is prohibited from practicing as a hospitalist or providing care to patients in an inpatient setting. After the effective date of this Decision, all patients in an inpatient setting that wish to be treated by the Respondent shall be notified by the Respondent that the Respondent is prohibited from practicing as a hospitalist or treating patients in an inpatient setting. Respondent shall maintain a log of all patients to whom the required oral notification was made.

The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

8. 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.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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; and Quarterly Declarations.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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/Petition to Revoke Probation No. 800-2020-063778 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, John H. Dodd. 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: 10/13/20

RICHARD FREDERICK BUSS, M.D.
Respondent

I have read and fully discussed with Respondent Richard Frederick Buss, 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: 10/13/20

JOHN H. DODD
Attorney for Respondent

ENDORSEMENT

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

DATED: 10-13-20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

JOHN S. GATSCHET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation/Petition to Revoke Probation No. 800-2020-063778

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb. 25 20 20
BY M. Francia ANALYST

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

In the Matter of the Petition to Revoke Probation and Accusation Against: **RICHARD FREDERICK BUSS, M.D.** 19620 State Highway 88 Pine Grove, CA 95665 Physician's and Surgeon's Certificate No. G 52995, Respondent.	Case No. 800-2020-063778 PETITION TO REVOKE PROBATION AND ACCUSATION

Complainant alleges:

PARTIES

1. Christine J. Lally ("Complainant") brings this Petition to Revoke Probation and Accusation (hereinafter, "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 July 12, 1984, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 52995 to Richard Frederick Buss, M.D. ("Respondent"). The

Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on January 31, 2022, unless renewed.

3. In a disciplinary action titled "In the Matter of Accusation Against Richard Frederick Buss, M.D.," Case No. 02-2010-206541, the Board issued a decision, effective on March 20, 2015, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation and Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code states:

> The Board shall have the responsibility for the following:
>
> (a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
>
> (b) The administration and hearing of disciplinary actions.
>
> (c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
>
> (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
>
> (e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the Board.
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> ...

6. 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.

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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:
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> (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 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

July 17-24, 2018

9. On or about the evening of July 17, 2018, Patient 1[1] arrived at Sutter-Amador Hospital's emergency department via emergency medical services ("EMS"). Patient 1 had a history of liver failure, hypertension, and diabetes. Patient 1 had suffered a syncopal episode while getting up to go to the bathroom. Patient 1 was admitted to the hospital and he told medical staff that that he felt lightheaded, had lost his balance and fallen. Patient 1's hemocrit dropped from 23.5 to 20.5. Respondent and an on-call surgeon were consulted and the surgeon recommended that Patient 1 receive platelets and fresh frozen plasma (FFP)[2].

[1] All patients are identified by an alpha-numeric in order to protect confidentiality. Further information will be provided during discovery.

[2] Fresh Frozen Plasma, a blood product made from the liquid portion of whole blood.

10. In a history and physical signed July 19, 2018, Respondent documented that Patient 1 was a 66-year-old man diagnosed with alcoholic liver disease. Respondent documented that the patient had been advised four years earlier that he had elevated liver functions from overusing alcohol, but that he had continued to drink up to eight drinks a day. Respondent documented that Patient 1 had stopped drinking alcohol four months ago. Respondent documented that Patient 1 was previously in the hospital between July 3, 2018, and July 11, 2018, for intractable ascites and edema, and underwent diuresis of around 40 pounds of water weight over 8 days. Following discharge on July 11, 2018, Respondent documented that the patient had contacted him several times complaining of feeling lightheaded, and Respondent advised Patient 1 to back off taking diuretics. Patient 1's labs from July 17, 2018, at 11:16 p.m. indicated that his sodium was 118 mmol/l, his creatinine was .83 mg/dL, a total bilirubin of 9.7 mg/dL and an INR[3] of 2.9. These values would provide a physician information on a patient's risk of death from advanced liver disease. Using the MELD ("model for end-stage liver disease") score, Patient 1 scored a 32 with an estimated risk of death within 90 days of 52.6%. A score higher than 10 points indicates the need for referral to hepatologist or liver transplant center.

11. Respondent's plan was to treat Patient 1 for acute blood loss with anemia, noting that Patient 1 was hypotensive and light-headed. Respondent documented that he would follow Patient 1's hemocrit level and that Patient 1 would be transfused if needed. Respondent documented that Patient 1 would likely need FFP. Respondent documented that Patient 1's liver disease with cirrhosis had progressed to full cirrhosis despite not drinking alcohol for the past three months. Respondent documented that he would withhold diuretics until the patient's belly felt somewhat better. Respondent also documented that Patient 1's diabetes remained in remission.

12. On July 18, 2018, at approximately 6:23 a.m., Patient 1 was brought up to the medical/surgical unit in the hospital from the emergency room and placed on telemetry. Patient 1 was transfused with packed red blood cells ("PRBC"). At approximately 1:55 p.m. on July 18,

[3] International Normalized Ratio, a measure of how much time it takes for a patient's blood to clot.

2018, nursing notes indicated that Respondent called and received an update on Patient 1's status. Respondent did not document a progress note. On the evening of July 18, 2018, Patient 1 became substantially worse. In Respondent's discharge summary dated July 26, 2018, Respondent documented that Patient 1 became weak and lethargic and his hematocrit fell to 15.7. Respondent also documented in his July 26, 2018, discharge summary that Patient 1's white blood count, his potassium level, and his creatinine level had all increased on July 18, 2018. In addition, Respondent in his July 26, 2018, discharge summary documented that Patient 1 was hypotensive. Patient 1 was transferred overnight to the Intensive Care Unit ("ICU"). According to Respondent's discharge summary signed on July 26, 2018, once in the ICU, Patient 1 received two more units of blood, two jumbo packs of plasma, and two platelet packs.

13. According to nursing notes, Respondent examined Patient 1 in the ICU at approximately 7:37 a.m. on July 19, 2018. Respondent did not document a progress note but did document Patient 1's progress on July 19, 2018, in his discharge summary that was signed on July 26, 2018. At approximately 10:09 a.m., Patient 1 was transferred from the ICU to the progressive care unit ("PCU"), which is a higher level of care than the medical/surgical unit but lower than the ICU. According to the nursing notes, Respondent again evaluated Patient 1 at the time of transfer, but again Respondent did not document a progress note. At approximately 10:38 a.m., Patient 1 was placed on a Levophen infusion and titrated to maintain a blood pressure greater than 90. By 11:46 a.m. on July 19, 2018, Patient 1's blood pressure was improving and he was oriented, but remained sleepy and weak according to nursing notes.

14. On July 19, 2018, at approximately 2:12 p.m, a surgeon saw Patient 1 for a surgical consultation. According to the surgeon's history and physical note, he reviewed Patient 1's medical history and current laboratory results. The surgeon assessed Patient 1 as having "Child-Pugh class C" level, which is a scoring system for the prognosis of chronic liver disease, and based on that level, Patient 1 had a 1-year survival rate of 45%. The surgeon noted, "(p)rognosis is reserved, if not poor in this patient. If his coagulopathy is unresponsive to the administration of blood products, consideration should be given to either transfer to a higher level of care institution or comfort care/hospice where specialized services are available (IR or liver transplant

service[4])." On July 19, 2018, at approximately 2:22 p.m., a case manager met with the patient to discuss a possible return to home to be on hospice care and documented that the patient stated he denied hospice care, and specifically stated "I'm not ready to give up yet." Respondent was notified that Patient 1 wanted to fight to survive.

15. Between July 20, 2018, and July 24, 2018, Patient 1 continued to be treated at Sutter-Amador Hospital by Respondent. During that time, multiple nursing notes were documented in Patient 1's chart. However, aside from the discharge summary dated July 27, 2018, Respondent failed to author any progress notes on Patient 1. For example, on July 22, 2018, at 12:42 p.m., a nurse documented that Respondent was at Patient 1's bedside and provided new orders, but Respondent failed to document a daily progress note. Between July 20, 2018, and July 24, 2018, Patient 1 continued to experience multiple changes in his care and continued to suffer from shortness of breath and unstable heart rates. While the nursing notes documented that Respondent provided new orders throughout that time, he failed to document progress notes during Patient 1's care.

16. On July 23, 2018, at 1:45 a.m., Patient 1's health began to show signs of severe worsening. At 5:34 p.m., a nurse's note documented that the family wished to have Patient 1 transferred to a hospital with a higher level of care. A plan was created to have the family meet with Respondent on July 24, 2018, at 8:15 a.m. for a conference. However, at 6:30 p.m., a nurse documented that Respondent wished to possibly transfer the patient on the evening of July 23, 2018. At approximately 10:24 p.m., on July 23, 2018, a nurse documented that they had spoken to the Sacramento Transfer Center, but that there were no beds available until possibly the morning of July 24, 2018. According to the nurse's notes, the nurse and transfer center contacted Respondent and he stated he did not want to try to transfer Patient 1 to any other facilities except for one located in Sacramento. On July 24, 2018, at approximately 1:11 p.m., Patient 1's transfer paperwork was completed and he was transferred to Sutter Sacramento later that afternoon. On July 27, 2018, Patient 1 passed away.

[4] Sutter Amador Hospital is a small community hospital that lacks those services.

17. On October 1, 2019, Respondent was interviewed regarding Patient 1's care. Respondent stated that the surgeon had suggested a higher level of care, but that Respondent expected the surgeon to make the transfer arrangements. Respondent also stated that the transfer came about when the family requested the transfer to a higher level of care.

October 17-18, 2018

18. On October 15, 2018, Patient 2 had been admitted to Sutter Amador Hospital for care of a fracture of second lumbar vertebrae. On October 15, 2018, Patient 3 had been admitted to Sutter Amador Hospital for care of chronic obstructive pulmonary disease ("COPD") exacerbation. On October 11, 2018, Patient 4 had been admitted to Sutter Amador Hospital for care of an infection of incontinent external stoma of urinary tract as well as Stage IV kidney disease and multiple sclerosis. On October 14, 2018, Patient 5 had been admitted to Sutter Amador Hospital for care of sepsis and pneumonia. On October 12, 2018, Patient 6 had been admitted to Sutter Amador Hospital for care of sepsis, and she had a history of malignant neoplasm of rectum. On or about October 17, 2018, Patients 2, 3, 4, 5, and 6, were all still admitted to Sutter Amador Hospital under the direct care of Respondent.[5]

19. On the morning of October 17, 2018, Respondent rounded on Patients 2, 3, 4, 5, and 6, and Respondent entered progress notes for each of them. Respondent then proceeded to let the ward clerk know that he was leaving town and that he would be available by cellular phone. Respondent stated he would return by the afternoon of October 18, 2018. According to Respondent, he was traveling to San Francisco, which is approximately 3 hours away from Sutter Amador Hospital, for a small vacation with his family.[6] Respondent had not arranged for care coverage for Patients 2, 3, 4, 5, and 6, despite Sutter Amador Hospital having a policy that physicians must remain within 30 minutes of the hospital when they have patients in the hospital.

20. A few hours after Respondent had left Sutter Amador Hospital on October 17, 2018, the Chief Executive Officer ("CEO") of the hospital contacted Respondent on his cellular phone.

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[5] Respondent was providing care to both his patients and those of another independent family physician at that time.

[6] In addition to being in San Francisco, according to Respondent's interview with the Board on October 2, 2019, he also partook in an Alcatraz tour boat trip, furthering limiting his ability to promptly respond to Sutter Amador Hospital.

The CEO asked Respondent why he had left Sutter Amador Hospital and Respondent informed the CEO he had a "preplanned" event in San Francisco and that he would be available by cellular phone. The CEO encouraged Respondent to transfer the five patients to the care of the hospitalists[7] and informed him that he was violating Sutter's Medical staff rules. The Respondent rejected the CEO's offer to transfer the care of the patients to the hospitalist service and repeated that he was available by phone.

21. On October 17, 2018, in the late afternoon, the CEO contacted the current Chief of Staff[8] at Sutter Amador hospital, who also happened to be the Medical Director for the hospitalists at Sutter Amador Hospital. The Chief of Staff called Respondent and inquired whether he was in San Francisco. Respondent replied that he was headed to San Francisco and that he had five patients at Sutter Amador Hospital that he was either providing care to or covering for another local independent physician. The Chief of Staff asked if he could help in anyway and offered to take over care of Respondent's five patients. Respondent stated, "Thank you for offering, but I'll cover my patients." The Chief of Staff had no way to force Respondent to transfer care of the five patients to the hospitalist service and ended the phone call.

22. The Chief of Staff and CEO informed the hospital staff and nurses that they should call Respondent if they had routine care questions but that all emergent care issues should be given to the on-call hospitalist staff because Respondent was too far away to provide emergent care to any of his patients. In fact, Patient 4 had chest pains that required emergent attention during the overnight period on October 17, 2017, into October 18, 2018. On the afternoon of October 18, 2018, Respondent returned to Sutter Amador Hospital and rounded on Patients 2, 3, 4, 5, and 6.

23. On October 2, 2019, during an investigative interview, Respondent stated he has elements of Asperger syndrome in his personality, which makes him "very awkward and reluctant

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[7] Sutter Amador has a hospitalist service, which is comprised of primary care physicians who specialize in providing in-patient care to patients in the hospital. As an independent physician, Respondent did not use the hospitalist service and instead chose to provide all care to his patients.

[8] The Chief of Staff is a leadership position and elected by the physician staff to deal with privileging issues and take part in the hospital's internal discipline process.

to ask favors of patient – people I do not know well. This includes my signing out my patients to the hospitalists." Respondent also stated that part of his reason for not transferring the patients is that if the hospitalist sees the patient, Respondent cannot bill for that care. Respondent also stated during the interview that he does not like looking in the chart to review the progress notes of other physicians to determine if the care was appropriate. Respondent admitted that the hospital rules and bylaws required physicians with admitted patients to be within a half hour of the hospital. Respondent stated, "Um—it seems, you know, I – I – I did something that probably I shouldn't have done. I snuck out of town overnight, hoping I would not be noticed."

December 15-17, 2018

24. On December 15, 2018, at approximately 3:23 p.m., Patient 7 arrived at the emergency room of Sutter Amador Hospital complaining of weakness, nausea, vomiting, and diarrhea for the previous 24 hours. Patient 7 reported as unable to get up out of his chair and had slid off the chair and onto the floor. Patient 7 had a reported history of diabetes but his blood sugar at home was 123. Patient 7 was found to be in sinus bradycardia with a first-degree AV block[9]. ER medical staff reported concern for sepsis and Patient 7 was admitted to Sutter Amador Hospital for care of sepsis, fever, metabolic acidosis and acute renal failure. At 8:55 p.m., a nurse noted that Patient 7 had some shortness of breath with exertion. At 11:00 p.m., a nurse documented that Patient 7 was resting in bed with eyes closed and appeared comfortable, but that his telemetry reading was sinus brady with a heart rate in the 30s. The nurse contacted a local independent physician who was covering for Respondent and he advised that Patient 7 should be transferred to the PCU. Sutter Amador Hospital does not have a cardiologist on call, nor do they have cardiac services.

[9] A first-degree atrioventricular ("AV") node block occurs when conduction through the AV node is slowed, thus delaying the time it takes for the action potential to travel from the SA node, through the AV node, and to the ventricles. A first-degree AV block is indicated on the EKG by a prolonged PR interval. Generally a first-degree AV is asymptomatic and without significant complications.

25. On December 16, 2018, at approximately 1:01 a.m., an EKG was performed that showed p-wave independent of QRS[10]. This indicated a third-degree heart block[11] with wide spaced QRS indicating site of block likely in the Bundle of His[12]. This is a worse prognosis than a narrow QRS. According to the nursing notes, a nurse notified the local independent physician that was covering for Respondent that Patient 7 had arrhythmia, and noted "notable disassociative p wave most likely thrid [sic] degree block, 12 lead done, only showing 1st degree block please see other strips." The nurse reported that the patient was resting with no outward signs of distress but his heart rate remained in the low 40s. At 9:30 a.m., a nurse documented in the nursing notes that the independent local physician who was covering for Respondent saw Patient 7. According to the note, that physician reviewed the current rhythm and past rhythms. According to the 9:30 a.m. nursing note, Patient 7 was in sinus rhythm, with a first-degree heart block, but was going in and out of third-degree block. The independent local physician suggested that metoprolol not be restarted and he requested that Respondent see the patient.

26. On December 16, 2018, at approximately 5:57 p.m., a nursing note documented that Patient 7 was transferred from the PCU. According to the nurse's note, Patient 7's heart rate continued to go into the "mid 30's" with telemetry "showing 1st to 3rd degree blocks." The note ends with "MD aware" but the note is not clear on which MD is referenced. Respondent failed to document a progress note on December 16, 2018.

27. On December 17, 2018, at approximately 4:10 a.m., a nursing note documented that Patient 7 reported no chest pains or shortness of breath. Patient 7's heart rate remained between 34 and 45 beats per minute and he was asymptomatic. On December 17, 2018, at approximately 1:25 p.m., there is a transfer note that documented that Respondent was transferring Patient 7 from Sutter-Amador Hospital to Mercy General for an emergency condition that required

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[10] QRS, or QRS complex, are the deflections in an electrocardiogram ("EKG") tracing that represent the ventricular activity of the heart.

[11] A third degree heart block can cause a wide range of symptoms, some of which are life-threatening. This type of heart block is a medical emergency and may require immediate treatment with a pacemaker.

[12] The bundle of cardiac muscle fibers that conducts the electrical impulses that regulate the heartbeat, from the atrioventricular node in the right atrium to the septum between the ventricles and then to the left and right ventricles.

necessary experience outside physician scope of practice/privileges. On December 17, 2018, at approximately 9:25 a.m., Respondent documented in a progress note that Patient 7 had continued third-degree heart block and that he was awaiting a cardiology transfer to another hospital. Respondent also signed a discharge note on December 28, 2018, which detailed Patient 7's course of stay at Sutter-Amador Hospital.

28. On October 1, 2019, during an investigative interview, Respondent stated that Patient 7 came to Sutter-Amador Hospital on a day that Respondent was out of town. Respondent's colleague, the local independent physician, admitted Patient 7 to the ICU for gastroenteritis and sepsis. At the time, Respondent could not see Patient 7 in the ICU because his ICU privileges had been removed by the hospital. According to Respondent, the local independent physician had Patient 7 moved to the telemetry ward so he could be seen by Respondent. Respondent saw Patient 7 on the next day (December 16, 2018). Respondent stated that he agreed that Patient 7 had a third-degree heart block. Respondent stated, "And my memory of third-degree heart block is not that it's necessarily an emergency. I remember it as something that some people had for weeks and months and they were lightheaded and passed out if they stood up. But if they laid down they were fine. And eventually they invented pacemakers to help these people resume a normal life. That was my memory of what I thought about a third-degree heart block, other than, if somebody was in the – in an acute coronary syndrome which this guy was not." Respondent acknowledged that he had Patient 7 stay over-night and that he transferred him the next day to a higher level of care in Sacramento. In the same interview, Respondent admitted, "Um – just that the –um – you know, it may be I – my understanding of heart block is out of date."

January 3, 2019

29. In 2013, Respondent began providing primary care to Patient 8. On or about January 3, 2019, Patient 8 had a fever and went to Sutter-Amador Hospital. The medical staff at Sutter-Amador Hospital diagnosed Patient 8 with pneumonia and prescribed antibiotics. The medical staff recommended that Patient 8 take a week off from work. Patient 8 contacted her employer and they informed her that she needed a note from her primary care provider providing medical clearance to return to work.

30. On or about January 7, 2019, Respondent saw Patient 8 in clinic for follow-up regarding her pneumonia diagnosis. During the appointment, Respondent used his stethoscope to listen to Patient 8's lungs. During the examination, Respondent placed the stethoscope under her left breast, to the side and near her left armpit. Respondent stopped what he was doing and asked Patient 8, "Did you have a breast augmentation?" Patient 8 told him yes and that she had it done when she 19 years old. Respondent replied that he didn't have that fact documented in Patient 8's medical records. After what seemed like an unusual and uncomfortable pause to Patient 8, Respondent then asked Patient 8, "Well, did they[13] get you the attention that you were looking for?" Patient 8 felt the comment was extremely inappropriate.

31. On October 1, 2019, during an investigative interview, Respondent was asked about Patient 8's January 7, 2019 visit to his office. Respondent stated, "And that[14], I can imagine having said that, that probably was – year, that –that—I—can't think that I would have—um—you know, that's probably insensitive of me. I don't think of that as offensive." Respondent stated that he didn't recall making the statement to Patient 8 but expressed that he was sorry if he had offended her.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

32. Respondent's license is subject to disciplinary action under Section 2234, subdivision (b), of the Code in that he committed gross negligence during the care of Patients 1, 2, 3, 4, 5, 6 and 7. The circumstances are set forth in paragraphs 9 through 28, which are incorporated by reference as if fully set forth herein. Additional circumstances are as follows:

33. Respondent's license is subject to disciplinary action because he committed gross negligence during the care and treatment of Patients 1, 2, 3, 4, 5, 6 and 7, in the following distinct and separate ways:

a. By failing to recognize that Patient 1's cirrhosis of the liver required an immediate transfer to a hospital with specialty care once Patient 1 refused hospice care because

[13] Referencing the breast augmentation.

[14] In response to the comment of, "Well did they get you the attention that you were looking for?"

the cirrhosis of liver represented an emergent condition that could not be treated at Sutter-Amador Hospital;

b. By failing to document any daily progress notes between July 17, 2018, and July 24, 2018, despite repeatedly evaluating and treating Patient 1's changing condition during Patient 1's hospital stay at Sutter Amador Hospital;

c. By failing to be within a reasonable arrival time of the hospital and by failing to transfer patient care to another medical provider while Patient 2 was in-patient at Sutter Amador Hospital;

d. By failing to be within a reasonable arrival time of the hospital and by failing to transfer patient care to another medical provider while Patient 3 was in-patient at Sutter Amador Hospital;

e. By failing to be within a reasonable arrival time of the hospital and by failing to transfer patient care to another medical provider while Patient 4 was in-patient at Sutter Amador Hospital;

f. By failing to be within a reasonable arrival time of the hospital and by failing to transfer patient care to another medical provider while Patient 5 was in-patient at Sutter Amador Hospital;

g. By failing to be within a reasonable arrival time of the hospital and by failing to transfer patient care to another medical provider while Patient 6 was in-patient at Sutter Amador Hospital; and,

h. By failing to recognize that Patient 7's third-degree heart block was a medical emergency that required immediate treatment by a cardiologist and necessitated an immediate transfer to a higher level of cardiac care than the care provided by Sutter-Amador Hospital.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

34. Respondent's license is subject to disciplinary action under Section 2234, subdivision (c), of the Code in that he committed repeated negligent acts during the care and treatment of Patients 1, 2, 3, 4, 5, 6, 7 and 8. The circumstances are set forth in paragraphs 9 through 33, which are incorporated by reference as if fully set forth herein. Each of the departures for gross negligence are also considered separate and distinct negligent acts. Additional circumstances are as follows:

a) By failing to document a progress note on December 16, 2018, while Patient 7 was not in the ICU under Respondent's direct care; and,

b) By making a sexually demeaning comment to Patient 8 while performing a chest examination on or about January 9, 2019.

THIRD CAUSE FOR DISCIPLINE

(Inaccurate and Inadequate Medical Records)

35. Respondent's license is subject to disciplinary action under Section 2266 of the Code in that he kept inaccurate and inadequate medical records during his care and treatment of Patients 1 and 7. The circumstances are set forth in paragraphs 9 through 34, which are incorporated by reference as if fully set forth herein.

CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

36. At all times after the effective date of Respondent's probation, Condition Number 9, Obey All Laws, stated in relevant part:

> "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 probation, payments, and other orders."

37. At all times after the effective date of Respondent's probation, Condition Number 15, Violation of Probation, stated in relevant part:

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"Failure to 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."

38. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, Obey all Laws, as referenced above, by repeatedly violating the Medical Practice Act while on probation. The facts and circumstances regarding this violation are set forth in Paragraphs 9 through 35, which are incorporated herein by reference.

DISCIPLINE CONSIDERATIONS

39. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about March 20, 2015, in a prior disciplinary action entitled, "In the Matter of the Accusation Against Richard Frederick Buss, M.D." before the Medical Board of California, in Case No. 02-2010-206541, Respondent's license was revoked, the revocation was stayed, and Respondent was placed on probation for five years for his gross negligence, repeated negligent acts, incompetence, and for failing to maintain adequate patient records, during his care and treatment of a patient. In that matter, Respondent was found to have improperly prescribed multiple controlled substances prior to the patient's death in which the cause of death was listed as polypharmacy. That decision is now final and a copy of that decision is attached as Exhibit A and is incorporated by reference.

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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 the probation that was granted by the Medical Board of California in Case No. 02-2010-206541 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's Certificate No. G 52995 issued to Richard Frederick Buss, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. G 52995, issued to Richard Frederick Buss, M.D.;

3. Revoking, suspending or denying approval of Richard Frederick Buss, M.D.'s authority to supervise physician's assistants and advanced practice nurses, pursuant to section 3527 of the Code;

4. If placed on probation, ordering Richard Frederick Buss, M.D., to pay the Board the costs of probation monitoring; and

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

DATED: FEB 25 2020

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

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EXHIBIT A

DECISION AND ORDER

Case No. 02-2010-206541

In the Matter of the Accusation Against

Richard Frederick Buss, M.D.

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

In the Matter of the Accusation Against:	)	
	)	
	)	
RICHARD FREDERICK BUSS, M.D.	)	Case No. 02-2010-206541
	)	
Physician's and Surgeon's Certificate No. G 52995	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

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 20, 2015.

IT IS SO ORDERED: February 18, 2015.

MEDICAL BOARD OF CALIFORNIA

By: _____
Jamie Wright, J.D., Chairperson
Panel A

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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: **RICHARD BUSS, M.D.** 13828 Gold Mine Road, Suite 5 Pine Grove, CA 95665-9494 Physician's and Surgeon's Certificate No. G 52995, Respondent.	Case No. 02-2010-206541 OAH No. 2011060097 **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. Kimberly Kirchmeyer (complainant) is the Executive Director of the Medical Board of California, and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Matthew M. Davis, Deputy Attorney General.

2. Richard Buss, M.D. (respondent), is represented in this proceeding by Robert B. Zaro, Esq., whose address is 1315 I Street, Suite 200, Sacramento, CA 95814.

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3. On or about July 12, 1984, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 52995 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought in Accusation No. 02-2010-206541, and will expire on January 31, 2016, unless renewed.

JURISDICTION

4. On April 20, 2011, Accusation No. 02-2010-206541 was filed before the Medical Board of California (Board), and is currently pending against respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on respondent on April 20, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 02-2010-206541 is attached hereto as Exhibit A and incorporated herein by reference as if dully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 02-2010-206541. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in Accusation No. 02-2010-206541; 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, having been fully advised of same by his attorney of record, Robert B. Zaro, Esq.

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

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CULPABILITY

8. Respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations in Accusation No. 02-2010-206541, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G 52995 to disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

9. 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 Medical Board of California, all of the charges and allegations contained in Accusation No. 02-2010-206541 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.

CONTINGENCY

10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this

paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

12. 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.

13. 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 and signatures shall have the same force and effect as originals.

14. 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. G 52995 issued to respondent Richard Buss, M.D., is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years from the effective date of this decision on the following terms and conditions:

1. **EDUCATION COURSE** Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 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.

Further, respondent shall complete an additional 25 CME Category I hours each year of probation in the area of family practice.

2. PRESCRIBING PRACTICES COURSE Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

3. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and

Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

4. **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. 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.

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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.

5. **CLINICAL TRAINING PROGRAM** Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). 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 program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice in which respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, 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, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. Determination as to whether respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

If respondent fails to enroll, participate in, or successfully complete the clinical training 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 training program have been completed. If the respondent did not successfully complete the clinical training 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. **PRACTICE MONITOR** 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.

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

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

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

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

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

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In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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** During probation, respondent is prohibited from supervising physician assistants.

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.

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11. **GENERAL PROBATION REQUIREMENTS**

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

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.

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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 in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non- practice. 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 a clinical training 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 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; and General Probation Requirements.

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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert B. Zaro, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 52995. 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: 12/19/2014

R Buss M.D.

RICHARD BUSS, M.D.
Respondent

I have read and fully discussed with respondent Richard Buss, 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: 12/19/14

Robert B Zaro

ROBERT B. ZARO, 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: 12/19/14

KAMALA D. HARRIS, Attorney General
of the State of California
THOMAS S. LAZAR,
Supervising Deputy Attorney General

MATTHEW M. DAVIS
Deputy Attorney General

Attorneys for Complainant

Exhibit A

Accusation No. 02-2010-206541

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO [illegible] 20 11
BY [illegible] ANALYST

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

In the Matter of the Accusation Against: **RICHARD BUSS, M.D.** 13828 Gold Mine Road, Suite 5 Pine Grove, CA 95665-9494 **Physician's and Surgeon's Certificate Number G52995** Respondent.	Case No. 02-2010-206541 ACCUSATION

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about July 12, 1984, the Medical Board of California issued Physician's and Surgeon's Certificate Number G52995 to Richard Buss, M.D. (Respondent). Said certificate is renewed and current with an expiration date of January 31, 2012.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division[1] deems proper.

5. Section 2234 of the Code states:

"The Division of Medical Quality 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 [Chapter 5, the Medical Practice Act].

"(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

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[1] California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, sections 2000, et seq.) means "Medical Board of California" and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

". . . ."

6. Section 2266 of the Code provides that, "[t]he failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)
[Bus. & Prof. Code § 2234(b)]

7. Respondent is subject to disciplinary action under section 2234(b) of the Code as follows:

8. On or about November 8, 2006, J.G.[2], a 32 year old female, began seeing Respondent for medical treatment due to migraine headaches. Respondent gave J.G. Morphine Sulfate (MS) 15 mg and Phenergan 25 mg on this date. Respondent also provided J.G. with a prescription for Norco 10 mg, 20 quantity, and Alprozolam 0.5 mg, 20 quantity. Respondent did not obtain prior medical records for J.G.

9. On or about December 20, 2006, J.G. saw Respondent for a migraine headache. Respondent gave the patient MS, 15 mg, and Phenergan, 25 mg, IM. On or about January 16, 2007, J.G. saw Respondent for a bad headache. The patient took Norco, but it was not helping to alleviate the headache she was experiencing. Respondent gave patient J.G. morphine sulfate (MS), 25 mg, IM. Respondent also prescribed J.G. Percocet. On or about January 17, 2007, J.G. returned to Respondent with a headache. Respondent's plan was morphine, 2 ml (30 mg) plus Phenergan, 25 mg, IM. Respondent prescribed Compazine as needed to J.G. for nausea.

10. On or about February 26, 2007, J.G. returned to see Respondent with a complaint of neck pain that grew into a headache. J.G. took some Norco which provided some relief to her. Respondent prescribed Flexeril to her, to be taken as needed. Respondent gave J.G. morphine 2

[2] Initials will be used to protect the confidentiality of the patient in question.

cc (30 mg) plus Phenergan, 25 mg, IM. On or about February 27, 2007, J.G. returned to Respondent with complaints of bad pain in her neck. Respondent gave her MS, 30 mg, plus Phenergan, 25 mg, IM. Respondent injected Lidocaine 2cc and TAC 40 mg in her neck. On or about February 28, 2007, J.G. returned to see Respondent again. Respondent noted that J.G. had increased blood pressure. Respondent was provided information at this visit that J.G. had been seen by a neurologist. Respondent made no attempt to make contact with this neurologist, at any point. Respondent gave J.G. a trial of Inderal, 20 mg, for blood pressure. Respondent also gave her MS, 3 ml, plus Phenergan, 25 mg, IM.

11. On or about March 12, 2007, J.G. came to see Respondent again. Respondent did not take J.G.'s blood pressure during this visit, despite the patient having high blood pressure during her last visit.

12. On or about April 2, 2007, J.G. had a patient visit with Respondent. J.G. complained of a headache that she had since the previous day. Respondent gave the patient MS 30 mg, Phenergan 25 mg, and Prozac. On or about April 3, 2007, J.G. returned to Respondent's office complaining that her headache had returned. The patient took Norco that morning. Respondent gave the patient MS 30 mg, Phenergan 25 mg, and Depakote.

13. On or about April 13, 2007, J.G. had a patient visit with Respondent. J.G. complained of having a stiff neck. Respondent injected J.G.'s neck with Lidocaine 2cc and TAC 40 mg.

14. On or about May 7, 2007, J.G. came to Respondent's office complaining of having a bad headache. Respondent gave the patient MS 30 mg and Phenergan 25 mg. About 3 1/2 hours later, the patient returned to see Respondent complaining of having a headache. Respondent gave J.G. MS 37.5 mg and Phenergan 25 mg. Respondent gave the patient this additional medication again because it had been three hours, and the patient had the same pain as before.

15. On or about May 14, 2007, J.G. went to see Respondent. The patient indicated that she was "losing it" and that she was "still very stressed;" J.G. had three children at home. Respondent gave the patient Lexapro, MS 30 mg, and Phenergan 25 mg.

16. On or about June 29, 2007, J.G. visited Respondent and complained of having a headache that would not go away. Respondent prescribed her Compazine. Respondent gave J.G. MS 37 mg, Phenergan 25 mg, and triamcinolone 40 mg. He also prescribed Dilaudid for the patient. Following this visit, Respondent believes that the patient's headache continued so she went to the emergency room and had a CT scan later that same day.

17. On or about August 1, 2007, J.G. returned to see Respondent complaining of having a headache for the past two days. Respondent gave the patient MS 37.5 mg and Phenergan 25 mg. Approximately 4 hours later, J.G. returned with pain and Respondent gave her MS 45 mg and Phenergan 50 mg.

18. On or about August 24, 2007, J.G. visited Respondent and complained of having a headache since the previous day. Respondent gave her MS 30 mg and Phenergan 25 mg.

19. On or about October 9, 2007, J.G. returned and complained of having a headache since the previous day. Respondent gave the patient MS 30 mg and Phenergan 25 mg. Respondent gave J.G. Norvasc to attempt to prevent her migraine headaches. She was still taking Lexapro and Xanax at the time.

20. On or about October 10, 2007, J.G. complained of the same headache as the previous day. Respondent gave the patient MS 45 mg and Phenergan 25 mg.

21. On or about October 30, 2007, J.G. returned to see Respondent. During this visit, Respondent first learned about J.G. being seen at a mental health facility. Respondent did not obtain any medication list from that mental health facility.

22. On or about November 1, 2007, J.G. met Respondent at his home, where Respondent gave J.G. a MS injection. The following day, on or about November 2, 2007, J.G. visited Respondent. At this visit, Respondent gave J.G. MS 45 mg and Phenergan 25 mg. Respondent also prescribed J.G. Verapamil 40 mg, Soma, and Dilaudid 4 mg. Respondent does not know how much Soma he prescribed to J.G.

23. On or about November 27, 2007, J.G. came to Respondent complaining of a headache that started the previous day. Respondent gave the patient MS 45 mg and Phenergan 25 mg.

Respondent also gave the patient a Fentanyl patch 50 mg. Respondent did not give J.G. any less potent 25 mg Fentanyl patches.

24. On or about November 28, 2007, J.G. returned to see Respondent, complaining that her headache was 100 times worse than before. J.G. indicated that the headache continued despite her wearing the Fentanyl patch. Respondent gave the patient MS 30 mg and Phenergan 25 mg. He also prescribed the patient Dilaudid 2 mg, 40 quantity, to use if J.G.'s pain continued. Respondent gave J.G. a second Fentanyl patch 50 mg for use if her migraine pain continued over that weekend. The Fentanyl patches Respondent gave to J.G. had been returned to him from a prior patient six months to one year earlier. Respondent re-issued these Fentanyl patches to J.G. Respondent is unsure is to whether he provided J.G. with the information insert to the Fentanyl patch box. Fentanyl patches are not supposed to be used for migraine headaches.

25. On or about November 29, 2007, J.G. was found unresponsive in her home, and was later declared dead in the emergency room. J.G. died with two Fentanyl 50 mcg/hr patches on her abdomen. The cause of death was listed as polypharmacy.

26. In the six months from May 1, 2007 until J.G.'s date of death on November 29, 2007, prescription records from Pine Cone Drug (Pine) and CVS Pharmacy (CVS) indicate that Respondent prescribed J.G. the following:

(a) Respondent prescribed phentermine 30 mg #30 on July 26, 2007, September 11, 2007, October 17, 2007, and November 27, 2007. Respondent prescribed several anti-depressants during this time: fluoxetine 20 mg 2 daily on May 2, 2007 and November 12, 2007, and Lexapro samples on May 14, 2007 and June 27, 2007.

(b) Respondent prescribed muscle relaxant carisoprodol (Soma) on a number of occasions: on June 2, 2007 from CVS for Soma 350 mg #40, on June 8, 2007 from Pine for Soma 350 mg #30, on July 2, 2007 from CVS for Soma 350 mg #40, on July 16, 2007 from CVS for Soma 350 mg #40, July 30, 2007 from CVS for Soma 350 mg #40, on August 20, 2007 from CVS for Soma 350 mg #40, on August 31, 2007 from CVS for Soma 350 mg #40, on September 17, 2007 from CVS for Soma 350 mg #40, on

October 6, 2007 from CVS for Soma 350 mg #40, on November 2, 2007 from Pine for Soma 350 mg #40 and on November 27, 2007 from Pine for Soma 350 mg #40.

(c) Respondent prescribed benzodiazepines on numerous occasions for J.G. during this time period. The records from Pine and CVS documented prescriptions filled on May 2, 2007, May 17, 2007, June 8, 2007, June 25, 2007 at Pine for Alprazolam 1 mg #40; on July 3, 2007, July 17, 2007, and July 30, 2007 at CVS for Lorazepam 1 mg #30; on August 1, 2007, August 20, 2007, September 4, 2007, September 25, 2007, October 8, 2007, October 17, 2007, and October 29, 2007 at Pine for Alprazolam 1 mg #40; on October 31, 2007, and November 18, 2007 at CVS for Alprazolam 1 mg #60, and on November 27, 2007 at Pine for Alprazolam 1 mg #40.

(d) Respondent prescribed narcotics for J.G.'s pain. At CVS, Hydrocodone/APAP 10/325 #30 on May 29, 2007, June 20, 2007, June 26, 2007, and July 2, 2007. Also on July 2, 2007, J.G. obtained Hydrocodone/APAP 5/500 #15 prescribed by Dr. Popke at Pine. J.G. again obtained Hydrocodone/APAP 10/325 #30 on July 16, 2007 and July 30, 2007 at CVS.

(e) J.G. was prescribed Hydromorphine (Dilaudid) for pain by Respondent. From Pine, J.G. obtained Dilaudid 4 mg #30 on August 1, 2007; Dilaudid 2 mg #24 on August 8, 2007; Dilaudid 2 mg #40 on October 9, 2007; Dilaudid 4 mg #40 on November 2, 2007; and Dilaudid 2 mg #40 on November 28, 2007.

27. The toxicology report from Central Valley Toxicology dated December 5, 2007, showed that Alprazolam, Flouxetine, Norfluoxetine, Morphine, Fentanyl, and Meprobamate (a metabolite of carisoprodol) were all detected in the peripheral blood obtained from J.G. in the emergency room on the morning she died.

28. Respondent is subject to disciplinary action pursuant to section 2234(b) of the Code, in that his treatment of J.G. was grossly negligent as follows:

(a) Respondent's administering some treatments to J.G. in the parking lot and/or his home was an extreme departure from the standard of care;

(b) Respondent's treatment of J.G.'s estrogen related migraine headaches was an extreme departure from the standard of care;

(c) Respondent's failure to institute preventive measures for migraines at an early stage of care regarding J.G. or to utilize proven measures for sufficient time was an extreme departure from the standard of care;

(d) Respondent's failure to use proven therapies for acute migraine and to utilize instead oral and injected narcotics for J.G. was an extreme departure from the standard of care;

(e) Respondent's failure to obtain a history from J.G. or information from previous or current physicians and providers of mental health care to J.G. was an extreme departure from the standard of care;

(f) Respondent's prescribing multiple addicting substances in excessive amounts on multiple occasions to J.G. was an extreme departure from the standard of care;

(g) Respondent's dispensing of Fentanyl patches to J.G. was an extreme departure from the standard of care;

(h) Respondent's dispensing to J.G. Fentanyl patches (an opioid) that had been returned by a previous patient was an extreme departure from the standard of care;

(i) Respondent's use of opioids from another patient on J.G., and not disposing of them initially when he received them from the previous patient, was an extreme departure from the standard of care; and,

(j) Respondent's failure to even attempt to mandate at least one consultation with a neurologist and/or pain specialist and/or orthopedic specialist in regards to J.G. was an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)
[Bus. & Prof. Code § 2234(c)]

29. Respondent is subject to disciplinary action under section 2234(c) of the Code as follows:

30. Paragraphs 7 through 28 are incorporated herein by reference.

31. Respondent is subject to disciplinary action pursuant to Code section 2234(c) in that he was repeatedly negligent in his treatment of J.G., as follows:

(a) Respondent failed to establish a pain management agreement with J.G.;

(b) Respondent failed to have any urine screens done regarding J.G.;

(c) Respondent administered some treatments to J.G. in the parking lot and/or his home;

(d) Respondent treatment of J.G.'s estrogen related migraine headaches was poor;

(e) Respondent failed to institute preventive measures for J.G.'s migraines at an early stage of care or to utilize proven measures for sufficient time;

(f) Respondent failed to use proven therapies for acute migraine and instead utilized oral and injected narcotics for J.G.;

(g) Respondent failed to obtain a history from J.G. or information from previous or current physicians and providers of mental health care;

(h) Respondent prescribed multiple addicting substances in excessive amounts on multiple occasions to J.G.;

(i) Respondent gave J.G. Fentanyl patches (an opioid) that had been returned by a previous patient;

(j) Respondent gave Fentanyl patches, a potent narcotic, to J.G.;

(k) Respondent failed to dispose of the returned Fentanyl patches initially when he received them from the previous patient; and,

(l) Respondent failed to even attempt to mandate at least one consultation with a neurologist and/or pain specialist and/or orthopedic specialist in regards to J.G.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)
[Bus. & Prof. Code § 2234(d)]

32. Respondent is subject to disciplinary action under section 2234(d) of the Code as follows:

33. Paragraphs 7 through 28 are incorporated herein by reference.

34. Respondent is subject to disciplinary action pursuant to Code section 2234(d) in that he was incompetent in his treatment of J.G., as follows:

(a) Respondent's treatment of J.G.'s estrogen related migraine headaches demonstrates a lack of knowledge in the treatment of migraine headaches;

(b) Respondent's failure to institute preventive measures for migraines at an early stage of care regarding J.G. or to utilize proven measures for sufficient time demonstrates a lack of knowledge in the treatment of migraine headaches;

(c) Respondent's failure to use proven therapies for acute migraines and to utilize instead oral and injected narcotics for J.G. demonstrates a lack of knowledge in the treatment of migraine headaches;

(d) Respondent's failure to obtain a history from J.G. or information from previous or current physicians and providers of mental health care to J.G., and his failure to monitor phentermine and to recognize that phentermine and carisoprodol might exacerbate migraine headaches, demonstrate a lack of knowledge in using these drugs and the treatment of migraine headaches; and,

(e) Respondent's dispensing of Fentanyl patches to J.G. demonstrates a lack of knowledge in dispensing this potent narcotic.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Accurate and Adequate Records of Provided Services)
[Bus. & Prof. Code § 2266]

35. Respondent is subject to disciplinary action under section 2266 of the Code as follows:

36. Paragraphs 7 through 28 are incorporated herein by reference.

37. Respondent is subject to disciplinary action pursuant to Code section 2266 in that he failed to maintain accurate and adequate records regarding his treatment and care of J.G., including some of his prescriptions to her for Soma, and on what occasions he saw and/or treated J.G. at his home and/or in the parking lot.

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 G52995, issued to Richard Buss, M.D.;

2. Revoking, suspending or denying approval of Richard Buss, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Richard Buss, M.D., to pay the Medical Board of California the costs of probation monitoring, if probation is imposed;

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

DATED: April 20, 2011

LINDA K. WHITNEY
Executive Director
Medical Board of California
State of California
Complainant

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