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

In the Matter of the Accusation Against: Kenneth Carl Russ, M.D. Physician's & Surgeon's Certificate No A48224 Respondent	Case No. 800-2018-046138

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 26, 2021.

IT IS SO ORDERED February 25, 2021

MEDICAL BOARD OF CALIFORNIA

By: Richard E. Thorp MD

Richard E. Thorp, M.D., Chair
Panel B

XAVIER BECERRA
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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: **KENNETH CARL RUSS, M.D.** **490 South Farrell Drive, Suite C 106** **Palm Springs, CA 92262** **Physician's and Surgeon's Certificate No. A 48224,** Respondent.	Case No. 800-2018-046138 OAH No. 2020070548 **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). This action was previously brought by Christine J. Lally solely in her prior official capacity as Interim Executive Director of the Board. Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Giovanni F. Mejia, Deputy Attorney General.

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2. Respondent Kenneth Carl Russ, M.D. (Respondent) is represented in this proceeding by attorneys Dennis K. Ames, Esq. and Pogey Henderson, Esq., whose address is: La Follette, Johnson, DeHaas, Fesler & Ames, 2677 North Main Street, Suite 901, Santa Ana, CA 92705.

3. On or about April 30, 1990, the Board issued Physician's and Surgeon's Certificate No. A 48224 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2018-046138, and will expire on March 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-046138 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 23, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-046138 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2018-046138. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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CULPABILITY

9. Respondent agrees that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2018-046138, and Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that if an accusation and/or petition to revoke probation is filed against him before the Board, or, if he ever petitions for early termination or modification of any term or condition of probation, all of the charges and allegations contained in Accusation No. 800-2018-046138 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.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and to be bound by the Disciplinary Order below, and that failure to comply with the Disciplinary Order shall constitute unprofessional conduct and grounds for further disciplinary action.

CONTINGENCY

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

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ADDITIONAL PROVISIONS

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

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

1. PUBLIC REPRIMAND. IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 48224 issued to Respondent Kenneth Carl Russ, M.D. is hereby publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a), paragraph (4). This public reprimand, which is issued in connection with Respondent's care and treatment of patients as set forth in Accusation No. 800-2018-046138, is as follows:

> You committed repeated negligent acts in violation of Business and Professions Code section 2234, subdivision (c) related to your prescribing of controlled substances to patients as more particularly set forth in Accusation No. 800-2018-046138.

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

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

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

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

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Dennis K. Ames, Esq. or Pogey Henderson, Esq., or both. 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: 1.27.21

KENNETH CARL RUSS, M.D.
Respondent

I have read and fully discussed with Respondent Kenneth Carl Russ, 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: 1/27/2021

DENNIS K. AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: January 28, 2021

Respectfully submitted,

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

GIOVANNI F. MEJIA
Deputy Attorney General
Attorneys for Complainant

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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: **Kenneth Carl Russ, M.D.** 490 South Farrell Drive, Suite C 106 Palm Springs, CA 92262, **Physician's and Surgeon's Certificate No. A 48224,** Respondent.	Case No. 800-2018-046138 **A C C U S A T I O N**

PARTIES

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

2. On or about April 30, 1990, the Medical Board issued Physician's and Surgeon's Certificate No. A 48224 to Kenneth Carl Russ, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2020, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2234 of the Code, states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> ...
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

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(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.

....

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

6. Respondent Kenneth Carl Russ, M.D. has subjected his Physician's and Surgeon's Certificate No. A 48224 to disciplinary action under section 2234, as defined by section 2234, subdivision (c), of the Code in that in that he committed repeated negligent acts in his care and treatment of one or more patients. The circumstances are as follows:

Patient A

7. On multiple occasions beginning in or around 2007,[1] Respondent rendered medical care and treatment to "Patient A,"[2] an adult female patient with a history of ailments including, but not limited to, kidney stones, urinary tract infections and ureteral and bladder spasms.

8. On multiple occasions in or around August 2015 to January 2020, Respondent issued a prescription for Norco[3] 10 mg/325 mg, in a quantity corresponding to approximately eight to twelve tablets per day, to Patient A for chronic pain.

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[1] Any act or omission of Respondent alleged herein to have occurred more than seven years prior to the filing of the instant Accusation is included for informational purposes only, and is not alleged as a basis for disciplinary action.

[2] Patients' true names are not used in the instant Accusation to maintain patient confidentiality. The patients' true identities are known to Respondent or will be disclosed to Respondent upon receipt of a duly-issued request for discovery in accordance with Government Code section 11507.6.

[3] Norco is a brand name for the drug combination of hydrocodone (5 mg, 7.5 mg, or 10 mg) and acetaminophen (325 mg). It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone belongs to a class of drugs known as opioids. When properly prescribed and indicated, it is used for the treatment of moderate to moderately severe pain.

9. Respondent's medical records for Patient A fail to document the establishment or existence of an adequate opioid therapy treatment plan during the course of Respondent's prescribing of Norco to Patient A in or around August 2015 to January 2020.

10. Respondent's medical records for Patient A fail to document that Respondent obtained adequate informed consent from Patient A for long-term opioid therapy during the course of Respondent's prescribing of Norco to Patient A in or around August 2015 to January 2020.

11. Respondent's medical records for Patient A fail to document that Respondent adequately counseled Patient A regarding the overdose risks of opioid therapy during the course of Respondent's prescribing of Norco to Patient A in or around August 2015 to January 2020.

12. In or around August 2015 to January 2020, Respondent committed negligent acts related to his prescribing of Norco to Patient A for chronic pain including, but not limited to, failing to adequately:

(a) Establish or document a treatment plan and objectives for opioid therapy;

(b) Obtain or document informed consent for long-term opioid therapy; or

(c) Counsel or document counseling of the patient regarding the risks of opioid overdose.

Patient B

13. On multiple occasions beginning on or about January 6, 2012, Respondent rendered medical care and treatment to "Patient B," an adult female patient with a history of ailments including, but not limited to, chronic pain related to orthopedic deformities resulting from post-polio syndrome.

14. On multiple occasions in or around January 2012 to January 2020, Respondent issued a prescription for Norco 10 mg/325 mg to Patient B, in a quantity corresponding to approximately eight to ten tablets per day, to Patient B for chronic pain.

15. Respondent's medical records for Patient B fail to document the establishment or existence of an adequate opioid therapy treatment plan during the course of Respondent's prescribing of Norco to Patient B in or around January 2012 to January 2020.

16. Respondent's medical records for Patient B fail to document that Respondent obtained adequate informed consent from Patient B for long-term opioid therapy during the course of Respondent's prescribing of Norco to Patient B in or around January 2012 to January 2020.

17. Respondent's medical records for Patient B fail to document that Respondent adequately counseled Patient B regarding the overdose risks of opioid therapy during the course of Respondent's prescribing of Norco to Patient B in or around January 2012 to January 2020.

18. In or around January 2012 to January 2020, Respondent committed negligent acts related to his prescribing of Norco to Patient B for chronic pain including, but not limited to, failing to adequately:

(a) Establish or document a treatment plan and objectives for opioid therapy;

(b) Obtain or document informed consent for long-term opioid therapy; or

(c) Counsel or document counseling of the patient regarding the risks of opioid overdose.

Patient C

19. On multiple occasions beginning in or around 2006, Respondent rendered medical care and treatment to "Patient C," a male adult patient with a history of ailments including, but not limited to, chronic pain, degenerative disc disease, degenerative joint disease, and opioid dependence.

20. On multiple occasions in or around November 2010 to January 2020, Respondent issued an opioid prescription to Patient C for chronic pain. This included, but was not limited to, the issuance of multiple prescriptions for methadone,[4] in quantities ranging from approximately 60 mg to 150 mg per day.

21. Respondent's medical records for Patient C fail to document that Respondent obtained adequate informed consent from Patient C for long-term opioid therapy during the

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[4] Methadone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.

course of Respondent's prescribing of opioids to Patient C in or around November 2010 to January 2020.

22. Respondent's medical records for Patient C fail to document that Respondent adequately counseled Patient C regarding the overdose risks of opioid therapy during the course of Respondent's prescribing of opioids to Patient C in or around November 2010 to January 2020.

23. In or around November 2010 to January 2020, Respondent committed negligent acts related to his prescribing of one or more controlled substance medications to Patient C for pain including, but not limited to, failing to adequately:

(a) Obtain or document informed consent for long-term opioid therapy; or

(b) Counsel or document counseling of the patient regarding the risks of opioid overdose.

SECOND CAUSE FOR DISCIPLINE

(Violating the Medical Practice Act)

24. Respondent Kenneth Carl Russ, M.D. has further subjected his Physician's and Surgeon's Certificate No. A 48224 to disciplinary action under section 2234, as defined by section 2234, subdivision (a), of the Code in that he violated or attempted to violate, directly or indirectly, one or more provisions of the Medical Practice Act as more particularly alleged in paragraphs 6 to 23, above, which are hereby incorporated by reference as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

25. To determine the degree of discipline, if any, to be imposed on Respondent Kenneth Carl Russ, M.D., Complainant alleges that on or about February 17, 2012, in a prior disciplinary action titled *In the Matter of the Accusation Against Kenneth Russ, M.D.* before the Medical Board of California, in Case No. 17-2008-189728, the Board issued a decision and disciplinary order whereby it publicly reprimanded Respondent's Physician's and Surgeon's Certificate No. A 48224 as follows:

> During the interval between February 2008 and October 2008 you were the sole physician practicing medicine at the PMS Treatment Clinic, a medical clinic owned and operated by Helen Anderson, a person not licensed to render professional

services. Your practice of medicine at the PMS Treatment Clinic promoted and furthered the corporate practice of medicine, in violation of both the Moscone-Knox Professional Corporation Act and the Medical Practice Act, which constitutes unprofessional conduct.

That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 48224, issued to Respondent Kenneth Carl Russ, M.D.;

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

3. Ordering Respondent Kenneth Carl Russ, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: MAR 23 2020

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