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

In the Matter of the Accusation Against **Britton Ashley Arey, MD.** **Physician's and Surgeons License No. A 90838** **Respondent.**	**Case No. 800-2016-028555**

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 April 2, 2021.

IT IS SO ORDERED: March 3, 2021.

MEDICAL BOARD OF CALIFORNIA

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

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: **BRITTON ASHLEY AREY, M.D.** **950 South Coast Drive, Suite 235** **Costa Mesa, CA 92626** **Physician's and Surgeon's Certificate No. A 90838** Respondent.	Case No. 800-2016-028555 OAH No. 2020010370 **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).[1] This action was brought by then Complainant Christine J. Lally, Interim Executive Director, solely in her official capacity. Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by LeAnna E. Shields, Deputy Attorney General.

[1] Mr. Prasifka became the Executive Director of the Medical Board on June 15, 2020.

2. Respondent Britton Ashley Arey, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, Esq., with Doyle Schafer McMahon, LLP, whose address is: 5440 Trabuco Road, Irvine, CA 92620.

3. On or about April 13, 2005, the Board issued Physician's and Surgeon's Certificate No. A 90838 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. 800-2016-028555, and will expire on March 31, 2021, unless renewed.

JURISDICTION

4. On November 21, 2019, Accusation No. 800-2016-028555 was filed before the Board, and is currently pending against Respondent. On November 21, 2019, a true and correct copy of Accusation No. 800-2016-028555 and all other statutorily required documents were properly served on Respondent. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A true and correct copy of Accusation No. 800-2016-028555 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2016-028555. Respondent has also carefully read, fully discussed with her counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her 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 her; the right to present evidence and to testify on her 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. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to each and every charge and allegation contained in Accusation No. 800-2016-028555 and agrees that she has thereby subjected her Physician's and Surgeon's Certificate No. A 90838 to disciplinary action.

10. Respondent further agrees that if an accusation is ever filed against her before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2016-028555 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 her Physician's and Surgeon's Certificate No. A 90838 is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. 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 she may not withdraw her agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

13. 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 does not, in its discretion, 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 this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, 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

14. 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.

15. 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 shall have the same force and effect as originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 90838 issued to Respondent BRITTON ASHLEY AREY, M.D., is hereby revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years 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.

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. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after

Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

4. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

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, 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, billing appropriately or both. 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. PROHIBITED PRACTICE. During probation, Respondent is prohibited from prescribing controlled substances to Respondent's family members or herself.

7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

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

9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility. This section will not prevent telemedicine practice due to, or resulting from, the COVID-19 pandemic.

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.

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

12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Board'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.

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

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California and delivered to the Board or its designee no later than January 31 of each calendar year.

18. 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 No. 800-2016-028555 shall be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 90838. 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: 1/20/2021

BRITTON ASHLEY AREY, M.D.
Respondent

I have read and fully discussed with Respondent Britton Ashley Arey, 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: January 21, 2021

RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: Jan. 21, 2021

Respectfully submitted,

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

LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-028555

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov. 21 2019
BY D. ESPERNIA ANALYST

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

In the Matter of the Accusation Against: **BRITTON ASHLEY AREY, M.D.** 950 South Coast Drive, Suite 235 Costa Mesa, CA 92626 Physician's and Surgeon's Certificate No. A90838, Respondent.	Case No. 800-2016-028555 **ACCUSATION**

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 13, 2005, the Medical Board issued Physician's and Surgeon's Certificate No. A90838 to Britton Ashley Arey, 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, 2021, 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.

(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.

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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.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

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

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

7. Respondent has subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that she has committed gross negligence in her care and treatment of one or more patients.[1] The circumstances are as follows:

Patient A

8. In or around January 2014, Respondent began providing care and treatment to a then 69-year-old female family member, Patient A, who reportedly complained of pain and anxiety due to reported traumatization from prior cancer treatment.

9. From in or around January 2014 through in or around December 2015, Respondent regularly prescribed high amounts of opioids[2] and benzodiazepines[3] to Patient A, including, but

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[1] Patient identities have been withheld for patient privacy purposes. Respondent is aware of the identities of the patients referred to herein.

[2] Opioids are Schedule II controlled substances pursuant to Health and Safety Code section 11055, subdivision (c), and are dangerous drugs pursuant to Business and Professions Code section 4011. When properly prescribed and indicated, they are generally used for pain management. All opioids carry a Black Box Warning that states, in part, "assess opioid abuse or addiction risk prior to prescribing; monitor all patients for misuse, abuse, and addiction." The combination of opioids with benzodiazepines is among the most common causes of death due to prescription drug overdose. The Black Box Warning for opioids states, "Concomitant opioid use with benzodiazepines... may result in profound sedation, respiratory depression, coma, and death; reserve concomitant use for patients with inadequate alternative treatment options; limit to minimum required dosage and duration."

[3] Benzodiazepines are Schedule IV controlled substances pursuant to Health and Safety Code section 11057, subdivision (d), and are dangerous drugs pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, they are used for the management of anxiety disorders or for the short-term relief of anxiety.

not limited to: hydrocodone/acetaminophen,[4] oxycodone/acetaminophen,[5] alprazolam,[6] clonazepam,[7] and promethazine.[8]

10. Respondent failed to perform and/or document the performance of a complete history and physical examination of Patient A to rule out any medical etiology for Patient A's anxiety and pain.

11. Respondent failed to coordinate and/or document any coordination of care with Patient A's oncologist or a pain management specialist.

12. Respondent failed to perform and/or document the performance of a full mental status exam of Patient A.

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[4] The drug combination of hydrocodone and acetaminophen, brand names Vicodin and Norco, 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. When properly prescribed and indicated, it is used for the treatment of moderate to moderately severe pain. The DEA has identified opioids, such as hydrocodone, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2017 Edition), at p. 38.)

[5] The drug combination of oxycodone/acetaminophen, brand name Percocet, 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. Oxycodone belongs to a class of drugs known as opioids. When properly prescribed and indicated, it is used for the treatment of moderate to severe pain.

[6] Alprazolam, brand name Xanax, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. Alprazolam is a short-acting benzodiazepine. When properly prescribed and indicated, it is commonly used to relieve anxiety.

[7] Clonazepam, brand name Klonopin, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an anti-anxiety medication in the benzodiazepine family.

[8] Promethazine with codeine phosphate, brand name Phenergan, is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is commonly used to treat nausea and vomiting.

13. Respondent failed to review and/or document her review of Patient A's California Controlled Substance Utilization Review and Evaluation System (CURES)[9] patient activity report.

14. From on or about January 2014 through on or about December 2015, the CURES database lists regular prescriptions for several controlled substances as having been issued by Respondent and filled to Patient A, as follows:

Date Filled	Drug Name	Strength	Qty	Days Supply
01/13/14	Promethazine HCL / Codeine Phosphate	6.25-10/5	240	5
01/13/14	Hydrocodone / acetaminophen	10/325	90	15
01/27/14	Hydrocodone / acetaminophen	10/325	90	15
01/27/14	Alprazolam	0.5 mg	90	30
02/09/14	Hydrocodone / acetaminophen	10/325	90	17
02/23/14	Oxycodone / acetaminophen	10/325	90	22
03/12/14	Alprazolam	0.5 mg	90	30
04/05/14	Promethazine HCL / Codeine Phosphate	6.25-10/5	240	8
04/24/14	Alprazolam	0.5 mg	90	30
06/02/14	Alprazolam	0.5 mg	90	30
09/23/14	Alprazolam	0.5 mg	90	30
11/17/14	Hydrocodone / acetaminophen	7.5/300	60	10
11/17/14	Alprazolam	0.5 mg	90	30

[9] The Controlled Substance Utilization Review and Evaluation System (CURES) is a program operated by the California Department of Justice (DOJ) to assist health care practitioners in their efforts to ensure appropriate prescribing of controlled substances, and law enforcement and regulatory agencies in their efforts to control diversion and abuse of controlled substances. (Health & Saf. Code, § 11165.) California law requires dispensing pharmacies to report to the DOJ the dispensing of Schedule II, III, and IV controlled substances as soon as reasonably possible after the prescriptions are filled. (Health & Saf. Code, § 11165, subd. (d).) It is important to note that the history of controlled substances dispensed to a specific patient based on the data contained in CURES is available to a health care practitioner who is treating that patient. (Health & Saf. Code, § 11165.1, subd. (a).)

Date Filled	Drug Name	Strength	Qty	Days Supply
12/21/14	Alprazolam	0.5 mg	90	30
01/25/15	Alprazolam	0.5 mg	90	30
01/26/15	Hydrocodone / acetaminophen	7.5/300	60	5
02/18/15	Alprazolam	1 mg	60	30
03/13/15	Alprazolam	1 mg	90	30
04/10/15	Alprazolam	1 mg	90	30
04/10/15	Hydrocodone / acetaminophen	7.5/300	60	10
05/09/15	Alprazolam	1 mg	90	30
06/01/15	Clonazepam	1 mg	60	30
06/08/15	Alprazolam	1 mg	90	30
07/04/15	Clonazepam	1 mg	60	30
07/06/15	Alprazolam	1 mg	90	30
07/14/15	Hydrocodone / acetaminophen	7.5/300	60	10
08/03/15	Alprazolam	1 mg	90	30
08/10/15	Clonazepam	1 mg	60	30
09/01/15	Alprazolam	1 mg	90	30
09/30/15	Alprazolam	1 mg	90	30
10/31/15	Alprazolam	1 mg	90	30
11/13/15	Clonazepam	1 mg	60	30
12/15/15	Alprazolam	1 mg	90	30

15. Respondent committed gross negligence in her care and treatment of Patient A, which included, but is not limited to:

A. Paragraphs 8 through 14, above, are hereby incorporated by reference and realleged as if fully set forth herein;

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B. Respondent provided care and treatment to Patient A over an extended period of time without performing and/or documenting the performance of an adequate history and physical examination, a full mental status examination, coordination of care with Patient A's oncologist, consultation with a pain management specialist, or timely referral to another healthcare provider to assume care and treatment of Patient A's health issues;

C. Respondent prescribed a combination of benzodiazepines and opiates to Patient A over an extended period of time without reviewing and/or documenting a review of Patient A's CURES patient activity report, and without obtaining and/or documenting an agreement regarding the prescribing of controlled substances to Patient A; and

D. Respondent provided care and treatment to Patient A over an extended period of time in an area of medicine, specifically, oncology and pain management, for which Respondent did not possess adequate training and experience.

Patient B

16. In or around January 2014, Respondent began providing care and treatment to a then 49-year-old male family member, Patient B, who reportedly complained of pain due to orthopedic knee pain.

17. From in or around January 2014 through in or around December 2015, Respondent regularly prescribed high amounts of opioids and benzodiazepines to Patient B, including, but not limited to, hydrocodone/acetaminophen, alprazolam, clonazepam, zolpidem tartrate,[10] suboxone,[11] eszopiclone.[12]

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[10] Zolpidem Tartrate, brand name Ambien, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. Ambien is a benzodiazepine analog. When properly prescribed and indicated, it is commonly used to treat insomnia.

[11] Suboxone is a brand name for buprenorphine and naloxone, and is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

[12] Eszopiclone, brand name Lunesta, is a Schedule IV controlled substance pursuant to the Federal Register, and a dangerous drug pursuant to Business and Professions Code section 4022. Lunesta is a hypnotic agent approved for the long term treatment of insomnia.

18. Respondent failed to perform and/or document the performance of a complete history and physical examination, including a complex orthopedic exam, of Patient B, to determine the nature and etiology of Patient B's complaints.

19. Respondent failed to coordinate and/or document any coordination of care with Patient B's orthopedist or a pain management specialist.

20. Respondent failed to review and/or document her review of Patient B's CURES patient activity report.

21. From on or about July 2014 through on or about April 2015, the CURES database lists regular prescriptions for several controlled substances as having been issued by Respondent and filled to Patient B, as follows:

Date Filled	Drug Name	Strength	Qty	Days Supply
07/07/14	Eszopiclone	3 mg	30	30
07/07/14	Suboxone	8mg/2mg	90	30
07/07/14	Alprazolam	0.5 mg	90	30
08/03/14	Suboxone	8mg/2mg	90	30
08/03/14	Alprazolam	0.5 mg	90	30
08/04/14	Eszopiclone	3 mg	30	30
08/21/14	Zolpidem Tartrate	12.5 mg	30	30
08/21/14	Clonazepam	0.5 mg	120	30
08/21/14	Hydrocodone / acetaminophen	7.5/300	90	15
09/20/14	Zolpidem Tartrate	12.5 mg	30	30
09/20/14	Clonazepam	0.5 mg	120	30
09/24/14	Alprazolam	0.5 mg	90	30
10/26/14	Alprazolam	0.5 mg	90	30
10/26/14	Suboxone	8mg/2mg	90	30
11/17/14	Clonazepam	0.5 mg	90	30

Date Filled	Drug Name	Strength	Qty	Days Supply
12/04/14	Alprazolam	0.5 mg	90	30
12/14/14	Suboxone	8mg/2mg	90	30
12/21/14	Clonazepam	0.5 mg	90	30
01/02/15	Alprazolam	0.5 mg	90	30
01/24/15	Clonazepam	0.5 mg	60	30
03/12/15	Clonazepam	05. mg	60	30
04/10/15	Clonazepam	05. mg	60	30

22. Respondent committed gross negligence in her care and treatment of Patient B, which included, but is not limited to:

A. Paragraphs 16 through 21, above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent provided care and treatment to Patient B over an extended period of time without performing and/or documenting the performance of an adequate history and physical examination, an orthopedic exam, coordination of care with Patient B's orthopedist, consultation with a pain management specialist, or timely referral to another healthcare provider to assume care and treatment of Patient B's health issues;

C. Respondent prescribed a combination of benzodiazepines and opiates to Patient B over an extended period of time without reviewing and/or documenting a review of Patient B's CURES patient activity report, and without obtaining and/or documenting an agreement regarding the prescribing of controlled substances to Patient B; and

D. Respondent provided care and treatment to Patient B over an extended period of time in an area of medicine, specifically, orthopedics and pain management, for which Respondent did not possess adequate training and experience.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

23. Respondent has further subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that she has committed repeated negligent acts in her care and treatment of one or more patients, as more particularly alleged in paragraphs 7 through 22, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Medical Practice Act)

24. Respondent has further subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that she has committed violations of provisions of the Medical Practice Act, as more particularly alleged in paragraphs 7 through 23, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

25. Respondent has further subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, of the Code, in that she has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 7 through 24, above, which are hereby incorporated by reference and realleged 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. A90838, issued to Respondent Britton Ashley Arey, M.D.;

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

3. Ordering Respondent Britton Ashley Arey, 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: November 21, 2019

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

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