

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

In the Matter of the Accusation
Against:

Don Lee McIntyre, M.D.

Physician's and Surgeon's
Certificate No. G 49567

Respondent.

Case No. 800-2017-034356

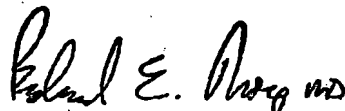
DECISION

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 16, 2021.

IT IS SO ORDERED: March 19, 2021.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 CAITLIN ROSS
Deputy Attorney General
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8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA.**

12 In the Matter of the Accusation Against:

Case No. 800-2017-034356

13 **DON LEE MCINTYRE, M.D.**
14 **PO Box 27443**
San Francisco, CA 94127-0443

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 **Physician's and Surgeon's Certificate No.**
G49567

17 Respondent.
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19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
24 California (Board). He brought this action solely in his official capacity and is represented in this
25 matter by Xavier Becerra, Attorney General of the State of California, by Caitlin Ross, Deputy
26 Attorney General.

27 2. Respondent Don Lee McIntyre, M.D. (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

1
2 10. Respondent does not contest that, at an administrative hearing, complainant could
3 establish a prima facie case with respect to the charges and allegations in Accusation No. 800-
4 2017-034356, a true and correct copy of which is attached hereto as Exhibit A, and that he has
5 thereby subjected his Physician's and Surgeon's Certificate, No. G49567 to disciplinary action.
6 Respondent hereby gives up his right to contest those charges.

7 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
8 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
9 Disciplinary Order below.

10 **CONTINGENCY**

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

21 13. Respondent agrees that if he ever petitions for early termination or modification of
22 probation, or if an accusation and/or petition to revoke probation is filed against him before the
23 Board, all of the charges and allegations contained in Accusation No. 800-2017-034356 shall be
24 deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any
25 other licensing proceeding involving Respondent in the State of California.

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

1 including all physician and locum tenens registries or other similar agencies, and to the Chief
2 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
3 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
4 calendar days.

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

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

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

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

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

17 6. GENERAL PROBATION REQUIREMENTS.

18 Compliance with Probation Unit

19 Respondent shall comply with the Board's probation unit.

20 Address Changes

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

26 Place of Practice

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

1 facility.

2 License Renewal

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

5 Travel or Residence Outside California

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

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

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

15 8. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
16 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
17 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
18 defined as any period of time Respondent is not practicing medicine as defined in Business and
19 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
20 patient care, clinical activity or teaching, or other activity as approved by the Board. If
21 Respondent resides in California and is considered to be in non-practice, Respondent shall
22 comply with all terms and conditions of probation. All time spent in an intensive training
23 program which has been approved by the Board or its designee shall not be considered non-
24 practice and does not relieve Respondent from complying with all the terms and conditions of
25 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
26 on probation with the medical licensing authority of that state or jurisdiction shall not be
27 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
28 period of non-practice.

1 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
2 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
3 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
4 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
5 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

6 Respondent's period of non-practice while on probation shall not exceed two (2) years.

7 Periods of non-practice will not apply to the reduction of the probationary term.

8 Periods of non-practice for a Respondent residing outside of California will relieve
9 Respondent of the responsibility to comply with the probationary terms and conditions with the
10 exception of this condition and the following terms and conditions of probation: Obey All Laws;
11 General Probation Requirements; Quarterly Declarations.

12 9. COMPLETION OF PROBATION. Respondent shall comply with all financial
13 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
14 completion of probation. Upon successful completion of probation, Respondent's certificate shall
15 be fully restored.

16 10. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
17 of probation is a violation of probation. If Respondent violates probation in any respect, the
18 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
19 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
20 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
21 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
22 the matter is final.

23 11. LICENSE SURRENDER. Following the effective date of this Decision, if
24 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
25 the terms and conditions of probation, Respondent may request to surrender his license. The
26 Board reserves the right to evaluate Respondent's request and to exercise its discretion in
27 determining whether or not to grant the request, or to take any other action deemed appropriate
28 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent

1 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
2 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
3 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
4 application shall be treated as a petition for reinstatement of a revoked certificate.

5 12. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
6 with probation monitoring each and every year of probation, as designated by the Board, which
7 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
8 California and delivered to the Board or its designee no later than January 31 of each calendar
9 year.

10 13. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
11 a new license or certification, or petition for reinstatement of a license, by any other health care
12 licensing action agency in the State of California, all of the charges and allegations contained in
13 Accusation No. 800-2017-034356 shall be deemed to be true, correct, and admitted by
14 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
15 restrict license.

16
17 ACCEPTANCE

18 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
19 stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into
20 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
21 agree to be bound by the Decision and Order of the Medical Board of California.

22
23 DATED: 12/4/2020 Don Lee McIntyre
24 DON LEE MCINTYRE, M.D.
25 Respondent

26 ENDORSEMENT

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

DATED: 12-7-20

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General



CAITLIN ROSS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-034356

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14 **PO Box 27443**
San Francisco, CA 94127-0443

A C C U S A T I O N

15
16 **Physician's and Surgeon's Certificate**
No. G49567,

17 Respondent.

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21 **PARTIES**

22 1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
23 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
24 (Board).

25 2. On or about February 7, 1983, the Medical Board issued Physician's and Surgeon's
26 Certificate Number G49567 to Don Lee McIntyre, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on October 31, 2020, unless renewed.

JURISDICTION

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

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

9 5. Section 2234 of the Code, in pertinent part, states:

10 “The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter.

15 “(b) Gross negligence.

16 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
17 omissions. An initial negligent act or omission followed by a separate and distinct departure from
18 the applicable standard of care shall constitute repeated negligent acts.

19 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
20 that negligent diagnosis of the patient shall constitute a single negligent act.

21 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
22 constitutes the negligent act described in paragraph (1), including, but not limited to, a
23 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
24 applicable standard of care, each departure constitutes a separate and distinct breach of the
25 standard of care.”

26 “(d) Incompetence.

27 ...

28 6. Section 2266 of the Code states:

1 "The failure of a physician and surgeon to maintain adequate and accurate records relating
2 to the provision of services to their patients constitutes unprofessional conduct."

3 **RESPONDENT'S PRACTICE**

4 7. Respondent currently works for a medical group and practices at a Bay Area public
5 facility. He also works as a per diem employee at an urgent care clinic in San Carlos, California.
6 He previously practiced for an employer that operated several different urgent care clinics in the
7 Bay Area, including a Golden Gate Urgent Care clinic in San Francisco. As he explained at his
8 Board interview, Respondent was previously board certified in emergency medicine, but did not
9 re-certify after it expired at the end of 2017. He was also previously board certified in family
10 medicine. That certification has also expired.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Failure to Maintain Adequate Records; Unprofessional Conduct)**

13 **(Patient 1)**

14 8. Respondent's license is subject to disciplinary action under section 2266, section
15 2234, and section 2234 subdivision (a), of the Code, in that he failed to ensure accurate
16 prescription documentation when he prescribed 1000 tablets of narcotic to Patient 1¹ from an
17 urgent care setting.

18 9. On September 6, 2015, Patient 1 sought treatment at Golden Gate Urgent Clinic for
19 knee pain. Respondent treated Patient 1 and diagnosed her with a knee sprain. To treat the pain,
20 he prescribed 1000 tablets of opiate medication, with instructions to take 1-2 pills every six hours
21 as needed for pain. Respondent prescribed this as a three-day supply. This prescription was
22 listed as 1000 tablets in CURES² and in the medical record. The prescription also states that the
23 original fill was already dispensed, and no refills were ordered. At his subject interview,
24 Respondent reported that he did not expect 1000 tablets to appear in the medical record, since the
25 opiates were dispensed onsite in a prepackaged bottle of 10-15 tablets.

26
27 ¹ Patient names are withheld for privacy concerns and are available to Respondent.

28 ² CURES stands for Controlled Substance Utilization Review and Evaluation System, California's prescription drug monitoring program.

1 prescription documentation when he prescribed 1000 tablets of narcotic to Patient 3 from an
2 urgent care setting.

3 15. On September 6, 2015, the same day as Patient 1 and Patient 2, Patient 3 sought
4 treatment at Golden Gate Urgent Clinic for an ankle injury resulting from playing basketball.
5 Respondent treated Patient 3 and diagnosed him with an Achilles rupture. To treat the pain, he
6 prescribed 1000 tablets of opiate medication, with instructions to take 1 pills every 4-6 hours for
7 pain. Respondent prescribed this as a four-day supply. This prescription was listed as 1000
8 tablets in CURES. The prescription also states that the original fill was already dispensed, and no
9 refills were ordered. At his subject interview, Respondent reported that he did not expect 1000
10 tablets to appear in the medical record, since the opiates were dispensed onsite in a prepackaged
11 bottle of 10-15 tablets.

12 16. Respondent is guilty of unprofessional conduct in his care and treatment of Patient 3,
13 and is subject to disciplinary action under section 2234 and/or 2234(a) and/or 2266 of the Code in
14 that Respondent failed to ensure accurate prescription documentation when he prescribed 1000
15 tablets of narcotic to Patient 3 from an urgent care setting.

16
17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Maintain Adequate Records; Unprofessional Conduct; Unprofessional Conduct**

19 **– Repeated Negligent Acts, Gross Negligence, Incompetence)**

20 **(Patient 4)**

21 17. Respondent's license is subject to disciplinary action under section 2266, section
22 2234, and section 2234, subdivisions (a-d), of the Code, in that he failed to maintain adequate
23 records and committed unprofessional conduct, repeated negligent acts, gross negligence, and
24 incompetence during the care and treatment of Patient 4 when he frequently prescribed controlled
25 substances to Patient 4 over the course of multiple years, yet failed to maintain any medical
26 records.

27 18. Patient 4 is a family member of Respondent. At his board interview, Respondent
28 explained that Patient 4 required specialist treatment, and Respondent assisted in trying to find

1 Patient 4 a relevant specialist. Respondent explained that after multiple trips to the emergency
2 room, where Patient 4 would receive pain medication, Respondent attempted to address Patient
3 4's pain in the first instance by prescribing controlled substances.

4 19. Respondent began prescribing medication to Patient 4. Between 2013 and 2016,
5 Respondent prescribed or re-filled the following controlled substances to Patient 4: lorazepam, a
6 benzodiazepine, and hydrocodone bitartrate acetaminophen, an opiate. Both benzodiazepines and
7 opiates can produce drug dependence and have the potential for abuse. Both medications alter
8 mental function, and when a patient consumes both, the risk of life-threatening overdose
9 increases. Respondent also occasionally prescribed medications to Patient 4 that were not
10 controlled substances.

11 20. Respondent prescribed lorazepam many times to Patient 4, often with multiple refills,
12 and also occasionally prescribed opiates, along with other unscheduled medications, but failed to
13 create and maintain adequate and accurate medical records. Specifically, Respondent did not
14 create any medical records whatsoever. He did not document any patient interaction, history,
15 physical exam, or progress note. He documented no evaluation or ongoing assessment of the
16 effectiveness of the treatment.

17 21. Respondent is guilty of unprofessional conduct in his care and treatment of Patient 4,
18 and is subject to disciplinary action under section 2234 and/or 2234(a) and/or 2234(b) and/or
19 2234(c) and/or 2234(d) and/or 2266 of the Code in that Respondent failed to maintain adequate
20 medical records and committed gross negligence and/or repeated negligent acts and/or
21 demonstrated incompetence, including but not limited to the following:

22 A. Regularly prescribing to Patient 4 potentially dangerous and addictive controlled
23 substances, with multiple refills, along with additional unscheduled medications, over the course
24 of multiple years, without maintaining any medical records.


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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G49567, issued to Don Lee McIntyre, M.D.;
2. Revoking, suspending or denying approval of Don Lee McIntyre, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Don Lee McIntyre, 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: **JUN 29 2020**



WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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