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

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
CAITLIN ROSS
Deputy Attorney General
State Bar No. 271651
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3615
Facsimile: (415) 703-5480
E-mail: Caitlin.Ross@doj.ca.gov
Attorneys for Complainant

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.** **PO Box 27443** **San Francisco, CA 94127-0443** **Physician's and Surgeon's Certificate No. G49567** Respondent.	Case No. 800-2017-034356 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

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

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

3. On or about February 7, 1983, the Board issued Physician's and Surgeon's Certificate No. G49567 to Don Lee McIntyre, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-034356, and will expire on October 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-034356 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 June 29, 2020. Respondent filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-034356 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2017-034356. Respondent has also carefully read, 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 be represented by counsel at his own expense; 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.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2017-034356, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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

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

CONTINGENCY

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. 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.

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2017-034356 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.

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

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G49567 issued to Respondent DON LEE MCINTYRE, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. 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.

2. 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.

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

4. 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.

5. 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.

6. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

facility.

License Renewal

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

Travel or Residence Outside California

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

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

7. 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.

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

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

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

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

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

9. 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.

10. 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.

11. 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 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.

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

13. 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. 800-2017-034356 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

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

DATED: 12/4/2020

DON LEE MCINTYRE, M.D.
Respondent

ENDORSEMENT

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

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
CAITLIN ROSS
Deputy Attorney General
State Bar No. 271651
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3615
Facsimile: (415) 703-5480
E-mail: Caitlin.Ross@doj.ca.gov
Attorneys for Complainant

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.** **PO Box 27443** **San Francisco, CA 94127-0443** **Physician's and Surgeon's Certificate No. G49567,** Respondent.	Case No. 800-2017-034356 **ACCUSATION**

PARTIES

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

2. On or about February 7, 1983, the Medical Board issued Physician's and Surgeon's Certificate Number G49567 to Don Lee McIntyre, 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 October 31, 2020, unless renewed.

JURISDICTION

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

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

5. Section 2234 of the Code, in pertinent part, 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.

"(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.

. . .

6. Section 2266 of the Code states:

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

RESPONDENT'S PRACTICE

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

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records; Unprofessional Conduct)

(Patient 1)

8. Respondent's license is subject to disciplinary action under section 2266, section 2234, and section 2234 subdivision (a), of the Code, in that he failed to ensure accurate prescription documentation when he prescribed 1000 tablets of narcotic to Patient 1[1] from an urgent care setting.

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

[1] Patient names are withheld for privacy concerns and are available to Respondent.
[2] CURES stands for Controlled Substance Utilization Review and Evaluation System, California's prescription drug monitoring program.

10. Respondent is guilty of unprofessional conduct in his care and treatment of Patient 1, and is subject to disciplinary action under section 2234 and/or 2234(a) and/or 2266 of the Code in that Respondent failed to ensure accurate prescription documentation when he prescribed 1000 tablets of narcotic to Patient 1 from an urgent care setting.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records; Unprofessional Conduct)

(Patient 2)

11. Respondent's license is subject to disciplinary action under section 2266, section 2234, and section 2234 subdivision (a), of the Code, in that he failed to ensure accurate prescription documentation when he prescribed 1000 tablets of narcotic to Patient 2 from an urgent care setting.

12. On September 6, 2015, the same day as Patient 1, Patient 2 sought treatment at Golden Gate Urgent Clinic for back pain. Respondent treated Patient 2 and diagnosed her with a muscle spasm. To treat the pain, he prescribed 1000 tablets of opiate medication, with instructions to take 1-2 pills every four hours as needed for pain. In CURES, this prescription was listed as 1000 tablets for a five-day supply with no refills ordered. At his subject interview, Respondent reported that he did not expect 1000 tablets to appear in the medical record, since the opiates were dispensed onsite in a prepackaged bottle of 10-15 tablets.

13. Respondent is guilty of unprofessional conduct in his care and treatment of Patient 2, and is subject to disciplinary action under section 2234 and/or 2234(a) and/or 2266 of the Code in that Respondent failed to ensure accurate prescription documentation when he prescribed 1000 tablets of narcotic to Patient 2 from an urgent care setting.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records; Unprofessional Conduct)

(Patient 3)

14. Respondent's license is subject to disciplinary action under section 2266, section 2234, and section 2234 subdivision (a), of the Code, in that he failed to ensure accurate

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

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

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

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records; Unprofessional Conduct; Unprofessional Conduct – Repeated Negligent Acts, Gross Negligence, Incompetence)

(Patient 4)

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

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

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

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

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

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

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

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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