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

In the Matter of the Accusation Against: Subhash Mishra, M.D. Physician's and Surgeon's Certificate No. C51768 Respondent	Case No. 800-2017-029054

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 May 14, 2021.

IT IS SO ORDERED: April 16, 2021.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
ALICE W. WONG
Deputy Attorney General
State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3873
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **SUBHASH MISHRA, M.D.** **270 Perkins Street** **Sonoma, CA 95476** **Physician's and Surgeon's Certificate No. C 51768** Respondent.	Case No. 800-2017- 029054 OAH No. 2020080799 **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 Alice W. Wong, Deputy Attorney General.

2. Respondent Subhash Mishra, M.D. (Respondent) is represented in this proceeding by attorney Robert S. Willoughby, whose address is: 275 Battery Street, Suite 1600, San Francisco, CA 94111-3370. On or about October 15, 2004, the Board issued Physician's and Surgeon's

Certificate No. C 51768 to Subhash Mishra, 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. 800-2017-032326, and will expire on February 28, 2022, unless renewed.

JURISDICTION

3. Accusation No. 800-2017-032326 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 October 1, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

4. A copy of Accusation No. 800-2017-032326 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-032326. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2017-032326, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. Respondent agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

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. 800-2017-032326, 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. C 51768 to disciplinary action.

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 or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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. 800-2017-032326 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. C 51768 issued to Respondent Subhash Mishra, 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. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any Schedule II or Schedule III controlled substances as defined by the California Uniform Controlled Substances Act, until Respondent has successfully completed a course in Prescribing Practices, as specified in paragraph 4. Respondent shall submit to the Board or its designee a certification of successful completion of the course. This partial restriction shall remain in effect until Respondent has been notified in writing by the Board or its designee that the Board accepts that the requirement of a Prescribing Practices Course has been successfully completed and that the partial restriction has been lifted.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section

11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. 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) in pain management, which shall not be less than 10 hours per year, for each year of probation. The educational program(s) or course(s) in pain management 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) in pain management 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 35 hours of CME of which 10 hours were in satisfaction of this condition.

4. 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.

5. 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.

6. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall

make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

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

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

7. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice

where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

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

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

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

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

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

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

12. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

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

Respondent's period of non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply to the reduction of the probationary term. Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the

responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

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

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

17. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

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

19. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2017-032326 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 above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert S. Willoughby. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 1/12/21

SUBHASH MISHRA, M.D.
Respondent

I have read and fully discussed with Respondent Subhash Mishra, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/12/2021

ROBERT S. WILLOUGHBY
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: January 13, 2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

Alice W. Wong

ALICE W. WONG
Deputy Attorney General
Attorneys for Complainant

SF2018201061

Exhibit A

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
ALICE W. WONG
Deputy Attorney General
State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3873
Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 1, 2018
BY: ANALYST

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

In the Matter of the Accusation Against: **Subhash Mishra, M.D.** **270 Perkins Street** **Sonoma, CA 95476** **Physician's and Surgeon's Certificate No. C 51768,** Respondent.	Case No. 800-2017-029054 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about October 15, 2004, the Medical Board issued Physician's and Surgeon's Certificate Number C 51768 to Subhash Mishra, 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 February 29, 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 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 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.

"(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. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

7. 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."

FACTS

8. At all times relevant to this matter, Respondent was licensed and practicing medicine in California.

PATIENT P-1[1]

9. Patient P-1, a male born in 1951, first saw Respondent on or about June 2006. P-1 had a medical history significant for anemia, Hepatitis C related to prior IV drug use, chronic insomnia, alcohol use, lumbar spinal stenosis with surgical decompression/laminectomy, and restless leg syndrome. Respondent saw P-1 every two months for pain medication refills for back pain. Over the time period reviewed from 2013 through 2015, there was only one examination of P-1's back.

10. During this time period, Respondent prescribed Norco[2] for P-1's back pain, as well as intermittent OxyContin[3] and Tramadol[4]. Although there was one signed controlled substance agreement, there was no documentation regarding any discussion of the risks of the opiates prescribed, no CURES reports were referenced or included in the chart documentation and no urine toxicology screenings were ordered. The History of Present Illness (HPI) is often scant and the physical examination at nearly all visits are repeated verbatim.

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[1] The patients are designated in this document as Patients P-1 through P-5 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

[2] Norco is a trade name for hydrocodone bitartrate w/APAP (hydrocodone with acetaminophen) tablets. Hydrocodone is a semisynthetic narcotic analgesic, a dangerous drug as defined in section 4022, and a Schedule III controlled substance.

[3] OxyContin is a trade name for oxycodone hydrochloride controlled-release tablets. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance and narcotic. It is a more potent pain reliever than morphine or hydrocodone.

[4] Tramadol is a long-acting opioid analgesics and acts in the central nervous system to relieve pain. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance.

11. Respondent saw P-1 on September 25, 2015 for follow-up for medications. On this visit, the HPI section noted that P-1 saw a hematologist who recommended to P-1 that he quit drinking alcohol. P-1 reported he was drinking one-half to one pint of bourbon per day and wished to quit drinking alcohol. Respondent prescribed Naltrexone,[5] which is an oral opiate antagonist used for treatment of alcoholism and opiate addiction by blocking the effects of alcohol and opiates. On the same day, Respondent prescribed Naltrexone and Norco to P-1 without any warning on the importance of stopping all opiates for at least 7 days prior to starting Naltrexone or the risks associated with sudden stopping of alcohol.

12. Later in the day, P-1 was brought to Sonoma Valley Hospital by ambulance due to altered mental status and agitation and was later diagnosed with acute opiate withdrawal precipitated by the Naltrexone. During P-1's hospital stay, P-1 developed an aspiration pneumonia, acute kidney issues and rhabdomyolysis.[6]

13. Respondent did not address P-1's long history of alcohol use while P-1 was under his care and did not screen or offer treatment for alcohol use disorder until it was brought to his attention by the hematologist.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate Records and/or Prescribing Without an Appropriate Prior Examination)

14. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence),

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[5] Naltrexone, also known by the trade name ReVia, includes prescribing warnings to physicians who prescribe Naltrexone that they must specifically counsel their patients to avoid opiates including those in cough syrup and to ensure that they do not have any opiates in their bloodstream when they take the first dose of Naltrexone. It is recommended that patients have a minimum of 7-10 days *off all opiates prior to starting* Naltrexone in order to prevent acute precipitated opiate withdrawal. In patients taking both opiates and Naltrexone, withdrawal symptoms can begin to appear within five minutes of ingesting the Naltrexone. Symptoms can include confusion, hallucinations, vomiting, diarrhea, dehydration which can affect kidney and liver function.

[6] Rhabdomyolysis is a serious syndrome due to a direct or indirect muscle injury. It results from the death of muscle fibers and release of their contents into the bloodstream which can lead to serious complications such as renal (kidney) failure.

and/or (c) (repeated negligent acts); (d) (incompetence), and/or 2242 (prescribing without an appropriate prior examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent prescribed Naltrexone for treatment of alcoholism and Norco for chronic pain at the same visit on September 25, 2015 and did not discuss with P-1 the importance of stopping all opiates for at least 7 days *prior* to starting the Naltrexone.

B. Respondent demonstrated a lack of knowledge about the risks of taking Naltrexone and Norco together, especially in a patient who had been taking opiates for many years.

C. Respondent did not advise the patient to wait to start the Naltrexone nor did he counsel P-1 on the risks associated with sudden stopping of alcohol.

D. Respondent did not take into account the altered metabolism of the medication with P-1's known liver disease which likely increased the blood levels of the Naltrexone.

E. Respondent did not appropriately counsel P-1 regarding the risks of acute alcohol withdrawal and did not screen or offer appropriate treatment for P-1's alcohol use disorder.

F. Respondent prescribed opiates without appropriately monitoring for abuse, misuse, or diversion and did not counsel P-1 regarding the risks of opiate use or offered safer alternatives in a patient with a history of substance abuse.

G. Respondent failed to thoroughly and accurately document physical examinations of P-1.

PATIENT P-2

15. Patient P-2, a male born in 1950, first saw Respondent in 2014. P-2 had chronic back pain related to a prior motor vehicle accident as well as hypertension and active Hepatitis C related to prior IV drug use.

16. Respondent saw P-2 approximately every three months for pain medication refills for P-2's chronic back pain. Over the course of care between 2014 and 2017, there was no examination of P-1's back or neck and the HPI never mentioned any back or neck pain other than

the initial visit on January 22, 2014 which reported P-2 was in a head on collision in 2007 resulting in neck and back pain and numbness in P-2's right arm. Physical examinations at nearly all visits are repeated verbatim. The diagnosis associated with the pain medications include only "backache unspecified" or "chronic pain syndrome." Respondent did not order any diagnostic studies or other evaluations of P-2's back or neck pain and did not make any referrals or recommendations for pain management, imaging studies or physical therapy.

17. Respondent gradually increased P-2's pain medication over the three year course of care without any objective evidence of disease related to P-2's complaints of back and neck pain. Between September 2016 through November 2017, Respondent prescribed up to 400 mg of oxycodone daily plus 90 mg MS-Contin[7], or a total of 690 MME,[8] well over the recommended dosage.

18. Although there was one signed controlled substance agreement, there was no documentation regarding any discussion of the risks of the opiates prescribed or safer alternatives to pain management. There were no CURES reports referenced or included in the chart documentation and there were no urine toxicology screenings ordered.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate Records and/or Prescribing Without an Appropriate Prior Examination)

19. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

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[7] Morphine sulfate is sold under the trade name MS-Contin and is an opioid agonist indicated for the relief of moderate to severe acute and chronic pain. Morphine sulfate is a dangerous drug as defined in section 4022 and a schedule II controlled substance. Respondent prescribed MS-Contin, 15 mg per day during the time period between May 2017 to October 2017.

[8] MME stands for morphine milligram equivalency. This is used convert the many different opioids into one standard value based on morphine and its potency. Oxycodone, for example, is 1.5 times as potent as morphine so 320 mg of oxycodone is equivalent to 480 MME.

A. Respondent prescribed high dose opiates (over 600 MME per day) without any objective medical diagnoses in a patient with known history of IV drug use.

B. Respondent prescribed high dose opiates without close monitoring with CURES reports or urine toxicology screenings.

C. Respondent prescribed opiates without appropriately monitoring for abuse, misuse, or diversion and did not counsel P-2 regarding the risks of opiate use or offer safer alternatives in a patient with a history of substance abuse.

D. Respondent failed to thoroughly and accurately document physical examinations of P-2.

PATIENT P-3

20. Patient P-3, a female born in 1950, initially saw Respondent on January 22, 2014 to establish care. The history reports P-3 disclosed she uses marijuana regularly and drinks 2-3 glasses of wine 3-4 nights per week. P-3 complained of "ongoing back pain for over 20 years, shoulder pain for two months" and requested prescription for oxycodone. Review of system notes "no joint pains, myalgia but gets arthritis with tomatoes or potatoes." There was no examination of P-3's back or any joints. Respondent prescribed oxycodone, 5 mg four times a day for pain. Respondent saw P-3 approximately every three months for pain medication refills.

21. On June 17, 2015, P-3 presented with complaints of palpitations and elevated blood pressure and pulse. Respondent adjusted P-3's blood pressure medications and refilled P-3's pain medication, noting "refilled oxycodone, encouraged [P-3] to try to wean down" but yet wrote the same prescription amount over the two years of care.

22. On July 16, 2015, P-3 was seen for follow up to review medication and noted "not needing as much oxycodone but sleep is still poor even with temazepam[9] and melatonin." The physical examination was only the verbatim general statements repeated at nearly every visit.

[9] Temazepam, also known by the trade name Restoril, is a benzodiazepine. It is a sedative used to treat anxiety. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

Diagnosis included "insomnia unspecified." Respondent prescribed oxycodone and Ambien[10] and advised P-3 to "try two temazepam" if P-3 had continued insomnia.

23. On February 1, 2016, P-3 was seen for follow-up medications, needing Ambien refills on days she sleeps at night and temazepam on days she sleeps during the day and worked the night shift. The only physical exam notes are again the verbatim general description at nearly every visit. Respondent refilled P-3's Ambien and oxycodone.

24. Respondent prescribed to P-3 temazepam, 15 mg, #30 per month between October 2015 through May of 2018, as well as Ambien, 5 mg, #25 per month between July 2015 through March 2016, then increasing to 10 mg, #30 per month between April 2016 through August 2016.

25. Respondent continued to prescribe oxycodone, 5 mg, #90-120 per three months between June 2015 through March 2018 without any objective evidence of any disease. Respondent never examined any of P-3's joints or spine. Only one x-ray was obtained which revealed some mild degenerative change. Respondent did not order any CT, MRI, nerve conduction studies, or referral to specialist evaluations to determine the cause of P-3's pain. Respondent never requested or obtained any prior medical records of P-3's back pain.

26. There was no controlled substance agreement ever reviewed or signed by P-3. There was no documentation regarding any discussion of the risks of benzodiazepines, including respiratory depression, sedation and addiction, especially in combination with opiates, Ambien, marijuana, and alcohol. Respondent did not discuss safer alternatives to treat P-3's insomnia. There were no CURES reports referenced or included in the chart documentation and there were no urine toxicology screenings ordered.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate Records and/or Prescribing Without an Appropriate Prior Examination)

27. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence),

[10] Zolpidem, also known by the trade name Ambien, belongs to a class of drugs called sedative-hypnotics. It is used to treat insomnia in adults. It is a dangerous drug as defined in section 4022, and a schedule IV controlled substance.

and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent prescribed benzodiazepines in combination with opiates, Ambien, marijuana, and alcohol without discussing and offering safer alternatives to P-3.

B. Respondent prescribed oxycodone at each visit for back pain or arthritis without any objective evidence of any disease and never examined any of P-3's joints or spine.

C. Respondent failed to obtain diagnostic studies such as CT, MRI, nerve conduction studies, or referral to specialist evaluations to determine the cause of P-3's back pain.

D. Respondent prescribed opiates without close monitoring with CURES reports or urine toxicology screenings.

E. Respondent prescribed opiates without appropriately monitoring for abuse, misuse, or diversion and did not counsel P-3 regarding the risks of opiate use or offered safer alternatives in a patient with a history of substance abuse.

F. Respondent failed to thoroughly and accurately document physical examinations of P-3.

PATIENT P-4

28. Patient P-4, a female born in 1971, began seeing Respondent in 2006. Patient P-4 saw Respondent on a monthly basis for chronic pain, hypertension and diabetes.

29. Respondent saw P-4 regularly for pain medication refills for chronic back pain. Review of the CURES report from 2015 through 2018 notes that Respondent was prescribing OxyContin, 10 mg, #60 per month and oxycodone, 5 mg, #100 per month.

30. Patient P-4 reported on one occasion that she was taking extra pain medications or taking controlled substance pain medications from friends. Respondent did not screen P-4 for opiate use disorder.

31. No CURES reports were reviewed or referenced. Only one saliva toxicology screening was performed on November 13, 2014 which was positive for diazepam and

hydrocodone and negative for oxycodone. The order notes that P-4 was being prescribed oxycodone, OxyContin and Soma[11] at the time. Respondent did not note or discuss the aberrant findings with P-4. Respondent also did not order any further toxicology screening.

FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate Records and/or Prescribing Without an Appropriate Prior Examination)

32. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent prescribed long-term opiates without offering safer alternatives for treatment of P-4's chronic back pain.

B. Respondent prescribed long-term opiates without close monitoring with CURES reports or monitoring for abuse, misuse, or diversion.

C. Respondent did not screen P-4 for opiate use disorder even though P-4 exhibited some signs of the disorder, including prescriptions running out early and taking pain medications from friends or family members.

D. Respondent only ordered one toxicology screening over a four-year period and obtained an aberrant result which was not addressed or discussed with P-4. Respondent did not order further toxicology screening after obtaining an aberrant result.

PATIENT P-5

33. Patient P-5, a male born in 1957, began seeing Respondent in 2009. Patient P-5's intake form noted past chemical dependency and substance abuse as well as family history of

[11] Carisoprodol, also known by the trade name Soma, is a muscle-relaxant and sedative. It is a dangerous drug as defined in section 4022 and is a Schedule III controlled substance.

substance abuse and bipolar disorder. Patient P-5's medical issues include hypertension, depression, hip and back pain, morbid obesity, tobacco and marijuana use, and diabetes.

34. Respondent saw P-5 approximately every two to three months for medication refills for Methadone[12], Norco and/or alprazolam.[13]

35. Respondent did not indicate why Methadone was prescribed to treat P-5 for chronic pain. There was no documented justification for why Respondent chose this medication. Respondent did not counsel P-5 and did not obtain informed consent regarding the cardiac risks of Methadone use. There is no mention or note of these risks in the medical records or controlled substance agreement signed by P-5. Respondent did not monitor P-5 with EKG for cardiac complications.

36. Respondent prescribed P-5 with Methadone, 10 mg, 120-240 tablets per month, for a time concomitantly with Norco, 10 mg, #180 per month, which equates to approximately 320 – 960 MME per day of Methadone, plus 60 MME per day of Norco. Respondent did not counsel P-5 regarding the risk of accidental overdose which is especially concerning given P-5's concurrent marijuana, benzodiazepine and alcohol use.

37. Only one CURES report was ever reviewed or referenced. Respondent did not counsel P-5 regarding the risks of long-term opiate use other than the one signed controlled substance agreement dated June 4, 2013. Respondent did not screen P-5 for opiate use disorder even though P-5 exhibited signs of the disorder, including running out early on prescriptions and taking medications from friends or family members. Only one toxicology screening was performed during the four-year period of treatment which had an aberrant result. Respondent never reviewed or discussed the aberrant result with P-5 and did not order any further toxicology screening.

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[12] Methadone is an opioid used to treat pain and as maintenance therapy or to help with tapering in people with opioid dependence. It is a dangerous drug as defined in section 4022 and a Schedule II controlled substance. Methadone also causes cardiac conduction defects, arrhythmia and can cause respiratory depression and death.

[13] Alprazolam, also known by the trade name Xanax, is a benzodiazepine. It is a psychotropic drug used to treat anxiety and panic disorders. Alprazolam is contra-indicated in patients with narrow-angle glaucoma or who are taking certain medications. It is a dangerous drug as defined in section 4022, and a schedule IV controlled substance.

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence and/or Repeated Negligent Acts and/or Failure to Maintain Adequate Records and/or Prescribing Without an Appropriate Prior Examination)

38. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234, subdivisions (a) (violation of Medical Practice Act), (b) (gross negligence), and/or (c) (repeated negligent acts); and/or 2242 (prescribing without an appropriate prior examination); and/or 2266 (inadequate records) of the Code in that Respondent engaged in the conduct described above including, but not limited to, the following:

A. Respondent prescribed Methadone for a number of years to treat P-5's chronic pain without any justification or discussion with P-5 on the cardiac risks of the medication or note the risks associated with the use of Methadone in P-5's medical records.

B. Respondent prescribed alprazolam three times a day to P-5 for many years for anxiety with no attempt to wean P-5 down from benzodiazepines and offer P-5 safer modalities for treatment of anxiety.

C. Respondent prescribed long-term opiates without discussing or offering safer alternatives for treatment of chronic back pain.

D. Respondent prescribed long-term opiates without close monitoring with CURES reports or monitoring for abuse, misuse, or diversion.

E. Respondent did not screen P-5 for opiate use disorder even though P-5 exhibited some signs of the disorder, including running out early on prescriptions and taking medications from friends or family members.

F. Respondent only ordered only one toxicology screening over a four-year period and obtained an aberrant result which should have been addressed or discussed with P-5.

G. Respondent failed to thoroughly and accurately document physical examinations of P-5.

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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 C 51768, issued to Subhash Mishra, M.D.;

2. Revoking, suspending or denying approval of Subhash Mishra, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Subhash Mishra, 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: October 1, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2018201061