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

In the Matter of the First Amended Accusation Against: Neil K. Hersh, M.D. Physician's and Surgeon's Certificate No. G 58484 Respondent.	Case No.: 800-2018-041402

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 December 30, 2021.

IT IS SO ORDERED: November 30, 2021.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

ROB BONTA
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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **NEIL K. HERSH, M.D.** 24881 Alicia Parkway E-333 Laguna Hills, CA 92653-4617 Physician's and Surgeon's Certificate No. G 58484, Respondent.	Case No. 800-2018-041402 OAH No. 2021050196 **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 Rob Bonta, Attorney General of the State of California, by LeAnna E. Shields, Deputy Attorney General.

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2. Respondent Neil K. Hersh, M.D. (Respondent) is represented in this proceeding by attorneys Jack R. Reinholtz, Esq., and Douglas deHeras, Esq., whose address is: 310 Golden Shore, Fourth Floor, Long Beach, CA 90802.

3. On or about September 2, 1986, the Board issued Physician's and Surgeon's Certificate No. G 58484 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in the First Amended Accusation No. 800-2018-041402, and will expire on December 31, 2021, unless renewed.

JURISDICTION

4. On or about August 2, 2021, the First Amended Accusation No. 800-2018-041402 was filed before the Board, and is currently pending against Respondent. On or about August 2, 2021, a true and correct copy of the First Amended Accusation No. 800-2018-041402 and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of the First Amended Accusation No. 800-2018-041402 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in the First Amended Accusation No. 800-2018-041402. Respondent has also carefully read, fully discussed with his counsel, and fully 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 First Amended 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.

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7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in the First Amended Accusation No. 800-2018-041402 and that he has thereby subjected his license to disciplinary action.

9. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in the First Amended Accusation No. 800-2018-041402 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 58484 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

11. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or

the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

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

14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 58484 issued to Respondent NEIL K. HERSH, M.D., is hereby revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. COMMUNITY SERVICE - FREE SERVICES. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval a community service plan in which Respondent shall, within the first 2 years of probation, provide 40 hours of free services (i.e., medical services permitted) to a community or

non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

Prior to engaging in any community service, Respondent shall provide a true copy of the Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where Respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

2. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom

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component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

4. WRITTEN EXAMINATION. Within 60 calendar days of the effective date of this Decision, Respondent shall take and pass the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Board or its designee.

Failure to pass the required written examination within 180 calendar days after the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations.

If Respondent fails to pass the written examination, 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 not practice medicine until Respondent successfully passes the examination, as evidenced by written notice to Respondent from the Board or its designee.

5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including

but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. 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.

This requirement to maintain a practice monitor shall cease upon written notification by the Board or its designee that Respondent has passed the Written Examination (SPEX).

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and First Amended 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.

7. 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.

8. 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.

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9. 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.

10. 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.

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than

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

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

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

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

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

12. 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.

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13. 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.

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

15. 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.

16. 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 the First Amended Accusation No. 800-2018-041402 shall be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Jack R. Reinholtz, Esq., and Douglas deHeras, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 58484. 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: 9/2/21

NEIL K. HERSH, M.D.
Respondent

I have read and fully discussed with Respondent Neil K. Hersh, 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: 9/2/2021

JACK R. REINHOLTZ, ESQ.
DOUGLAS DEHERAS, ESQ.
Attorneys for Respondent

ENDORSEMENT

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

DATED: 9/3/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-041402

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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **NEIL K. HERSH, M.D.** 24881 Alicia Parkway E-333 Laguna Hills, CA 92653-4617 Physician's and Surgeon's Certificate No. G 58484, Respondent.	Case No. 800-2018-041402 **FIRST AMENDED ACCUSATION** [Cal. Gov. Code, § 11507.]

Complainant alleges:

PARTIES

1. William Prasifka (Complainant) brings this First Amended 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 September 2, 1986, the Medical Board issued Physician's and Surgeon's Certificate No. G 58484 to Neil K. Hersh, M.D. (Respondent). The Physician's and Surgeon's

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Certificate No. G 58484 was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2021, unless renewed.

JURISDICTION

3. This First Amended Accusation, which supersedes Accusation No. 800-2018-041402, filed on January 7, 2021, in the above-entitled matter, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

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

5. Section 2234 of the Code, states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.

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

(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 that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

(g) The 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.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

6. Respondent has subjected his Physician's and Surgeon's Certificate No. G 58484 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he, as the medical director of Next Advanced Medicine, committed gross negligence in the care and treatment of Patients A, B, and C,[1] as more particularly alleged hereinafter.

Patient A

7. In or around 2017, Patient A, a then 66-year-old male, received information about a Diabetes Reversal Seminar by Next Advanced Medicine (NAM). Patient A had a history of

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[1] To protect the privacy of all patients involved, patient names have not been included in this pleading. Respondent is aware of the identity of the patients referred to herein.

diabetes since in or around 2000. Patient A was already under the care of a physician and was prescribed metformin and glipizide to control his diabetes. In addition to medications, Patient A had already made changes to his diet and was able to bring his A1C[2] levels from 9% to 6.7%.[3]

8. According to their website and advertisements, Respondent was the only physician at NAM and was identified as the medical director of NAM. NAM claimed their program had successfully reversed Type II Diabetes in patients in a short amount of time, including, but not limited to, reducing and/or eliminating the need to take oral diabetic medications, reducing and/or eliminating the risk factors for diabetic complications and early death, and reducing and/or eliminating the need for insulin injections. NAM offered a free live event on how to reverse diabetes and "become non-diabetic."

9. On or about August 5, 2017, Patient A attended the NAM seminar where they claimed all but one of their patients had successfully "cured" their diabetes, and the sole outstanding patient was able to reduce their medications.

10. The NAM diabetes program included 14 clinic visits, patient education, a grocery store tour, weekly meal plans, nutritional supplements, and various tests, including, but not limited to, blood, stool sample, hormones, and food sensitivity.

11. On or about August 16, 2017, after a consultation appointment with NAM, Patient A enrolled in NAM's diabetes program. According to NAM records, Patient A's weight was noted to be 175 pounds and laboratory tests on this date revealed Patient A's A1C level to be 6.7%.

12. From on or about August 16, 2017, through on or about January 29, 2018, Patient A participated in the NAM diabetes program, attending scheduled visits, undergoing numerous tests, and purchasing the recommended supplements sold by NAM.

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[2] A1C, also referred to as Hemoglobin A1C (HA1C), is a blood test that measures a person's blood sugar levels over the past three months and is commonly used to diagnose prediabetes or diabetes.

[3] According to the Centers for Disease Control and Prevention, a normal A1C result is below 5.7%. Results between 5.7% and 6.4% percent is indicative of prediabetes. Results 6.5% or above is indicative of diabetes. (https://www.cdc.gov/diabetes/managing/managing-blood-sugar/a1c.html)

13. From on or about August 16, 2017, through on or about January 29, 2018, as part of the NAM diabetes program, Patient A met with a NAM nutritionist during his office visits and met with Respondent at one office visit for a medical exam.

14. From on or about August 16, 2017, through on or about January 29, 2018, as part of the NAM diabetes program, Patient A purchased several dietary supplements[4] from NAM directly, including, but not limited to, Apex H-PLR, ProbioMax DF, Diaxinol, BioG-Max C, Berberine-500, Super G Antioxidant, Bile-Aid, RepairVite-SE, Gastro-ULC, Ortho Biotic, Methyl CpG, Enzymix Pro, Reacted Magnesium, Effecsulin, ADEK-Pro, Biogenetix MDS, Metaboclear-CH, Hepato-CL, GI-Synergy, and Mitocore.

15. From on or about August 16, 2017, through on or about January 29, 2018, as part of the NAM diabetes program, Patient A underwent numerous tests, including, but not limited to, blood tests, a food sensitivity test, a hormone stress test, and a comprehensive metabolic panel test. The tests evaluated Patient A's DHEA,[5] FSH,[6] LH,[7] estradiol, testosterone, and cortisol levels. The tests also evaluated Patient A's lipids and HS CRP[8] and homocysteine[9] levels.

16. From on or about August 16, 2017, through on or about January 29, 2018, as part of the NAM diabetes program, Patient A provided two stool samples for comprehensive analysis,

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[4] The supplements sold by NAM were non-prescription dietary supplements that contained various blends of vitamins, minerals, amino acids, and enzymes.

[5] DHEA, dehydroepiandrosterone, is a steroid hormone produced mainly in the adrenal glands.

[6] FSH, follicle-stimulating hormone, regulates the development, growth and reproductive processes of the body. FSH and luteinizing hormone (LH) work together in the reproductive system.

[7] LH, luteinizing hormone, is a hormone produced in the anterior pituitary gland, it stimulates the cells production of testosterone.

[8] HS CRP, high sensitivity C-reactive protein, is a protein found in blood plasma and is a marker for measuring one's risk of developing coronary artery disease.

[9] Homocysteine is a non-proteinogenic amino acid and is a marker for measuring one's risk of developing coronary artery disease.

which included, but was not limited to, testing for helicobacter pylori,[10] elastase,[11] candida,[12] ova and parasites.[13]

17. On or about January 29, 2018, Patient A's final visit with NAM, Patient A's laboratory results indicated Patient A's A1C level to be 6.1% and Patient A's weight was noted to be 170 pounds.

18. Respondent committed gross negligence in the care and treatment of Patient A, which included, but was not limited to, the following:

A. Paragraphs 7 through 17, above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent failed to use, and/or direct NAM staff to use, evidence-based medicine supported by medical literature in the care and treatment of Patient A's well-controlled diabetes, in that Respondent, and/or NAM staff, claimed they could reverse diabetes and then directly sold nutritional supplements to Patient A which have no evidence in medical literature for reversing or curing diabetes, and

C. Respondent failed to order, and/or direct NAM staff to order, only relevant testing that would assist in diagnosis and/or help in providing direction in the care and treatment of Patient A's diabetes, in that Respondent, and/or NAM staff, ordered multiple tests that had no relevance to Patient A's diagnosis of diabetes or the reversal of diabetes, nor was indicated by a medical history or physical exam, including but not limited to, testing for H. pylori, hormone testing of DHEA, FSH, LH, estradiol, cortisol, and testosterone, and stool testing for elastase, candida, ova and parasites.

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[10] Helicobacter pylori, commonly referred to as H. pylori, is a microaerophillic bacteria which grows primarily in the human digestive track. Research indicates a correlation exists between the presence of H. pylori and those suffering from chronic gastritis as well as gastric and duodenal ulcers.

[11] Elastase is a pancreatic enzyme that digests proteins. Low elastase levels is an indicator of pancreatic exocrine insufficiency.

[12] Candida is a type of yeast commonly located on mucosal surfaces and mainly in the gastrointestinal tract. Candida can cause fungal infections with abnormally high growth.

[13] Ova and parasite exam is a test to examine a stool sample for parasites and/or parasite eggs.

Patient B

19. In or around 2018, Patient B, a then 50-year-old female, with a history of Grave's disease,[14] received information about a comprehensive thyroid program by NAM that claimed to treat thyroid conditions. Patient B was already under the care of a physician for treatment of her hyperthyroidism.

20. According to their website and advertisements, Respondent was the only physician at NAM and was identified as the medical director of NAM.

21. In or around 2018, Patient B attended the NAM seminar where they claimed their program could help reduce patients' thyroid medication and improve symptoms caused by thyroid conditions.

22. The NAM comprehensive thyroid program included 14 clinic visits, patient education, a grocery store tour, weekly meal plans, nutritional supplements, and various tests, including, but not limited to, blood, stool sample, hormones, and food sensitivity.

23. On or about April 23, 2018, after a consultation appointment with NAM, Patient B enrolled in NAM's comprehensive thyroid program.

24. From on or about April 23, 2018, through on or about September 17, 2018, Patient B participated in the NAM comprehensive thyroid program, attending scheduled visits, undergoing numerous tests, and purchasing the recommended supplements sold by NAM.

25. From on or about April 23, 2018, through on or about September 17, 2018, as part of the NAM comprehensive thyroid program, Patient B met with a NAM nutritionist during office visits and met with Respondent at one office visit for a medical exam.

26. From on or about April 23, 2018, through on or about September 17, 2018, as part of the NAM comprehensive thyroid program, Patient B purchased several dietary supplements from NAM directly, including, but not limited to, Methyl CpG, ADEK-Pro, Ortho Biotic, Thyro CNV, Mito Chore, GTA Forte, Phenotropic, Iron Hemevite, Metaboclear, HyPex Bal, Omega 3, Grapefruit Seed Extract, iodine, and vitamin D.

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[14] Grave's disease is an autoimmune disorder that affects the thyroid gland, typically resulting in the overproduction of thyroid hormones, also known as hyperthyroidism.

27. From on or about April 23, 2018, through on or about September 17, 2018, as part of the NAM comprehensive thyroid program, Patient B underwent numerous tests, including, but not limited to, blood tests, a food sensitivity test, a hormone stress test, and a comprehensive metabolic panel test. The tests evaluated Patient B's cholesterol, iron, iodine, vitamin D and homocysteine levels. The tests also included a thyroid panel, lipid panel, and a metabolic hormone test measuring Patient B's estradiol, testosterone and progesterone levels.

28. From on or about April 23, 2018, through on or about September 17, 2018, as part of the NAM comprehensive thyroid program, Patient B provided a stool sample for comprehensive analysis, which included, but was not limited to, testing for helicobacter pylori, elastase, candida, ova and parasites.

29. Respondent committed gross negligence in the care and treatment of Patient B, which included, but was not limited to, the following:

A. Paragraphs 19 through 28, above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent failed to use, and/or direct NAM staff to use, evidence-based medicine supported by medical literature in the care and treatment of Patient B's thyroid disorder, in that Respondent, and/or NAM staff, claimed they could minimize or eliminate her symptoms from thyroid disease and then directly sold nutritional supplements to Patient B which have no evidence in medical literature for reducing the symptoms of thyroid disease, and

C. Respondent failed to order, and/or direct NAM staff to order, only relevant testing that would assist in diagnosis and/or help in providing direction in the care and treatment of Patient B's thyroid disease, in that Respondent, and/or NAM staff, ordered multiple tests that had no relevance to Patient B's diagnosis of thyroid disease or the reduction of symptoms of thyroid disease, nor was indicated by a medical history or physical exam, including but not limited to, testing for H. pylori and stool testing for elastase, candida, ova and parasites.

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Patient C

30. In or around 2019, Patient C, a then 67-year-old female, received information about a Diabetes Reversal Seminar by NAM. Patient C had a history of diabetes since in or around 1993. Patient C was already under the care of a physician and was receiving insulin to treat her diabetes.

31. In or around 2019, Patient C attended the NAM seminar where she learned about NAM's diabetes program. After the NAM presentation, Patient C met with a NAM representative who scheduled her for a consultation.

32. On or about January 16, 2019, Patient C completed a new patient application, in which she reported her most recent A1C level as 6% and her current weight to be 164 pounds.

33. On or about February 4, 2019, pursuant to NAM's diabetes program, Patient C submitted a blood sample and stool sample for testing.

34. On or about February 6, 2019, attended a consultation appointment with C.B., a chiropractor with NAM.

35. On or about April 10, 2019, as part of the NAM diabetes program, Respondent performed an "initial medical exam" of Patient C.

36. From on or about February 4, 2019, through on or about August 22, 2019, as part of the NAM diabetes program, Patient C met with C.B. during office visits and attended a grocery store tour with NAM staff.

37. From on or about February 4, 2019, through on or about August 22, 2019, as part of the NAM diabetes program, Patient C purchased several dietary supplements from NAM directly, including, but not limited to, AdrenaCalm, Effecsulin, Enterovite, Fibromin, Glucostatic Balance, Hypaax Balance, Omega Co3, Magnesium, Restore, vitamin D, Max GABA, Max GSH, Women's Probiotic, Diaxinol, Berberine-500, and PS Support.[15]

38. From on or about February 4, 2019, through on or about August 22, 2019, as part of the NAM diabetes program, Patient C underwent numerous tests, including, but not limited to, blood tests, food sensitivity test, a hormone stress test, and a comprehensive metabolic panel test.

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[15] See footnote 4.

The tests evaluated Patient C's DHEA, FSH, LH, HS CRP, homocysteine, insulin antibodies, vitamin D, islet cell antibody, glucose, and creatinine levels.

39. On or about February 4, 2019, as part of the NAM diabetes program, Patient C provided a stool sample for comprehensive analysis, which included, but was not limited to, testing for helicobacter pylori, elastase, flora, secretory immunoglobulin A, ova and parasites.

40. On or about August 22, 2019, Patient C's final visit with NAM, Patient C's laboratory results indicated Patient C's A1C level to be 6.5% and Patient C's weight was noted to be 163 pounds.

41. Respondent committed gross negligence in the care and treatment of Patient C, which included, but was not limited to, the following:

A. Paragraphs 30 through 40, above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent failed to use, and/or direct NAM staff to use, evidence-based medicine supported by medical literature in the care and treatment of Patient C's diabetes, in that Respondent, and/or NAM staff, claimed they could reverse diabetes and then directly sold nutritional supplements to Patient C which have no evidence in medical literature for reversing or curing diabetes, and

C. Respondent failed to order, and/or direct NAM staff to order, only relevant testing that would assist in diagnosis and/or help in providing direction in the care and treatment of Patient C's diabetes, in that Respondent, and/or NAM staff, ordered multiple tests that had no relevance to Patient C's diagnosis of diabetes or the reversal of diabetes, nor was indicated by a medical history or physical exam, including but not limited to, testing for H. pylori, hormone testing of DHEA, FSH, LH, estradiol, cortisol, and testosterone, and stool testing for elastase, ova and parasites.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

42. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 58484 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he, as the medical director of Next Advanced Medicine, committed repeated negligent acts in the care and treatment of Patients A, B and C, as more particularly alleged in paragraphs 6 through 41, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 58484, issued to Respondent Neil K. Hersh, M.D.;

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

3. Ordering Respondent Neil K. Hersh, 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: AUG 0 2 2021

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

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