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

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| In the Matter of the Accusation Against:<br><br>Darren Lipshitz, M.D.<br><br>Physician's and Surgeon's Certificate No. A 65353<br><br>Respondent. | Case No.: 800-2017-039074 |

## 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 January 6, 2022.

IT IS SO ORDERED: December 7, 2021.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
JOSHUA M. TEMPLET
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*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**DARREN LIPSHITZ, M.D.**<br>**2609 Murrell Road**<br>**Santa Barbara, CA 93109-1879**<br><br>**Physician's and Surgeon's Certificate No. A 65353,**<br><br>Respondent. | Case No. 800-2017-039074<br><br>OAH No. 2021030279<br><br>**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, via Joshua M. Templet, Deputy Attorney General.

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2. Respondent Darren Lipshitz, M.D. (Respondent) is represented in this proceeding by attorney Shannon V. Baker, Rothschild Wishek & Sands LLP, 765 University Avenue, Sacramento, CA 95825.

3. On May 29, 1998, the Board issued Physician's and Surgeon's Certificate No. A 65353 to Darren Lipshitz, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-039074, and will expire on January 31, 2022, unless renewed.

## JURISDICTION

4. Accusation No. 800-2017-039074 (Accusation) 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 December 2, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of the Accusation is attached as **exhibit A** and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the Accusation. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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## CULPABILITY

9. Respondent understands and agrees that the charges and allegations in the Accusation, if proven at a hearing, constitute cause for imposing discipline on his Physician's and Surgeon's Certificate.

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

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

## CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board 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 or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in the Accusation shall be deemed true, correct, and fully admitted by Respondent for purposes of 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.

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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 Respondent, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 65353 issued to Respondent Darren Lipshitz, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three years with the following terms and conditions:

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

2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

3. 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 months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the 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.

4. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the effective date of this Decision, Respondent shall enroll in a professional boundaries program approved in advance by the Board or its designee. Respondent, at the program's discretion, shall undergo and complete the program's assessment of Respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24-hour program of interactive

education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The program shall evaluate Respondent at the end of the training and the program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire program not later than six months after Respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on Respondent's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with program recommendations. At the completion of the program, Respondent shall submit to a final evaluation. The program shall provide the results of the evaluation to the Board or its designee. The professional boundaries program shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

The program has the authority to determine whether or not Respondent successfully completed the program.

A professional boundaries 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.

If Respondent fails to complete the program within the designated time period, Respondent shall cease the practice of medicine within three calendar days after being notified by the Board or its designee that Respondent failed to complete the program.

5. NOTIFICATION. Within seven days of the effective date of this Decision, the Respondent shall provide a 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.

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

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

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 ten calendar days after the end of the preceding quarter.

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).

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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 Certificate.

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 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 Boards' 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 years.

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

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

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.

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 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 Board 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 agency in the State of California, all of the charges and allegations contained in the Accusation shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or other proceeding seeking to deny or restrict such license.

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Shannon V. Baker. 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: 10-08-21

DARREN LIPSHITZ, M.D.
*Respondent*

I have read and fully discussed with Respondent Darren Lipshitz, 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: 10/08/2021

SHANNON V. BAKER
Rothschild Wishek & Sands LLP
*Attorney for Respondent*

**ENDORSEMENT**

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

DATED: 10/10/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

JOSHUA M. TEMPLET
Deputy Attorney General
*Attorneys for Complainant*

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# Exhibit A

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

| In the Matter of the Accusation Against: | Case No. 800-2017-039074 |
|---|---|
| **Darren Lipshitz, M.D.**<br>**23661 Pacific Coast Highway**<br>**Malibu, CA 90265-4825**<br><br>**Physician's and Surgeon's Certificate No. A 65353,**<br><br>Respondent. | **ACCUSATION** |

## PARTIES

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

2. On or about May 29, 1998, the Medical Board issued Physician's and Surgeon's Certificate Number A 65353 to Darren Lipshitz, 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 January 31, 2022, unless renewed.

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## JURISDICTION

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

4. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

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

(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.

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. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

(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 the patient's 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."

## FACTUAL ALLEGATIONS

8. Respondent is board certified in family practice and addiction medicine. According to his interview with Board representatives, Respondent was treating Patient 1[1] in his capacity as a family practitioner. Respondent would provide treatment to Patient 1 at his office which he rented from Passages-Malibu, his home office, or other informal locations.

9. According to a CURES Report, Respondent began prescribing scheduled medication to Patient 1 on or about April 10, 2016 and continuing to at least January 28, 2019. The scheduled medication included oxycodone, an opiate narcotic, as well as an amphetamine salt combination (brand-name Adderall), a stimulant used to treat attention-deficit hyperactivity disorder (ADHD). These medications were prescribed monthly by Respondent. On or about March 21, 2017, Respondent began prescribing methadone, an opiate narcotic used to treat moderate to severe pain and narcotic drug addiction, for Patient 1. Respondent continuously prescribed methadone and generic Adderall for Patient 1. Occasionally, Respondent would prescribe oxycodone for Patient 1. It appears that Patient 1's primary complaint was lower back pain and ADHD.

10. For a period of approximately six months in 2018, Respondent provided treatment to Patient 1 *pro bono*. From the period of August 24, 2018 through December 5, 2018, Respondent kept his notes for Patient 1 on a legal pad. The notes were not contemporaneous with the patient's visit. As his visits with Patient 1 sometimes occurred in an informal setting, Respondent would sometimes chart a few days after the visit. Patient 1's medical visit notes would then be placed in a file folder. The folder was kept in a file cabinet in Respondent's home office. Respondent's notes are handwritten and difficult to decipher.

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[1] The patient herein is referred to by number for privacy protection.

11. On or about August 24, 2018, Patient 1 fell while walking on the beach and caused an exacerbation of the lower back pain. Patient 1 had been decreasing the amount of pain medication with a goal of discontinuing all pain medication and was upset with this setback. Respondent documented pain to the right paralumbar area and bruising. No neurological deficit was noted. No vital signs were documented. Respondent rendered an assessment of lumbar strain and contusion. His plan was to administer an intramuscular injection of Toradol 60 mg and prescribe oxycodone 30 mg #14. Patient 1 was advised not to increase the methadone dose for acute pain. Patient 1 was to inform Respondent if the prescription for oxycodone was not filled or if the medication was not used or if the patient decreased medications. Patient 1 was also told to use the same pharmacy. A pain contract was signed that day. The plan was to decrease Patient 1's methadone to 30 mg per day, once the acute pain resolved.

12. Patient 1 followed up with Respondent on September 5, 2018, and reported a fifty percent improvement. Patient 1 was unable to lower the dose of methadone and was taking 40 mg per day. There were no issues with the Adderall, which was being taken at a dose of 45 mg twice a day. No vital signs are documented. Movement was overall improved. A urine drug screen was reported by Respondent as positive for oxy [oxycodone], amp [amphetamines] and meth [methadone], and negative for the rest of panel. However, the actual laboratory results (form) are not contained in Patient 1's chart. Patient 1 reported to be traveling at the end of September and would likely be unable to make the appointment for the following month. Respondent's assessment of Patient 1 was chronic low back pain. Methadone taper delayed due to the patient's travel plans. "Will give Rx [prescription] dated 10/1." Adderall refilled #90.

13. On October 9, 2018, Patient 1 returned to see Respondent and reported that the back injury from the beach fall was resolved. Chronic pain overall was fifty percent improved, but it was hard to tell as Patient 1 had been taking 40 mg of methadone per day. No vital signs are documented. Patient 1 was exercising and wanted to start a methadone taper. Patient 1 had run out of Adderall and was struggling to complete tasks. Per CURES, Patient 1 had filled a prescription for Adderall 30 mg #90 on September 5, 2018. Respondent noted that the patient was an hour late for the appointment, had difficulty staying on topic and could not pay attention

for more than three to four minutes. Respondent's assessment of Patient 1 was chronic back pain, improving per patient's assessment and ADHD, even more obvious since out of Adderall for a few days. Respondent's plan was to reduce the methadone to 35 mg per day for ten days, then decrease to 30 mg per day, and refill Adderall #90.

14. Patient 1's last visit with Respondent was on December 5, 2018. The visit was for follow up and medications. Patient 1 was doing well and the back pain continued to improve, at least some days. Patient 1 reported reducing the methadone dose and had reduced pain level, which Respondent found surprising. Patient 1 continued to exercise. On examination there were no changes to the type of pain; the right side was greater than the left. The pain was worse in the morning and again in late afternoon/evening. Patient 1 had no paresthesia or weakness; there were no problems with bowel or bladder. Patient 1 continued with restlessness and night sweats for four to five days after decreasing the dose of methadone. The holiday season and telephone calls with Patient 1's mother caused sadness. Patient 1 had been paying attention to the correlation between emotion and pain and noted an increase in pain after speaking with mother. Patient 1 has a therapist who is available after calls with mother. Regarding the ADHD, Patient 1 had been taking one and a half tablets of Adderall (45 mg) twice a day which reduced anxiety, helped with eating and sleeping except at night when there were tremors. Patient 1 requested a letter for a comfort dog to help with sleep. It is also noted that Patient 1 works with dad. Patient 1 also reported to be practicing mindfulness. Examination included that Patient 1 was in no acute distress, alert and oriented, vital signs were documented. Gait was normal, but there was discomfort noted from sit to stand position. Reflexes were 2-3 plus and equal, bilaterally. It is noted that a urine drug screen was done, but the results are not documented; no laboratory results are included in the chart. Respondent's assessment of Patient 1 was of chronic low back pain, slowly improving. Patient 1 recognizes role of emotional state on pain. Goal is to be medication-free, to which Patient 1 is looking forward. Plan is to continue exercise, acknowledge emotions (therapy, behavioral exercises, mindfulness), been handling methadone dose reduction well with tolerable signs/symptoms of withdrawal. Regarding ADHD, Adderall had paradoxical effect on patient—is calming, eats and sleeps better. Refill Adderall 30 mg take 1½ pills twice a day. Plan

is to reduce back to 30 mg twice a day with further dose reduction planned over the next two months.

15. Although there was no visit in January 2019, Respondent refilled Patient 1's prescriptions for methadone 30 mg twice a day and Adderall 30 mg #90.

**FIRST CAUSE FOR DISCIPLINE**

**GROSS NEGLIGENCE**

**(Failure to Maintain Adequate and Accurate Medical Records)**

16. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code for gross negligence in failing to maintain adequate and accurate medical records for Patient 1. The circumstances are as follows:

17. Complainant refers to and, by this reference, incorporates herein, paragraphs 8 through 15, as though fully set forth.

18. The standard of care requires that a physician keep timely, legible and accurate medical records. The history of present illness and a review of symptoms should be detailed in the notes. Accurate recording of the physical findings should be documented at every visit. Medication reconciliation, defined by the Centers for Medicare and Medicaid Services (CMS) as "the process of identifying the most accurate list of all the medications that the patient is taking, including name, dosage, frequency, and route, by comparing the medical record to an external list of medications obtained from a patient, hospital, or other provider" is expected to ensure patient safety and quality of care. There should be clear documentation of impressions and plans.

19. Respondent was grossly negligent in maintaining Patient 1's medical chart as follows:

a. Respondent's notes were difficult to decipher;

b. It was not clear from Patient 1's chart what medications the patient was taking;

c. Vital signs were often missing from the physical examinations;

d. There were no laboratory reports maintained in Patient 1's chart nor were any laboratory studies ordered for Patient 1; and

e. It would be difficult for another practitioner to provide continuity of care to Patient 1 based on the medical records.

20. Respondent's acts and omissions as set forth above, whether proven individually, jointly or in some combination thereof, constitute gross negligence in violation of section 2234, subdivision (b), of the Code, and Respondent's license is subject to discipline.

**SECOND CAUSE FOR DISCIPLINE**

**GROSS NEGLIGENCE**

**(Inadequate use and Monitoring of Stimulant Medication (Adderall))**

21. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code for gross negligence in his improper prescribing and monitoring of Adderall for Patient 1. The circumstances are as follows:

22. Complainant refers to and, by this reference, incorporates herein, paragraphs 8 through 15, as though fully set forth.

23. The standard of care calls for Adderall to be prescribed at a low dose and incrementally increased at weekly intervals until an optimal response is obtained, due to serious cardiac side effects. Maximum dosage used in clinical trials was 60 mg per day. United States box warnings include sudden death and serious cardiovascular adverse effects from misuse of Adderall. Other side effects include transient elevations in blood pressure and worsening of anxiety disorders. It can give a feeling of euphoria, resulting in abuse. Adderall is one of the commonly abused prescription medications in the United States. It is classified as a Schedule II Controlled Substance.

24. It is unclear how Patient 1 was given the diagnosis of ADHD. Respondent claims that Patient 1 came to him from another provider, perhaps from another state, with the diagnosis of ADHD and already on Adderall. Patient 1 asked Respondent to continue to prescribe Adderall, and he did because Respondent became Patient 1's primary physician. There is no DSM-5 diagnostic criteria for ADHD in Patient 1's chart. Features such as combined presentation, predominantly inattentive presentation or predominantly hyperactive/impulsive presentation were not specified in the medical record. There was no mention of the severity and remission status. ADHD must be differentiated from mood disorders, substance use disorders or other psychotic disorders that may have features similar to those noted in ADHD. A clear discussion and

monitoring of the adverse side effects of this controlled substance should be carried out. At 90 mg per day, which is above the maximum recommended dose, a referral to a psychiatrist or a specialist in ADHD treatment was warranted. Respondent should have monitored Patient 1's blood pressure and heart rate at every visit.

25. Respondent was grossly negligent in the care and treatment of Patient 1 as follows:

a. Respondent prescribed Adderall, a dangerous drug, to Patient 1 without documenting an appropriate medical indication for the controlled substance;

b. Respondent regularly prescribed Adderall to Patient 1 without eliminating other medical disorders;

c. Respondent did not discuss the risks of taking Adderall with Patient 1;

d. Respondent did not evaluate/monitor Patient 1 for the associated risks of taking Adderall at each visit;

e. Respondent did not refer Patient 1 to a psychiatrist or specialist in treating ADHD; and

f. Respondent did not monitor Patient 1's blood pressure and heart rate at each visit.

26. Respondent's acts and omissions as set forth above whether proven individually, jointly or in some combination thereof constitute gross negligence in violation of section 2234, subdivision (b), of the Code, and Respondent's license is subject to discipline.

**THIRD CAUSE FOR DISCIPLINE**

**REPEATED NEGLIGENT ACTS**

**(Improper Prescribing and Management of Chronic Opiate Pain Medication)**

27. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code for negligence in his improper prescribing and management of chronic opiate pain medication for Patient 1. The circumstances are as follows:

28. Complainant refers to and, by this reference, incorporates herein, paragraphs 8 through 15, as though fully set forth.

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29. When treating patients with opiates for chronic pain, the standard of care requires that opiates with the lowest potency and addiction potential be tried first for a defined period and the patient's progress monitored for benefits and harm, including pain level, quality of life, functional status and adverse effects. The patient's risk of drug addiction and aberrancy should also be assessed prior to initiation of long-term opiate therapy. Risk stratification is one of the most important things a physician can do to mitigate potentially adverse consequences of opiate prescribing. Patients should also be monitored with regular urine drug screens and CURES reports should be periodically reviewed. If a patient transfers to another physician for pain management care, the standard of care is to obtain the medical records from the prior physician and re-evaluate the patient for continuous and titration of therapy. To continue with opiate therapy, there should be fulfillment of functional goals. Pain relief should not be used as the primary indicator to assess the success of treatment. If the opiate therapy is to be chronic in nature, the morphine milligram equivalent (MME) of the patient's daily opiate therapy should not exceed 80-90 mg per day as the risks of drug overdose, death and adverse effects increase significantly beyond this dosage. Education of the patient and the caregiver about the adverse side effects and naloxone antidote therapy should be carried out. Once the patient's pain is adequately controlled on a safe dosage of opiate therapy, they should be monitored regularly every one to three months.

30. Respondent was negligent in the prescribing and management of chronic opiate pain medication for Patient 1 as follows:

a. Respondent failed to clearly delineate functional goals and adverse events for Patient 1;

b. Urine drug screens laboratory reports were not kept in the patient chart. It is unknown where the results that were recorded came from and if they were accurate;

c. Patient 1 was prescribed 320 mg MME per day, in excess of the recommended 90 mg MME per day, placing Patient 1 at high risk for adverse effects; and

d. There is no documentation that Patient 1 was instructed on the use of naloxone.

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e. Respondent did not review or document that he reviewed Patient 1 CURES Report.

31. Respondent's acts and omissions as set forth above whether proven individually, jointly or in some combination thereof constitute repeated negligent acts in violation of section 2234, subdivision (c), of the Code, and Respondent's license is subject to discipline.

**FOURTH CAUSE FOR DISCIPLINE**

**REPEATED NEGLIGENT ACTS**

**(Lack of Informed Consent and Pain Management Agreement)**

32. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code for negligence in failing to obtain informed consent and a pain management agreement from Patient 1. The circumstances are as follows:

33. Complainant refers to and, by this reference, incorporates herein, paragraphs 8 through 15, as though fully set forth.

34. When considering long-term use of opiates, the standard of care requires the physician to discuss the risks and benefits of the treatment plan with the patient. The patient consent includes the risks and benefits, and side effects associated with opiate use. Medical evidence on the efficacy of long-term opiate therapy should also be addressed. A pain management agreement is often combined with this discussion for convenience. The pain management agreement typically outlines the joint responsibilities of the patient and the physician, including replacement of lost medications and early refill requests. It should also emphasize that the patient agrees to obtain prescribed opiate medications from only one physician or practice and use only one pharmacy. The patient agrees to periodic drug screening and knows that CURES will be monitored.

35. Respondent was negligent in failing to obtain an informed consent and a pain management agreement from Patient 1 as follows:

a. Respondent failed to obtain a pain management agreement from Patient 1 until August 24, 2018, despite having prescribed opiate narcotics to Patient 1 since April 10, 2016; and

b. Respondent failed to obtain an informed consent for chronic opiate pain management from Patient 1 until August 24, 2018, despite having prescribed opiate narcotics to Patient 1 since April 10, 2016.

36. Respondent's acts and omissions as set forth above whether proven individually, jointly or in some combination thereof constitute repeated negligent acts in violation of section 2234, subdivision (c), of the Code, and Respondent's license is subject to discipline.

**FIFTH CAUSE FOR DISCIPLINE**

**REPEATED NEGLIGENT ACTS**

37. Respondent's acts and omissions, as set forth in the First, Second, Third and Fourth Causes for Discipline, constitute repeated negligent acts in violation of section 2234, subdivision (c), of the Code, and Respondent's license is subject to discipline.

**SIXTH CAUSE FOR DISCIPLINE**

**FAILURE TO MAINTAIN ADEQUATE AND ACCURATE RECORDS**

38. Respondent's acts and omissions, as set forth in paragraphs 8 through 15, above, demonstrate a failure to maintain adequate and accurate records, in violation of section 2266 of the Code, and Respondent's license is subject to discipline.

**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 A 65353, issued to Respondent Darren Lipshitz, M.D.;

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

3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation monitoring; and

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4. Taking such other and further action as deemed necessary and proper.

DATED: DEC 0 2 2020

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

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