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

In the Matter of the Accusation Against: Larry A. Epstein, M.D. Physician's & Surgeon's Certificate No. C 24787 Respondent.	Case No. 800-2018-045250

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 12, 2022.

IT IS SO ORDERED December 13, 2021.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
ANA GONZALEZ
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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: **LARRY A. EPSTEIN, M.D.** **2500 Hospital Dr.** **Bldg. 11 Suite E** **Mountain View CA 94040-4106** **Physician's and Surgeon's Certificate No. C 24787** Respondent.	Case No. 800-2018-045250 **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 Ana Gonzalez, Deputy Attorney General.

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2. Respondent Larry A. Epstein, M.D. (Respondent) is represented in this proceeding by attorney Barry C. Marsh, whose address is: 12901 Saratoga Avenue Saratoga, CA 95070-9998.

3. On December 19, 1963, the Board issued Physician's and Surgeon's Certificate No. C 24787 to Larry A. Epstein, 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. 800-2018-045250, and will expire on November 30, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-045250 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 9, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-045250 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 Accusation No. 800-2018-045250. 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 agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2018-045250, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. C 24787 to disciplinary action.

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

ADDITIONAL CIRCUMSTANCES

12. After the filing of the Accusation, Respondent produced over two hundred pages of additional medical records, that were not previously provided as part of the certified records Respondent produced during the investigation. Those additional records established that Respondent had in fact been in regular contact with his patient while prescribing controlled substances for pain management.

CONTINGENCY

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

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

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 24787 issued to Respondent LARRY A. EPSTEIN, M.D., shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand is issued in connection with Respondent's care and treatment of a patient as set forth in Accusation No. 800-2018-045250, specifically Respondent's failure to obtain a narcotic contract and conduct annual urine toxicology tests while prescribing controlled substances for pain management. Respondent also failed to take appropriate steps to ensure the accuracy and completeness of the medical records he produced during the Board's investigation.

1. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

this Decision.

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

Respondent understands and agrees that failure to successfully complete the course in the stated time shall constitute unprofessional conduct and grounds for further discipline.

2. WRITTEN PROTOCOL FOR RESPONDING TO RECORD REQUESTS. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board for its prior approval, a written protocol for responding to any and all requests for medical records. The protocol shall include a description of the process to be followed when responding to a request for records, a description of the training to be provided to all office staff who are delegated the responsibility to produce records, and the procedure by which Respondent will ensure the accurate and completeness of records production. Respondent understands and agrees that failure to comply with this requirement shall constitute unprofessional conduct and grounds for further discipline.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Barry C. Marsh. 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: 10/1/21

Larry A. Epstein, MD

LARRY A. EPSTEIN, M.D.
Respondent

I have read and fully discussed with Respondent Larry A. Epstein, 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: 10/1/2021

BARRY C. MARSH
Attorney for Respondent

ENDORSEMENT

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

DATED: October 10, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

Ana Gonzalez

ANA GONZALEZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2018-045250

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

In the Matter of the Accusation Against: **Larry A. Epstein, M.D.** **2500 Hospital Dr.** **Bldg. 11 Suite E** **Mountain View, CA 94040-4106** **Physician's and Surgeon's Certificate No. C 24787,** Respondent.	Case No. 800-2018-045250 **A C C U S A T I O N**

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 December 19, 1963, the Medical Board issued Physician's and Surgeon's Certificate Number C 24787 to Larry A. Epstein, 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 November 30, 2022, unless renewed.

JURISDICTION

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

4. Section 2004 of the Code states:

> The board shall have the responsibility for the following:
>
> (a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
>
> (b) The administration and hearing of disciplinary actions.
>
> (c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
>
> (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
>
> (e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.
>
> (f) Approving undergraduate and graduate medical education programs.
>
> (g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).
>
> (h) Issuing licenses and certificates under the board's jurisdiction.
>
> (i) Administering the board's continuing medical education program.

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

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

> 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.

...

7. 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.

8. 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.

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CONTROLLED SUBSTANCES

9. Adderall, a trade name for mixed salts of a single-entity amphetamine product (dextroamphetamine sulphate, dextroamphetamine saccharate, amphetamine sulfate, amphetamine aspartate), is a dangerous drug as defined in section 4022 and a schedule II controlled substance as defined by section 11055 of the Health and Safety Code. The least amount feasible should be prescribed or dispensed at one time in order to minimize the possibility of overdosage. Amphetamines have been extensively abused. Tolerance, extreme psychological dependence, and severe social disability have occurred.

10. Dilaudid is a trade name for hydromorphone hydrochloride. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance as defined by section 11055, subdivision (d) of the Health and Safety Code. Its principal therapeutic use is relief of pain. Psychic dependence, physical dependence, and tolerance may develop upon repeated administration of narcotics; therefore, Dilaudid should be prescribed and administered with caution. Physical dependence, the condition in which continued administration of the drug is required to prevent the appearance of a withdrawal syndrome, usually assumes clinically significant proportions after several weeks of continued use.

11. Norco is a trade name for hydrocodone bitartrate with acetaminophen. Hydrocodone bitartrate is a semisynthetic narcotic analgesic and a dangerous drug as defined in section 4022 of the Business and Professions Code. Norco is a schedule II controlled substance and narcotic as defined by section 11055, subdivision (e) of the Health and Safety Code. Repeated administration of hydrocodone over a course of several weeks may result in psychic and physical dependence.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts; Prescribing Without Appropriate Medical Examination/Medical Indication and/or Inadequate Records)

12. Respondent Larry A. Epstein, M.D. is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or 2242 and/or 2266 in connection with his prescribing of controlled substances. The circumstances are as follows:

13. Respondent has practiced internal medicine since 1969. Respondent started seeing Patient 1[1] in 1994. Respondent's medical records for Patient 1 show that in 2008 he started prescribing this patient Norco for chronic pain. Beginning around 2010, through at least June 2020, the medical records and CURES[2] report show that Respondent prescribed this patient Schedule II controlled substances including Dilaudid, Norco, and Adderall. Diluadid and Norco were prescribed to manage Patient 1's chronic pain; Adderall was prescribed to treat the patient's attention deficit hyperactivity disorder (ADHD).

14. While Respondent conducted appropriate evaluation and ongoing assessment of Patient 1's complaints of pain and ADHD, he failed to document necessary informed consent and monitoring over time. Patient 1's medical records do not contain a narcotic contract or any urine toxicology test during the years Respondent was prescribing Patient 1 with Schedule II controlled substances for pain management and ADHD, thereby demonstrating that the patient was not provided with the requisite consent for treatment with multiple controlled substances, and that Respondent did not take the steps necessary to ensure proper usage of the prescribed medications. The medical records do not document any visits between Respondent and Patient 1 between September 8, 2014 and February 21, 2018, while Respondent continued to prescribe Dilaudid, Norco, and Adderall.

15. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to disciplinary action based on gross negligence, repeated negligent acts and/or prescribing without a narcotic contract, urine toxicology testing, or an appropriate examination and/or medical record of the examination, including, but not limited to the following:

A. Respondent prescribed controlled substances, including opiates for pain management and Adderall for ADHD, without any narcotic contract.

B. Respondent prescribed controlled substances for pain management without any urine toxicology tests during the prescribing period.

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[1] Names redacted to protect privacy interests.

[2] CURES (Controlled Substance Utilization Review and Evaluation System) is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies and law enforcement.

C. Respondent prescribed controlled substances for pain management without any medical examination and/or documentation of a medical examination for over three years.

DISCIPLINARY CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent Larry A. Epstein, M.D., Complainant alleges that on or about May 2, 2012, in a prior disciplinary action titled *In the Matter of the Accusation Against Larry A. Epstein, M.D.* before the Medical Board of California, in Case Number 03-2009-199044, Respondent's license was publicly reprimanded and he was ordered to complete courses in prescribing practices, medical record keeping, and clinician-patient communications, issued for failing to provide adequate documentation as to the reasons for prescribing antibiotics for a patient from 2005 through 2009.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 24787, issued to Larry A. Epstein, M.D.;

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

3. Ordering Larry A. Epstein, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: JUN 09 2021

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

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