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

In the Matter of the First Amended Accusation Against: Nicole Poliquin, M.D. Physician's and Surgeon's Certificate No. A 30419 Respondent.	Case No.: 800-2018-042938

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 March 17, 2022.

IT IS SO ORDERED: February 15, 2022.

MEDICAL BOARD OF CALIFORNIA

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

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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: **NICOLE POLIQUIN, M.D.** **3151 Airway Ave., Suite T-2** **Costa Mesa, CA 92626-4607** **Physician's and Surgeon's Certificate No. A 30419,** Respondent.	Case No. 800-2018-042938 OAH No. 2021040595 **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 Karolyn M. Westfall, Deputy Attorney General.

2. Respondent Nicole Poliquin, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, Esq., whose address is: 5440 Trabuco Road, Irvine, CA 92620.

3. On or about August 30, 1976, the Board issued Physician's and Surgeon's Certificate No. A 30419 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2018-042938, and will expire on August 31, 2022, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2018-042938, which superseded the Accusation filed on March 23, 2021, was filed before the Board on January 11, 2022, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 23, 2021. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of First Amended Accusation No. 800-2018-042938 is attached hereto 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 First Amended Accusation No. 800-2018-042938. Respondent has also carefully read, fully discussed with her counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her 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 her; the right to present evidence and to testify on her 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. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

9. Respondent admits that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in First Amended Accusation No. 800-2018-042938, and agrees that she has thereby subjected her Physician's and Surgeon's Certificate No. A 30419 to disciplinary action.

10. Respondent further agrees that if she ever petitions for modification or early termination of probation, or if an accusation and/or petition to revoke probation is filed against her before the Medical Board of California, all of the charges and allegations contained in First Amended Accusation No. 800-2018-042938 shall be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California or elsewhere.

11. Respondent agrees that her 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.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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 she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the Board, all of the charges and allegations contained in First Amended Accusation No. 800-2018-

042938 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 30419 issued to Respondent Nicole Poliquin, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years from the effective date of this Decision on the following terms and conditions:

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 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 course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

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

A medical record keeping course taken after the acts that gave rise to the charges in the 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 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. 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

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. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision, First Amended Accusation, and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment,

the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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 resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If Respondent did not successfully complete the clinical competence assessment program, Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

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 and First Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, First Amended Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and First Amended

Accusation, 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 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.

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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.

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, 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. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

8. 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.

9. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement in the amount of $5,555.00 (five thousand five hundred fifty-five dollars and zero cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board.

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The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs.

10. 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.

11. 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.

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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.

12. 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.

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

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

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

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

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Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

14. 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.

15. 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.

16. 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.

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17. 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.

ACCEPTANCE

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

DATED: 1/25/22

NICOLE POLIQUIN, M.D.
Respondent

I have read and fully discussed with Respondent Nicole Poliquin, 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: January 25, 2022

RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

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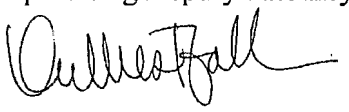
ENDORSEMENT

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

DATED: 1/26/22

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General



KAROLYN M. WESTFALL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

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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: **NICOLE POLIQUIN, M.D.** **3151 Airway Ave., Suite T-2** **Costa Mesa, CA 92626-4607** **Physician's and Surgeon's Certificate No. A 30419,** Respondent.	Case No. 800-2018-042938 **FIRST AMENDED ACCUSATION**

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 August 30, 1976, the Board issued Physician's and Surgeon's Certificate No. A 30419 to Nicole Poliquin, 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 August 31, 2022, unless renewed.

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JURISDICTION

3. This First Amended Accusation, which supersedes the Accusation filed on March 23, 2021, 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, in pertinent part:

> (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.
>
> ...

5. 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.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but

not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

...

6. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

COST RECOVERY

7. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected her Physician's and Surgeon's Certificate No. A 30419 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that she was grossly negligent in her care and treatment of Patient A,[1] as more particularly alleged hereinafter:

9. On or about December 3, 2013,[2] Patient A, a then sixty-five-year-old male patient, was referred to Respondent by his endocrinologist for severe depression. Patient A's medical issues included obesity, urinary incontinence, neuropathy in his feet, low testosterone, and type II diabetes. Patient A had a lengthy history of depression spanning back to childhood that included suicidal ideation and two prior suicide attempts. Patient A attempted suicide in 2005 with an overdose of Tylenol PM and alcohol, and subsequently received inpatient psychiatric treatment at the McDonald Center followed by two years of outpatient psychiatric treatment. Patient A had a history of alcohol and phentermine[3] abuse. Patient A's liver function test, completed in or around

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[1] To protect the privacy of the patient involved, the patient's name has not been included in this pleading. Respondent is aware of the identity of the patient referred to herein.

[2] Conduct occurring more than seven years before the filing of this Accusation is for informational purposes only and is not alleged as a basis for disciplinary action. (Bus. & Prof. Code, § 2230.5.)

[3] Phentermine is an amphetamine-like stimulant medication used to suppress appetite. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022.

2005, revealed poor results and he was told he may need a liver transplant. Patient A had maintained his sobriety since 2005 and was active in Alcoholics Anonymous. At the time of the referral, Patient A's medications included, but were not limited to, metformin,[4] Actos,[5] levothyroxine,[6] Lipitor,[7] losartan,[8] Axiron,[9] and Lexapro[10] 10 mg.

10. On or about December 3, 2013, Patient A presented to Respondent for psychiatric treatment with complaints of depression and anger issues. At this initial visit, Respondent documented in the patient's chart a history of present illness, medication and psychiatric history, and a mental status examination. Respondent noted Patient A had previously taken Prozac[11] and Dexamyl,[12] but no further details were obtained about his use of these medications, or his prior abuse of phentermine. At the conclusion of the visit, Respondent diagnosed Patient A with major depression, recurrent, severe, nonpsychotic, and alcohol abuse, unspecified, in later remission.

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[4] Metformin is an anti-diabetic medication used to treat Type II diabetes. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[5] Actos (brand name for Pioglitazone) is an anti-diabetic medication used to treat Type II diabetes. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[6] Levothyroxine is a hormone medication used to treat hypothyroidism. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[7] Lipitor (brand name for atorvastatin) is a statin medication used to treat high cholesterol and triglyceride levels. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[8] Losartan is an antihypertensive medication used to treat high blood pressure. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[9] Axiron is a testosterone medication used to treat the symptoms of testosterone deficiency. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[10] Lexapro (brand name for escitalopram) is a selective serotonin reuptake inhibitor (SSRI) antidepressant medication used to treat anxiety and major depressive disorder. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[11] Prozac (brand name for fluoxetine) is an SSRI antidepressant medication used to treat anxiety and major depressive disorder. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[12] Dexamyl was a brand name combination drug composed of sodium amobarbital and dextroamphetamine sulfate within the same pill. It was widely abused, and is no longer manufactured.

Respondent maintained Patient A on his prior prescription of Lexapro 10 mg and added a prescription of Abilify[13] 2 mg. Prior to her initial visit with Patient A, or anytime thereafter, Respondent did not order and/or document receipt and review of any prior treatment records, did not order thyroid function tests and/or document receipt and review of Patient A's prior thyroid function tests, did not order baseline labs and/or document receipt and review of Patient A's prior liver function test results, and did not confer and document a discussion with Patient A's internist or endocrinologist regarding the current nature and extent of his chronic liver failure.

11. On or about April 4, 2014, Patient A presented to Respondent for a follow-up visit. At this visit, Respondent noted an increase in Patient A's anxiety and discussed a recent event where he had lost his temper at work. At the conclusion of this visit, Respondent increased Patient A's Lexapro dose to 20 mg, and prescribed gabapentin[14] 300 mg. The chart notes for this visit, or any visit thereafter, do not include a documented discussion with the patient regarding the risks and benefits of gabapentin or an increased dose of Lexapro.

12. Between on or about April 4, 2014, and on or about August 2, 2019, Respondent maintained Patient A on regular prescriptions of gabapentin 300 mg.

13. Between on or about April 4, 2014, and on or about May 15, 2016, Respondent maintained Patient A on regular prescriptions of Lexapro 20 mg.

14. On or about April 25, 2014, Patient A presented to Respondent for a follow-up visit. At this visit, Patient A expressed a desire for more energy. Respondent discussed Nuvigil[15] and Dexedrine[16] with Patient A, noting he had previously taken this medication and "had no tendency

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[13] Abilify (brand name for aripiprazole) is an antipsychotic mediation used to treat schizophrenia, bipolar disorder, depression, and Tourette syndrome. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[14] Gabapentin is an anticonvulsant and nerve pain medication. It is a dangerous drug pursuant to Business and Professions Code section 4022.

[15] Nuvigil (brand name for armodafinil) is a controlled substance stimulant medication used to treat sleepiness from narcolepsy, sleep apnea, or night shift work.

[16] Dexedrine (brand name for dextroamphetamine) is a stimulant medication used to treat attention-deficit hyperactivity disorder (ADHD) and narcolepsy. It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. This medication contains a "black

to abuse it." The patient's chart does not include when, why, and for how long Patient A had previously taken these medications, what his response was to the medications, or why they were discontinued. The chart notes also do not include a detailed discussion with the patient regarding his prior abuse of phentermine. At the conclusion of this visit, Respondent prescribed Patient A one (1) tab of Dexedrine 5mg twice per day for the treatment of depression. The chart notes for this visit do not include a documented discussion with the patient regarding the risks and benefits of Dexedrine, or any coordination of care with the patient's internist or endocrinologist prior to prescribing Dexedrine.

15. On or about May 21, 2014, Patient A presented to Respondent for a follow-up visit. At this visit, Respondent noted the patient had more energy on Dexedrine, and his motivation and concentration were "ok." At the conclusion of this visit, Respondent increased the patient's Dexedrine dose to one (1) 10 mg tab twice per day. The chart notes for this date do not include the reason for the dose increase or the symptoms being targeted with this increase in medication.

16. On or about June 9, 2014, Patient A presented to Respondent for a follow-up visit. At this visit, Respondent noted the patient's energy was stable, his motivation and concentration were "ok," and he was not feeling depressed. At the conclusion of this visit, Respondent increased the patient's Dexedrine dose to two (2) 10 mg tabs twice per day. The chart notes for this date do not include the reason for the dose increase or the symptoms being targeted with this increase in medication.

17. On or about June 30, 2014, Respondent prescribed Patient A 30 tabs of Lexapro 20 mg with six (6) refills. Between on or about June 30, 2014, and on or about October 4, 2019, Respondent maintained Patient A on regular prescriptions of Lexapro 20 mg.

18. On or about July 21, 2014, Patient A presented to Respondent for a follow-up visit. At this visit, Respondent noted the patient's energy and mood were improved, and that he was feeling "200% better." Patient A informed Respondent that the two (2) tabs of Dexedrine had helped him a lot, but admitted that he sometimes takes three (3) tabs. At the conclusion of this

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box warning" that it is contraindicated in patients with moderate to severe hypertension, advanced arteriosclerosis, or symptomatic cardiac disease.

visit, Respondent increased the patient's Dexedrine dose to two (2) 10 mg tabs three (3) times per day. The chart notes for this date do not include a documented discussion with the patient regarding taking medications as prescribed, the reason for the dose increase, the symptoms being targeted with this increase in medication, or the lack of any adverse side-effects from the medication.

19. On or about October 28, 2014, Patient A presented to Respondent for a follow-up visit. At this visit, Respondent noted the patient's energy was stable, his motivation and concentration were "ok," he was not feeling depressed, and he had lost approximately 68 pounds in six months. Patient A admitted to taking more Dexedrine than prescribed and running out of his medication early. Respondent discussed addiction and misuse with the patient, and documented that he "contracted for staying on track." At the conclusion of this visit, Respondent maintained the patient on two (2) tabs of Dexedrine 10 mg tabs (3) three times per day.

20. On or about January 12, 2015, Patient A presented to Respondent for a follow-up visit. At this visit, Respondent documented an ADHD diagnosis for the first time. The chart notes for this visit do not identify specific DSM-V[17] criteria to support that diagnosis at that time.

21. On or about March 6, 2015, Patient A presented to Respondent for a follow-up visit. At this visit, Patient A admitted taking more Dexedrine than prescribed. Respondent reminded Patient A that this medication can be addicting, but authorized him to take up to seven (7) tabs per day. The chart notes for this visit, or any visit thereafter, do not include Respondent's reasoning for increasing Patient A's dose of Dexedrine beyond the recommended daily dose.

22. On or about November 20, 2015, Patient A presented to Respondent for a follow-up visit. At this visit, Patient A admitted taking more Dexedrine than prescribed due to his lack of energy in the afternoon. At the conclusion of this visit, Respondent increased the patient's Dexedrine dose to two (2) 15 mg tabs three (3) times per day.

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[17] The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) is the 2013 update to the Diagnostic and Statistical Manual of Mental Disorders, the taxonomic and diagnostic tool published by the American Psychiatric Association. In the United States, the DSM serves as the principal authority for psychiatric diagnoses.

23. On or about December 11, 2015, Respondent prescribed Patient A trazodone[18] 150 mg three (3) times per day. The chart notes do not identify a clinical visit on that date, or the reason for this prescription. Between on or about December 11, 2015, and on or about March 2, 2020, Respondent maintained Patient A on regular prescriptions of trazodone 150 mg. The patient's progress notes throughout that time do not include any reference to this medication.

24. On or about December 17, 2015, Patient A presented to Respondent for a follow-up visit. At this visit, Patient A admitted taking too much medication. Respondent discussed the expected and potential side effects of the medication, and adjusted Respondent's prescription of Dexedrine to three (3) 10 mg tabs three (3) times per day.

25. On or about January 14, 2016, Respondent prescribed Patient A 270 tabs of Dexedrine 10 mg, but the chart notes do not identify a clinical visit or any other interaction with the patient on that date.

26. On or about May 16, 2016, Respondent increased Patient A's Lexapro prescription to two (2) 20 mg tabs per day. The chart notes do not identify a clinical visit on that date, the reason for the increase in this prescription, or a documented discussion with the patient regarding the risks and benefits of this dose of Lexapro. Respondent maintained Patient A on that dose until on or about May 15, 2020.

27. On or about October 28, 2016, Patient A presented to Respondent for a follow-up visit. At this visit, Patient A admitted overusing his Dexedrine. At the conclusion of this visit, Respondent refilled Patient A's prescription, but gave him a "fair warning" that she will not refill his next prescription until November 28, 2016.

28. On or about November 23, 2016, Respondent prescribed Patient A 270 tabs of Dexedrine 10 mg. The chart notes do not identify a clinical visit or any other interaction with the patient on that date.

29. On or about December 28, 2016, Patient A presented to Respondent for a follow-up visit. At this visit, Patient A informed Respondent that he had called the office two days earlier

[18] Trazodone is an antidepressant and sedative medication used to treat depression. It is a dangerous drug pursuant to Business and Professions Code section 4022.

asking for an early refill of his medications. At the conclusion of this visit, Respondent maintained Respondent on his prescription of three (3) tabs of Dexedrine 10 mg three (3) times per day.

30. On or about January 13, 2017, Respondent received a letter from OptumRX informing her that Patient A's prescription of Lexapro exceeded the manufacturer's maximum of 20 mg per day. A copy of his prescription profile for that month was attached. Respondent initialed the receipt and review of this letter on or about January 19, 2017, but made no change to the prescription at that time.

31. On or about January 31, 2017, Respondent received a letter from OptumRX informing her that Patient A's prescription of Lexapro exceeded the manufacturer's maximum of 10 mg per day in geriatric patients. Respondent initialed the receipt and review of this letter on or about February 13, 2017, and included a note stating, "ok will decrease," but made no change to the prescription at that time.

32. On or about February 16, 2017, Respondent prescribed Patient A 252 tabs of Dexedrine 10 mg. The chart notes do not identify a clinical visit or any other interaction with the patient on that date.

33. On or about March 10, 2017, Respondent prescribed Patient A 60 tabs of Dexedrine 10 mg. The chart notes do not identify a clinical visit or any other interaction with the patient on that date.

34. On or about March 21, 2017, Patient A presented to Respondent for a follow-up visit. At this visit, Patient A admitted he has addictive tendencies, and informed Respondent that he ran out of his medications one week early. The chart notes for this visit make no reference to Patient A's Lexapro prescription in any way. At the conclusion of this visit, Respondent maintained Respondent on his prescription of three (3) tabs of Dexedrine 10 mg three (3) times per day.

35. Between on or about March 22, 2017, and on or about May 15, 2020, Respondent wrote monthly prescriptions to Patient A for three (3) tabs of Dexedrine 10 mg three (3) times per day. Respondent only documented six (6) clinical encounters with the patient throughout that time period, including progress notes on or about October 9, 2017, March 5, 2018, March 4,

2019, June 19, 2019, and May 15, 2020, and a patient intake form on or about December 16, 2019.

36. On or about April 19, 2017, Respondent prescribed Patient A 252 tabs of Dexedrine 10 mg. The chart notes do not identify a clinical visit with the patient on that date, but contains a handwritten note from the patient thanking Respondent for allowing him to pick up his prescription that day, and stating he will not ask for an early refill.

37. On or about July 12, 2017, Respondent prescribed Patient A two (2) tabs of Lexapro 20 mg per day, with six (6) refills.

38. On or about August 27, 2017, Respondent received a letter from OptumRX informing her that Patient A's prescription of Lexapro exceeded the manufacturer's maximum of 20 mg per day. A copy of his prescription profile for that month was attached. Respondent initialed the receipt and review of this letter on or about August 29, 2017, and included a note stating that the patient is supposed to take only one (1) 20 mg tab per day according to her records, but made no change to the prescription at that time.

39. On or about October 9, 2017, Patient A presented to Respondent for a follow-up visit. At this visit, Respondent noted the patient was doing well. The chart notes for this visit make no reference to his Lexapro prescription in any way. At the conclusion of the visit, Respondent made no changes to Patient A's medication regimen.

40. On or about February 15, 2018, Respondent prescribed Patient A two (2) tabs of Lexapro 20 mg per day, with six (6) refills.

41. On or about September 3, 2020, Respondent was interviewed by an investigator for the Board. During this interview, Respondent indicated that she believed the maximum recommended daily dose of Lexapro was 40 mg, and the maximum recommended daily dose of Dexedrine was 60 mg.

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

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(A) Prescribing a daily dose of 40 mg Lexapro to Patient A between in and around May 2016, and in and around May 2020, and failing to appropriately manage the dosing error once brought to her attention; and

(B) Providing Patient A with monthly prescriptions for medications, including dextroamphetamine, between in or around March 2017 and in or around May 2020, while only documenting five (5) progress notes and one (1) patient intake form during that time period.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

43. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 30419 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in her care and treatment of Patient A, as more particularly alleged hereinafter:

(A) Paragraphs 8 through 42(B), above, are hereby incorporated by reference and realleged as if fully set forth herein.

(B) Failing to order thyroid function tests and/or obtain and document review of Patient A's prior thyroid function tests at any time while treating Patient A for depression;

(C) Prescribing psychotropic medications to a patient with a history of liver failure without ever ordering baseline labs to assess liver function, and/or obtaining and documenting review of lab work previously performed, and/or conferring and documenting a discussion with Patient A's internist or endocrinologist regarding the current nature and extent of his possible chronic liver failure;

(D) Prescribing daily trazodone 150 mg tabs to Patient A between in and around September 2017 and in and around May 2020, without ever documenting the inclusion of this medication in the patient's treatment plan, progress notes, or medication sheets;

(E) Failing to obtain and document informed consent from Patient A when prescribing gabapentin for anxiety and insomnia;

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(F) Failing to obtain a detailed and thorough prescription substance abuse history from Patient A before prescribing Dexedrine;

(G) Failing to obtain and document informed consent from Patient A when prescribing Dexedrine;

(H) Failing to document any coordination of care with Patient A's internist or endocrinologist prior to prescribing Dexedrine;

(I) Failing to clearly document her rationale for increasing Patient A's dose of Dexedrine on or about May 21, 2014, and again on or about June 9, 2014;

(J) Failing to document her reasoning for increasing Patient A's dose of Dexedrine beyond the recommended daily dose;

(K) Failing to set firm limits and continuously providing refills of Dexedrine to Patient A despite his substance abuse history and his repeated overuse of this medication;

(L) Diagnosing Patient A with ADHD without appropriately documenting DSM-V criteria to support this diagnosis in the patient's chart; and

(M) Failing to document a patient encounter and prescription to Patient A for Dexedrine on or about January 14, 2016.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

44. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 30419 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records regarding her care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 43(M), above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

45. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 30419 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code, in that Respondent has demonstrated incompetence in her care and

treatment of Patient A, as more particularly alleged in paragraphs 8 through 44, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

46. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 15, 2011, the Board issued a Decision and Order that became effective on or about July 15, 2011, in an action entitled, *In the Matter of the Accusation Against Nicole Poliquin-Williams, M.D.*, Medical Board of California Case No. 06-2007-187121. In that matter, and as a result of Respondent's negligent care and treatment of two patients, Respondent's Physician's and Surgeon's Certificate No. A 30419 was publicly reprimanded. That Decision is now final and is incorporated by reference 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. A 30419, issued to Respondent, Nicole Poliquin, M.D.;

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

3. Ordering Respondent, Nicole Poliquin, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: JAN 11 2022

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

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