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

In the Matter of the First Amended Accusation Against: Andrew George Malcolm, M.D. Physician's and Surgeon's Certificate No. A 31071 Respondent.	Case No. 800-2020-069563

DECISION

The attached Stipulated Surrender of License and 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 February 24, 2022.

IT IS SO ORDERED February 17, 2022.

MEDICAL BOARD OF CALIFORNIA

William Prasifka,
Executive Director

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

In the Matter of the First Amended Accusation Against: **ANDREW GEORGE MALCOLM, M.D.** **4557 Vista de la Tierra** **Del Mar, CA 92014** **Physician's and Surgeon's Certificate No. A 31071** Respondent.	Case No. 800-2020-069563 OAH No. 2022010541 **STIPULATED SURRENDER OF LICENSE 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 Tessa L. Heunis, Deputy Attorney General.

2. Andrew George Malcolm, M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about May 23, 1977, the Board issued Physician's and Surgeon's Certificate No. A 31071 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. 800-2020-069563 and will expire on December 31, 2021, unless renewed. On February 24, 2021, an Order pursuant to Penal Code section 23 was issued in *The People of the State of California v. Andrew George Malcolm*, San Diego County Superior Court Case No. SCD285357, prohibiting Respondent from practicing medicine in the State of California until final disposition of the criminal charges then pending against him or as a condition of probation. On or about March 24, 2021, in Superior Court Case No. SCD285357, the prohibition against practicing medicine in the State of California (unless lifted or modified by the Board) was made a condition of a grant of two years formal probation to Respondent.

JURISDICTION

4. On August 6, 2021, Accusation No. 800-2020-069563 was filed before the Board. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent, and Respondent timely filed his Notice of Defense contesting the Accusation. Subsequently, on December 27, 2021, First Amended Accusation 800-2020-069563 was filed before the Board and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent and all allegations therein were deemed controverted. A true and correct copy of First Amended Accusation No. 800-2020-069563 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and fully understands the charges and allegations in First Amended Accusation No. 800-2020-069563. Respondent also has carefully read, and fully understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the

issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in First Amended Accusation No. 800-2020-069563, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. A 31071 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate No. A 31071 without further process.

CONTINGENCY

10. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Board "shall delegate to its executive director the authority to adopt a ... stipulation for surrender of a license."

11. Respondent understands that, by signing this stipulation, he enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate No. A 31071 without further notice to, or opportunity to be heard by, Respondent.

12. This Stipulated Surrender of License and Disciplinary Order shall be subject to the approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for his consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands

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and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

13. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in his discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

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

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

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 31071, issued to Respondent Andrew George Malcolm, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A 31071 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. 800-2020-069563 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $491.25 prior to issuance of a new or reinstated license.

6. 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 First Amended Accusation, No. 800-2020-069563 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 31071. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 1.26.22

ANDREW GEORGE MALCOLM, M.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: January 26, 2022

Respectfully submitted,

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

TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation No. 800-2020-069563

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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: **ANDREW GEORGE MALCOLM, M.D.** **4557 VISTA DE LA TIERRA** **DEL MAR, CA 92014** **Physician's and Surgeon's Certificate No. A 31071,** Respondent.	Case No. 800-2020-069563 **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 May 23, 1977, the Board issued Physician's and Surgeon's Certificate Number A 31071 to Andrew George Malcolm, 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 December 31, 2021, unless renewed. On February 24, 2021, an Order pursuant to Penal Code section 23 was issued in Superior Court Case No. SCD285357,

prohibiting Respondent from practicing medicine in the State of California until final disposition of the criminal charges then pending against him or as a condition of probation. On or about March 24, 2021, in Superior Court Case No. SCD285357, the prohibition against practicing medicine in the State of California (unless lifted or modified by the Board) was made a condition of a grant of two years formal probation to Respondent.

JURISDICTION

3. This First Amended Accusation, which supersedes Accusation No. 800-2020-069563 filed on August 6, 2021, in the above-entitled matter, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 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.
>
> ...

5. Section 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes including, but not limited to:
>
> (a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. ...
>
> ...

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6. 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.

...

STATUTORY PROVISIONS

7. 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.

...

(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.

...

8. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

...

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

9. Section 2237 of the Code states:

(a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section.

...

10. Section 2238 of the Code states:

A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

11. Section 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than

one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section. ...

12. Section 2241 of the Code states:

(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

...

13. 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. ...

...

14. Section 2261 of the Code states:

Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.

15. 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.

16. Section 4021 of the Code states:

"Controlled substance" means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

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17. Section 4022 of the Code states:

"Dangerous drug" ... means any drug ... unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

...

(c) Any other drug ... that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

18. Section 2529.1 of the Code states:

(a) The use of any controlled substance or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the registrant, or to any other person or to the public, or to the extent that this use impairs the ability of the registrant to practice safely or more than one misdemeanor or any felony conviction involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of this unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section. ...

19. Health and Safety Code section 11152 states:

No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division.[1]

20. Health and Safety Code section 11153 states:

(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

...

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[1] Health and Safety Code, Division 10, Uniform Controlled Substances Act.

21. Health and Safety Code section 11157 states:

No person shall issue a prescription that is false or fictitious in any respect.

22. Health and Safety Code section 11171 states:

No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

23. Health and Safety Code section 11173 states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

...

24. Health and Safety Code section 11174 states:

No person shall, in connection with the prescribing, furnishing, administering, or dispensing of a controlled substance, give a false name or false address.

25. Health and Safety Code section 11175 states:

No person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription.

26. Health and Safety Code section 11180 states:

No person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.

27. Title 21, United States Code Controlled Substances Act, section 843, states:

(a) Unlawful acts

It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 828 of this title;

...

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(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this subchapter or subchapter II of this chapter ...

...

(b) Communication facility

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

...

28. Title 21, United States Code Controlled Substances Act, section 844, states:

(a) Unlawful acts; penalties

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. ...

...

29. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.[2]

REGULATORY PROVISIONS

30. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the

[2] *Shea v. Board of Medical Examiners*, (1978) 81 Cal.App.3d 564, 575.

license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

COST RECOVERY

31. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DEFINITIONS

32. Hydrocodone is a Schedule II[3] controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. Is it sold under brand names that include Vicodin and Norco.

33. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. It is sold under brand names that include Percocet.

34. Amphetamine salt combo is sold under the brand name Adderall. 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.

35. Butalbital is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.

36. Alprazolam, flurazepam and diazepam are all in the benzodiazepine family of drugs. They are Schedule IV controlled substances pursuant to Health and Safety Code section 11057, subdivision (d), and dangerous drugs pursuant to Business and Professions Code section 4022.

[3] Before October 6, 2014, hydrocodone was a Schedule III controlled substance.

Alprazolam is often sold under the brand name Xanax, flurazepam as Dalmane, and diazepam as Valium.

FACTUAL ALLEGATIONS

37. Except as otherwise stated herein, at all relevant times, Respondent was a physician practicing as a radiologist.

38. Between at least January 2014[4] through August 2019, Respondent issued prescriptions for controlled substances to Patient 1, Patient 2, Patient 3, Patient 4, Patient 5, Patient 6, Patient 7, Patient 8, Patient 9, Patient 10, Patient 11, Patient 12, Patient 13, and Patient 14[5] (collectively, "Patient 1 through Patient 14"), whose number included family members, friends, employees and other acquaintances. In total, Patient 1 through Patient 14 filled prescriptions at approximately twenty-four (24) pharmacies for the following approximate total number of prescription drugs:

a) 13,570 x hydrocodone bitartrate-acetaminophen 5/325 mg tablets[6]

b) 1,390 x oxycodone HCL-acetaminophen 5/325 mg tablets

c) 1,330 x alprazolam 0.5 mg tablets

d) 1,760 x flurazepam 15 mg tablets

e) 840 x diazepam 5 mg tablets[7]

f) 760 x flurazepam HCL 30 mg tablets[8]

g) 310 x hydrocodone bitartrate-acetaminophen 5/300 mg tablets

h) 280 x hydrocodone bitartrate-acetaminophen 5/500 mg tablets[9]

i) 650 x butalbital-acetaminophen-caffeine 50/325/40 mg tablets[10]

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[4] During the course of the Board's investigation into this matter, a Controlled Substance Utilization Review and Evaluation System (CURES) Report was obtained, showing all prescriptions issued by Respondent and filled during the period January 1, 2014, through January 1, 2021. Conduct occurring outside the statute of limitations period is for informational purposes only and is not alleged as a basis for disciplinary action.

[5] The identity of the patients is known to all parties but not revealed herein for privacy reasons.

[6] Of this total, 800 tablets were obtained during January – July 2014.

[7] Of this total, 240 tablets were obtained during January – July 2014.

[8] Of this total, 260 tablets were obtained during January – July 2014.

[9] Of this total, 180 tablets were obtained during January – July 2014.

[10] Of this total, 180 tablets were obtained during January – July 2014.

j) 60 x amphetamine salt combo 10 mg tablets

39. Respondent performed no examinations on Patient 1 through Patient 14 and did not maintain any medical records for them. In most instances, the controlled substances obtained by Patient 1 through Patient 14 were not used by them but were handed to Respondent for his personal use, by pre-arrangement. Respondent believed at least one of the patients to be addicted to prescription opioids.

40. On or about August 20, 2019, Patient 1 was contacted and interviewed by Law Enforcement in connection with multiple prescriptions for controlled substances issued by Respondent and filled by Patient.

41. On or about February 28, 2020, in *The People of the State of California vs. George Andrew Malcolm et al*, Superior Court, County of San Diego, Case No. SCD285357, a felony Complaint was filed against Respondent (with Patient 1 as a co-defendant). The Complaint charged Respondent with sixteen (16) counts of violating Health and Safety Code section 11173, subdivision (a) [obtaining prescription for controlled substances by fraud or deceit].

42. On or about February 24, 2021, Respondent pleaded guilty to three (3) counts of violating Health and Safety Code section 11173, subdivision (a), and admitted to unlawfully obtaining, on three occasions, "a Schedule II controlled substance, to wit Hydrocodone bitartrate-acetaminophen or oxycodone HCL-acetaminophen by fraud, deceit, misrepresentation or by concealment of a material fact." On the same date, Respondent was convicted on his plea of guilty.

43. On or about March 24, 2021, Respondent was sentenced to two years formal probation on various terms and conditions, including that he is not permitted to practice medicine in the State of California while on probation unless permitted by the Board.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

44. Respondent Andrew George Malcolm, M.D., is subject to disciplinary action under sections 2227 and 2234, as defined by section 2236, subdivision (a), of the Code, in that he has been convicted of a crime substantially related to the qualifications, functions, or duties of a

physician and surgeon, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Drug Related Conviction)

45. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2237, of the Code, in that he has been convicted of a charge of violating a state statute or regulation regulating dangerous drugs or controlled substances, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violation of Drug Statutes)

46. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the Code, in that he violated federal and/or state statutes or regulations regulating dangerous drugs or controlled substances, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Acts of Dishonesty or Corruption)

47. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (e), of the Code, in that he committed acts of dishonesty or corruption, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence)

48. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient 1 through Patient 14, as more

particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein, and as further described below:

(1) - (14) Respondent failed to perform and/or document that he performed a history and physical on Patient 1 through Patient 14.

(15) - (28) Respondent failed to produce a treatment plan and objectives in his care of Patient 1 through Patient 14.

(29) - (42) Respondent failed to obtain an informed consent from Patient 1 through Patient 14.

(43) - (56) Respondent failed to perform a periodic review of the care he provided to Patient 1 through Patient 14.

(57) - (70) Respondent failed to offer Patient 1 through Patient 14 any additional evaluations or consultations for their care.

(71) - (84) Respondent failed to maintain any medical records of his care and treatment for Patient 1 through Patient 14.

(85) Respondent failed to adhere to the prescribing guidelines of the Medical Board or of the Drug Enforcement Agency (DEA) and prescribed medications to his patients for his personal use.

SIXTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

49. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient 1 through Patient 14, as more particularly described in paragraphs 37 through 43, and 48, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SEVENTH CAUSE FOR DISCIPLINE

(Furnishing Drugs to an Addict)

50. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2241, of the Code, in that he furnished

dangerous drugs or controlled substances to a person he knew or reasonably believed was using or would use the drugs or substances for a nonmedical purpose, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without an Appropriate Exam)

51. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2242 of the Code, in that he prescribed, dispensed or furnished dangerous drugs without an appropriate prior examination and a medical indication, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

NINTH CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substances)

52. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has administered controlled substances to himself, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

TENTH CAUSE FOR DISCIPLINE

(Conviction of a Felony Involving the Use, Consumption, or Self-Administration of a Controlled Substance)

53. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has been convicted of a felony involving the use, consumption, or self-administration of a controlled substance, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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ELEVENTH CAUSE FOR DISCIPLINE

(Making False Statements)

54. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2261 of the Code, in that he knowingly made or signed a certificate or other document directly or indirectly related to the practice of medicine which falsely represented the existence or nonexistence of a state of facts, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

55. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records in regard to his care and treatment of patients, as more particularly described in paragraphs 37 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRTEENTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

56. Respondent Andrew George Malcolm, M.D., is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly described in paragraphs 37 through 55, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 31071, issued to Respondent Andrew George Malcolm, M.D.;

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

3. Ordering Respondent Andrew George Malcolm, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Respondent Andrew George Malcolm, M.D., to pay the Medical Board of California the reasonable costs of the enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: DEC 27 2021

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

Reji Varghese
Deputy Director