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

In the Matter of the First Amended Accusation/Petition to Revoke Probation Against: Xinming Fu, M.D. Physician's and Surgeon's Certificate No. A 70082 Respondent.	Case No.: 800-2020-073243

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 April 8, 2022.

IT IS SO ORDERED: March 9, 2022.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
GIOVANNI F. MEJIA
Deputy Attorney General
State Bar No. 309951
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9072
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the First Amended Accusation/Petition to Revoke Probation Against: **XINMING FU, M.D.** **2001 East 1st Street, Suite 102** **Santa Ana, CA 92705** **Physician's and Surgeon's Certificate No. A 70082,** Respondent.	Case No. 800-2020-073243 OAH No. 2021050113 **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 Giovanni F. Mejia, Deputy Attorney General.

////

////

2. Respondent Xinming Fu, M.D. (Respondent) is represented in this proceeding by attorney Courtney E. Pilchman, Esq., whose address is: 2030 Main Street, Suite 1300, Irvine, CA 92614.

3. On or about October 22, 1999, the Board issued Physician's and Surgeon's Certificate No. A 70082 to Xinming Fu, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation/Petition to Revoke Probation No. 800-2020-073243, and will expire on September 30, 2023, unless renewed.

JURISDICTION

4. First Amended Accusation/Petition to Revoke Probation No. 800-2020-073243 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on June 16, 2021. Respondent filed a Notice of Defense contesting the First Amended Accusation/Petition to Revoke Probation.

5. A copy of First Amended Accusation/Petition to Revoke Probation No. 800-2020-073243 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation/Petition to Revoke Probation No. 800-2020-073243. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in First Amended Accusation/Petition to Revoke Probation No. 800-2020-073243.

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

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in First Amended Accusation/Petition to Revoke Probation No. 800-2020-073243 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.

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 his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

////

////

////

ADDITIONAL PROVISIONS

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 70082 issued to Respondent Xinming Fu, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions, which shall supersede all other terms and conditions of probation previously ordered in Medical Board case No. 04-2007-181659. The five (5) year term of probation under this Disciplinary Order shall begin on the effective date of the Medical Board's Decision in case No. 800-2020-073243.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 60 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 85 hours of CME of which 60 hours were in satisfaction of this condition.

////

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 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. 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(s), Accusation(s), 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 the 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. The 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 the Respondent did not successfully complete the clinical competence assessment program, the 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.

4. 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(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to

compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within

15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

5. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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. The Respondent shall not resume practice until an appropriate practice setting is established.

5. PROHIBITED PRACTICE. During probation, Respondent is prohibited from evaluating any patient for, or issuing, any emotional support animal or medical cannabis recommendation. After the effective date of this Decision, all patients being treated by the Respondent shall be notified that the Respondent is prohibited from evaluating any patient for, or issuing, any emotional support animal or medical cannabis recommendation. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

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. 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.

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. 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.

12. 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.

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.

13. 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.

14. 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.

15. 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.

16. 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.

17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation/Petition to Revoke Probation No. 800-2020-073243 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 license.

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Courtney E. Pilchman, 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: 03-04-2022

XINMING FU, M.D.
Respondent

I have read and fully discussed with Respondent Xinming Fu, 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: 3/4/22

COURTNEY E. PILCHMAN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: March 7, 2022

Respectfully submitted,

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

GIOVANNI F. MEJIA
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation/Petition to Revoke Probation No. 800-2020-073243

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
GIOVANNI F. MEJIA
Deputy Attorney General
State Bar No. 309951
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9072
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the First Amended Accusation and Petition to Revoke Probation Against: **XINMING FU, M.D.** **2001 East 1st Street, Suite 102** **Santa Ana, CA 92705-4020** **Physician's and Surgeon's Certificate No. A 70082,** Respondent.	Case No. 800-2020-073243 OAH No. 2021050113 **FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION**

PARTIES

1. William Prasifka (Complainant) brings this First Amended Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 22, 1999, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 70082 to Xinming Fu, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on September 30, 2021, unless renewed.

////

////

JURISDICTION

3. This First Amended Accusation and Petition to Revoke Probation is brought before the Board, under the authority of the following laws, and the Board's Decision and Order in the case entitled *In the Matter of the Accusation Against Xinming Fu, M.D.*, Board case No. 04-2007-181659, a true and correct copy of which is attached hereto as exhibit A and hereby incorporated by reference as if fully set forth herein. All section reference are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227, subdivision (a) 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.

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.

7. Section 2290.5 of the Code states, in pertinent part:

...

(b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

...

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct....

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. A 70082 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 the course of his care and treatment of one or more patients. The circumstances are as follows:

////

////

////

////

Patient A[1]

9. On or about November 12, 2018, Patient A visited www.petsupportdoctor.com (the Website). The Website purported to offer emotional support animal (ESA) letters.

10. Via the Website, Patient A initiated the online application process for an ESA letter.

11. During the course of the online application process, Patient A provided the following description of illness: "I am VERY WORRIED by the awful state of our country. Horrible leaders make me really anxious about the future." Patient A further provided a medical history of low back pain, headaches and insomnia.

12. Following Patient A's submission of and payment for the online application, Patient A briefly conferred with Respondent by telephone.

13. Respondent issued or caused to be issued an ESA letter for Patient A dated November 12, 2018 stating, in pertinent part:

> [Patient A] is currently a patient of ours. I am familiar with his history and with the functional limitations imposed by his mental related illness. This person meets the definition of disability under the Americans with Disability Act, the Fair Housing Act, and the Rehabilitation Act of 1973. Due to this mental disability, this individual has certain limitations related to social interaction and coping with stress.
>
> To help alleviate these difficulties and to enhance his ability to live independently and to fully use and enjoy the dwelling unit you own. [Sic] I have recommended [Patient A] to obtain a pet or emotional support animal. The presence of an emotional support animal is necessary to mitigate the symptoms he is currently experiencing.

14. Respondent failed to conduct an adequate initial evaluation of Patient A.

15. Respondent failed to adequately establish a basis for the disability finding and recommendation asserted in the ESA letter for Patient A.

16. Respondent failed to maintain adequate medical records for Patient A.

17. Prior to delivering health care via telehealth, Respondent failed to inform Patient A about the use of telehealth, or obtain and document verbal or written consent from Patient A for the use of telehealth.

---

[1] Pseudonyms are used in the instant First Amended Accusation and Petition to Revoke Probation in the place of any patient's true name. The true name and identity of any such patient is known to Respondent or will be disclosed to Respondent following Complainant's receipt of a duly-issued request for discovery pursuant to Government Code section 11507.6.

18. Respondent committed gross negligence in the course of his care and treatment of Patient A including, but not limited to, failing to adequately:

(a) Conduct an initial evaluation of Patient A;

(b) Maintain medical records for Patient A.

Patient B

19. On or about February 11, 2019, Respondent issued or caused to be issued an ESA letter for Patient B stating, in pertinent part:

> [Patient B] is currently a patient of ours. I am familiar with his history and with the functional limitations imposed by his mental related illness. This person meets the definition of disability under the Americans with Disability Act, the Fair Housing Act, and the Rehabilitation Act of 1973 (section 504). Due to this mental disability, this individual has certain limitations related to social interaction and coping with stress.
>
> To help alleviate these difficulties and to enhance his ability to live independently and to fully use and enjoy the dwelling unit you own. [Sic] I have recommended [Patient B] to obtain a pet or a [sic] emotional support/companionship animal. The presence of an emotional support animal is necessary to mitigate the symptoms he is currently experiencing.

20. Respondent failed to conduct an adequate medical evaluation of Patient B for an ESA recommendation.

21. Respondent failed to maintain adequate medical records for Patient B.

22. Prior to delivering health care via telehealth, Respondent failed to inform Patient B about the use of telehealth, or obtain or document verbal or written consent from Patient B for the use of telehealth.

23. Respondent committed gross negligence in the course of his care and treatment of Patient B including, but not limited to, failing to adequately conduct a medical evaluation of Patient B for an ESA recommendation.

Patient C

24. On or about September 18, 2019, Patient C submitted a request for an ESA letter via the website, MyESAdoctor.com.

////

////

25. Respondent issued or caused to be issued an ESA letter for Patient C dated September 24, 2019 stating, in pertinent part:

> [Patient C] is currently a patient of ours. I am familiar with her history and with the functional limitations imposed by her mental related illness [sic]. This person meets the definition of mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders 5, and under the Americans with Disability Act, the Fair Housing Act, and the Rehabilitation Act of 1973 (section 504), as well as the Air Carrier Access Act (49 U.S.C. 41705 and 14 C.F.R. 382). Due to this mental disability, this individual has certain limitations related to social interaction and coping with stress.
>
> To help alleviate these difficulties,and [sic] to enhance her ability to live independently and to fully use and enjoy the dwelling unit you own, I have recommended [Patient C] to obtain her companion emotional support animal. The presence of her emotional support animal is necessary to mitigate the symptoms she is currently experiencing. In the setting of airline travel, please allow her to be accompanied by her emotional support animal in the aircraft cabin.

26. Respondent failed to conduct an adequate medical evaluation of Patient C for an ESA recommendation.

27. Respondent failed to adequately diagnose a psychiatric condition for Patient C as a basis for an ESA recommendation.

28. Respondent failed to adequately establish or document symptoms of any mental illness or how such symptoms were affected by Patient C's purported emotional support animal.

29. In his records pertaining to his care and treatment of Patient C, Respondent failed to adequately document basic identifying information for Patient C including, but not limited to, her birth date or residence address, or both.

30. In his records pertaining to his care and treatment of Patient C, Respondent failed to adequately document the patient's medical/psychiatric history, medications or past treatments, or her social and family history, or any combination thereof.

31. Respondent committed gross negligence in the course of his care and treatment of Patient C including, but not limited to:

(a) Improperly issuing an ESA letter for Patient C;

(b) Failing to maintain adequate medical records for Patient C.

////

////

Patient D

32. On or about January 16, 2020, Patient D visited a website for Steady Care Medical (Steady Care) to request a medical cannabis recommendation. Patient D was not a previously existing patient of Steady Care or Respondent.

33. As a part of the process for obtaining a medical cannabis recommendation, Patient D spoke with Respondent by telephone.

34. During the call with Respondent, Patient D stated, among other things, that he wanted to use cannabis for pain, that he had tweaked his back approximately five or six years ago, and that approximately nine years before that he had injured his knee.

35. Respondent issued or caused to be issued a medical cannabis recommendation for Patient D dated January 16, 2020, titled "Physician Statement and Recommendation", that stated, in pertinent part:

> The purpose of this medical document is to identify this individual as a patient whose possession and/or cultivation of medical cannabis is permissible pursuant to California Health and Safety Code Section 11362.5 and Senate Bill 420.
>
> This affirms the patient listed above has been examined and evaluated by [Respondent] and that [Respondent] is licensed to practice medicine in the State of California. It is [Respondent's] assessment that the above-mentioned patient qualifies under California Health and Safety Code Section 11362.5 for the use of cannabis for medical purposes. If this patient chooses to use cannabis therapeutically, the staff of [Respondent's clinic] will continue to monitor the status of this patient. The attending physician is responsible for only the medicinal cannabis aspect of medical care. This patient assumes full responsibility for any and all risks associated with this treatment option. [Respondent] has discussed the potential medical benefits and risks of cannabis use.

36. Prior to the issuance of the medical cannabis recommendation for Patient D, Respondent failed to conduct or document an adequate physical examination of Patient D.

37. Prior to the issuance of the medical cannabis recommendation for Patient D, Respondent failed to adequately review or establish Patient D's medical history.

38. Prior to the issuance of the medical cannabis recommendation for Patient D, Respondent failed to adequately establish any diagnosis for Patient D, or any basis for a medical cannabis recommendation.

////

39. Prior to the issuance of the medical cannabis recommendation for Patient D, Respondent failed to adequately discuss possible side effects of cannabis or cannabis treatment, or other possible treatment options.

40. Prior to delivering health care via telehealth, Respondent failed to inform Patient D about the use of telehealth, or obtain or document verbal or written consent from Patient D for the use of telehealth.

41. Respondent failed to maintain adequate medical records for Patient D.

42. Respondent committed gross negligence in the course of his care and treatment of Patient D including, but not limited to:

(a) Improperly issuing a medical cannabis recommendation for Patient D;

(b) Failing to adequately maintain medical records for Patient D.

Patient E

43. On or about May 21, 2020, Patient E called a telephone number for "Online Medical Card" to request a medical cannabis recommendation. Patient E was not a previously existing patient of Online Medical Card or Respondent.

44. As a part of the process for obtaining a medical cannabis recommendation, Patient E participated in a telephone call during which he stated that he was seeking a medical cannabis recommendation because of foot pain.

45. On or about June 3, 2020, Respondent issued or caused to be issued a medical cannabis recommendation for Patient E dated May 21, 2020, titled "Physician Statement and Recommendation", that stated, in pertinent part:

> The purpose of this medical document is to identify this individual as a patient whose possession and/or cultivation of medical cannabis is permissible pursuant to California Health and Safety Code Section 11362.5 and Senate Bill 420.
>
> This affirms the patient listed above has been examined and evaluated by [Respondent] and that [Respondent] is licensed to practice medicine in the State of California. It is [Respondent's] assessment that the above-mentioned patient qualifies under California Health and Safety Code Section 11362.5 for the use of cannabis for medical purposes. If this patient chooses to use cannabis therapeutically, the staff of [Respondent's clinic] will continue to monitor the status of this patient. The attending physician is responsible for only the medicinal cannabis aspect of medical care. This patient assumes full responsibility for any and all risks associated with this treatment

option. [Respondent] has discussed the potential medical benefits and risks of cannabis use.

46. Prior to the issuance of the medical cannabis recommendation for Patient E, Respondent failed to conduct or document an adequate physical examination of Patient E.

47. Prior to the issuance of the medical cannabis recommendation for Patient E, Respondent failed to adequately review or establish Patient E's medical history.

48. Prior to the issuance of the medical cannabis recommendation for Patient E, Respondent failed to adequately establish any diagnosis for Patient E, or any basis for a medical cannabis recommendation.

49. Prior to the issuance of the medical cannabis recommendation for Patient E, Respondent failed to adequately discuss possible side effects of cannabis or cannabis treatment, or other possible treatment options.

50. On or about June 19, 2020, a Board investigator requested a certified copy of Patient E's medical records from Respondent.

51. In response, the Board's investigator received, among other things, a Certification of Records form in which an office manager of Respondent's attested that Respondent did not have a "medical note" for Patient E because "the doctor didn't have a chance to consult with [the] patient." The office manager further attested that "the [r]ec[ommendation] was revoked...."

52. Respondent committed gross negligence in the course of his care and treatment of Patient E including, but not limited to:

(a) Improperly issuing a medical cannabis recommendation for Patient E;

(b) Failing to adequately maintain medical records for Patient E.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

53. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 70082 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. The circumstances are as follows:

54. Paragraphs 8 through 52, above, are hereby incorporated by reference as if fully set forth herein.

55. Respondent committed additional negligent acts in the course of his care and treatment of Patient A or Patient B, or both, including, but not limited to, failing to adequately:

(a) Establish a basis for the disability finding and recommendation asserted in the ESA letter for Patient A;

(b) Maintain medical records for Patient B.

THIRD CAUSE FOR DISCIPLINE

(Failure to Obtain or Document Informed Consent for Telemedicine)

56. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 70082 to disciplinary action under sections 2227 and 2234, as defined by section 2290.5, subdivision (d), of the Code in that he failed to inform Patient A, Patient B, or Patient D, or any combination thereof, about the use of telehealth, or obtain and document verbal or written consent from one or more of the patients for the use of telehealth as more particularly alleged in paragraphs 9 through 22 and 32 through 40, above, which are hereby incorporated by reference as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

57. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 70082 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 relating to the provision of services to one or more patients as more particularly alleged in paragraphs 8 through 56, above, which are hereby incorporated by reference as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Incompetence)

58. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 70082 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code in that Respondent exhibited incompetence in evaluating Patient A,

Patient B, or Patient C, or any combination thereof, for a disability or ESA recommendation as more particularly alleged in paragraphs 9 through 17, 19 through 22, and 24 through 30, above, which are hereby incorporated by reference as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Violating the Medical Practice Act)

59. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 70082 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code in that he violated or attempted to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate one or more provisions of the Medical Practice Act as more particularly alleged in paragraphs 8 through 58, above, which are hereby incorporated by reference as if fully set forth herein.

CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

60. At all times after the effective date of Respondent's probation, Condition 7 of Respondent's probation stated:

> 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.

61. Respondent's probation is subject to revocation because he failed to comply with Condition 7 of his probation, as more particularly alleged in paragraphs 8 through 59, above, which are hereby 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 the probation that was granted by the Medical Board of California in Case No. 04-2007-181659 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 70082 issued to Respondent Xinming Fu, M.D.;

2. Revoking or suspending Respondent Physician's and Surgeon's Certificate No. A 70082, issued to Respondent Xinming Fu, M.D.;

3. Revoking, suspending or denying approval of Respondent Xinming Fu, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

4. If placed on probation, ordering Respondent Xinming Fu, M.D. to pay the Board the costs of probation monitoring;

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

DATED: JUN 16 2021

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