

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

**In the Matter of the Accusation/Petition
to Revoke Probation Against:**

Michael Hirsch Tolwin, M.D.

**Physician's and Surgeon's
Certificate No. G 48816**

Respondent.

Case No.: 800-2020-069068

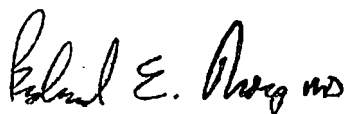
DECISION

**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 June 17, 2022.

IT IS SO ORDERED: May 19, 2022.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
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Attorneys for Complainant
7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation/Petition to
Revoke Probation Against:

13 **MICHAEL HIRSCH TOLWIN, M.D.**
14 **P.O. Box 34841**
Los Angeles, CA 90034

15 **Physician's and Surgeon's Certificate**
16 **No. G 48816,**

17 Respondent.

Case No. 800-2020-069068

OAH No. 2021050194

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Tan N. Tran, Deputy
25 Attorney General.

26 2. Respondent Michael Hirsch Tolwin, M.D. (Respondent) is represented in this
27 proceeding by attorneys Peter R. Osinoff and Edward Idell, of Bonne Bridges Mueller O'Keefe &
28 Nichols, 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071-1562.

3. On or about August 30, 1982, the Board issued Physician's and Surgeon's Certificate No. G 48816 to Michael Hirsch Tolwin, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation/Petition to Revoke Probation No. 800-2020-069068, and will expire on July 31, 2022, unless renewed.

JURISDICTION

4. Accusation/Petition to Revoke Probation No. 800-2020-069068 was filed before the Board, and is currently pending against Respondent. The Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on December 18, 2020. Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke Probation.

5. A copy of Accusation/Petition to Revoke Probation No. 800-2020-069068 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2020-069068. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation/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.

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1 **CULPABILITY**

2 9. Respondent understands that the charges and allegations in Accusation/Petition to
3 Revoke Probation No. 800-2020-069068, if proven at a hearing, constitute cause for imposing
4 discipline upon his Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation/Petition to Revoke Probation without the
6 expense and uncertainty of further proceedings, Respondent admits that at a hearing, Complainant
7 could set forth a prima facie case for the charges and allegations in Accusation/Petition to Revoke
8 Probation No. 800-2020-069068, and Respondent declines to defend same.

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

12 **CONTINGENCY**

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

23 13. Respondent agrees that if he ever petitions for early termination or modification of
24 probation, or if an accusation and/or petition to revoke probation is filed against him before the
25 Board, all of the charges and allegations contained in Accusation/Petition to Revoke Probation
26 No. 800-2020-069068 shall be deemed true, correct and fully admitted by Respondent for
27 purposes of any such proceeding or any other licensing proceeding involving Respondent in the
28 State of California.

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

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

DISCIPLINARY ORDER

16. It should be noted that in a prior disciplinary action entitled "In the Matter of the Accusation Against: Michael Hirsch Tolwin, M.D.," Case No. 800-2014-009168, the Medical Board of California issued a decision, effective December 14, 2018 (the "2018 Decision"), in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions.

17. All terms and conditions of the 2018 Decision continue to apply and will continue to apply until the termination of the entire probationary period. Respondent is hereby bound by those other terms and conditions of the 2018 Decision. A copy of the 2018 Decision is also attached as Exhibit A and is incorporated herein by reference.

18. IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 48816 issued to Respondent Michael Hirsch Tolwin, M.D. is revoked, pursuant to the 2018 Decision. However, the revocation is stayed and Respondent is placed on probation for an additional one (1) year, which shall be consecutive to, and shall take effect immediately upon completion of the 2018 Decision, with the following terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to

1 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
2 completion of each course, the Board or its designee may administer an examination to test
3 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
4 hours of CME of which 40 hours were in satisfaction of this condition.

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

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

19 Respondent shall submit a certification of successful completion to the Board or its
20 designee not later than 15 calendar days after successfully completing the course, or not later than
21 15 calendar days after the effective date of the Decision, whichever is later.

22 3. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
23 ordered to reimburse the Board its costs of investigation and enforcement, including, but not
24 limited to, expert review, amended accusations, legal reviews, joint investigations, and subpoena
25 enforcement, as applicable, in the amount of \$6,092.50 (six thousand ninety-two dollars and fifty
26 cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall
27 be considered a violation of probation.

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

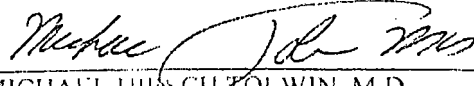
3 The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility
4 to repay investigation and enforcement costs, including expert review costs (if applicable).

5 4. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
6 a new license or certification, or petition for reinstatement of a license, by any other health care
7 licensing action agency in the State of California, all of the charges and allegations contained in
8 Accusation/Petition to Revoke Probation No. 800-2020-069068 shall be deemed to be true,
9 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
10 proceeding seeking to deny or restrict license.

11 ACCEPTANCE

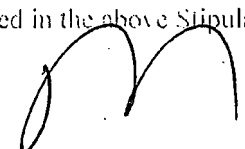
12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorneys, Peter R. Osinoff and Edward Idell. I understand the stipulation
14 and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
15 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
16 bound by the Decision and Order of the Medical Board of California.

17
18 DATED: 3/16/2022


MICHAEL HIRSCH TOLWIN, M.D.
Respondent

20
21 I have read and fully discussed with Respondent Michael Hirsch Tolwin, M.D. the terms
22 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
23 Order. I approve its form and content.

24 DATED: 3/18/2022


PETER R. OSINOFF, ESQ.
EDWARD IDELL, ESQ.
Attorneys for Respondent

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27 ///

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ENDORSEMENT

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

DATED: 3/18/22

Respectfully submitted,

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



TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

**Accusation/Petition to Revoke Probation
No. 800-2020-069068**

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 BRIAN ROBERTS
Deputy Attorney General
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California Department of Justice
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6 Telephone: (213) 269-6614
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation/Petition to
13 Revoke Probation Against:

Case No. 800-2020-069068

14 **Michael Hirsch Tolwin, M.D.**
15 **P.O. Box 34841**
Los Angeles, CA 90034

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16 **Physician's and Surgeon's Certificate**
17 **No. G 48816,**

18 Respondent.

19
20 **PARTIES**

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

24 2. On or about August 30, 1982, the Medical Board issued Physician's and Surgeon's
25 Certificate Number G 48816 to Michael Hirsch Tolwin, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on July 31, 2022, unless renewed.

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

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

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

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

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

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

17 7. Section 2234 of the Code, states:

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

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

23 (b) Gross negligence.

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

28 (1) An initial negligent diagnosis followed by an act or omission medically
appropriate for that negligent diagnosis of the patient shall constitute a single
negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or
omission that constitutes the negligent act described in paragraph (1), including, but
not limited to, a reevaluation of the diagnosis or a change in treatment, and the
licensee's conduct departs from the applicable standard of care, each departure
constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is
substantially related to the qualifications, functions, or duties of a physician and
surgeon.

(f) Any action or conduct which would have warranted the denial of a
certificate.

1 (g) The failure by a certificate holder, in the absence of good cause, to attend
2 and participate in an interview by the board. This subdivision shall only apply to a
3 certificate holder who is the subject of an investigation by the board.

4 8. Section 2242 of the Code states:

5 (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
6 4022 without an appropriate prior examination and a medical indication, constitutes
7 unprofessional conduct. An appropriate prior examination does not require a
8 synchronous interaction between the patient and the licensee and can be achieved
9 through the use of telehealth, including, but not limited to, a self-screening tool or a
10 questionnaire, provided that the licensee complies with the appropriate standard of
11 care.

12 (b) No licensee shall be found to have committed unprofessional conduct within
13 the meaning of this section if, at the time the drugs were prescribed, dispensed, or
14 furnished, any of the following applies:

15 (1) The licensee was a designated physician and surgeon or podiatrist serving in
16 the absence of the patient's physician and surgeon or podiatrist, as the case may be,
17 and if the drugs were prescribed, dispensed, or furnished only as necessary to
18 maintain the patient until the return of the patient's practitioner, but in any case no
19 longer than 72 hours.

20 (2) The licensee transmitted the order for the drugs to a registered nurse or to a
21 licensed vocational nurse in an inpatient facility, and if both of the following
22 conditions exist:

23 (A) The practitioner had consulted with the registered nurse or licensed
24 vocational nurse who had reviewed the patient's records.

25 (B) The practitioner was designated as the practitioner to serve in the absence
26 of the patient's physician and surgeon or podiatrist, as the case may be.

27 (3) The licensee was a designated practitioner serving in the absence of the
28 patient's physician and surgeon or podiatrist, as the case may be, and was in
possession of or had utilized the patient's records and ordered the renewal of a
medically indicated prescription for an amount not exceeding the original prescription
in strength or amount or for more than one refill.

(4) The licensee was acting in accordance with Section 120582 of the Health
and Safety Code.

9. 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."

10. At all times after the effective date of the Decision and Order in Case Number 800-
2014-009168, Probation Condition Number 13 stated:

Failure to fully comply with any term or condition of probation is a violation of

1 probation. If Respondent violates probation in any respect, the Board, after giving
2 Respondent notice and the opportunity to be heard, may revoke probation and carry
3 out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
4 Probation, or an Interim Suspension Order is filed against Respondent during
5 probation, the Board shall have continuing jurisdiction until the matter is final, and
6 the period of probation shall be extended until the matter is final.

7 **FACTUAL SUMMARY**

8 **Initial Visit and Diagnosis**

9 11. Respondent is a practicing psychiatrist. Patient 1 (P-1),¹ a 24-year-old female,
10 visited Respondent on January 24, 2019, for a scheduled appointment. P-1 reported trouble with
11 focus and concentration. P-1 further reported that the symptoms were interfering with her ability
12 to perform in the respiratory therapy program in which she was enrolled. Respondent was
13 concerned that her performance in the respiratory therapy program was due to her lack of focus,
14 inability to concentrate, lack of sleep, or a different condition. Respondent indicated that her
15 inability to focus had been present for some time. Prior to this visit with Respondent, P-1 never
16 sought treatment or evaluation for these symptoms.

17 12. During the initial interview, Respondent noted that P-1 became irritated, frustrated,
18 and aggressive regarding her symptoms. She denied substance or alcohol abuse. She denied a
19 history of medical problems or any family history of mental illness; however, P-1 had been
20 psychiatrically hospitalized at the age of 13 with depression and a suicide attempt by overdose.
21 P-1 reported last seeing a psychiatrist a few years prior.

22 13. Respondent conducted a mental status exam and gave P-1 an Attention Deficit
23 Hyperactivity Disorder (ADHD) test which, in actuality, was a self-report checklist of symptoms
24 that a pharmaceutical representative had given to Respondent several years prior. The checklist
25 used a child/adolescent rating scale.

26 14. P-1 reported significant symptoms in the areas of attention, hyperactivity, and
27 impulsivity. Based upon these findings, Respondent diagnosed P-1 with Attention Deficit
28 Disorder (ADD).

15. Respondent did not use the American Psychiatric Association guidelines, which are

¹ For the purpose of privacy, the patient in this Accusation is referred to as Patient 1.
Respondent is aware of the identity of Patient 1.

1 from the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DMS-5), to
2 diagnose P-1 with ADD.²

3 16. Respondent did not obtain collateral information from sources other than P-1.
4 Respondent did not assess other mental health conditions that may present with inattention,
5 hyperactivity, and/or impulsivity, such as Major Depressive Disorder and anxiety.

6 17. Respondent did not obtain a Controlled Substance Utilization and Evaluation System
7 (CURES)³ report to confirm or disprove P-1's report of substance use/abuse.

8 18. Respondent did not conduct a medical review of P-1's physical symptoms or perform
9 laboratory tests that would suggest potential medical illnesses that present with P-1's symptoms.

10 19. Respondent did not conduct a review of P-1's educational history to determine if
11 there were learning disabilities that would present with P-1's symptoms.

12 20. Respondent did not use an adult ADHD rating scale to check the symptoms of
13 ADHD.

14 Prescribed Treatment

15 21. Respondent recommended Adderall⁴ or Strattera⁵ for treatment. P-1 requested
16 Adderall. Respondent prescribed 20 milligrams to be taken in the morning and 20 milligrams to
17 be taken at noon. P-1 was given a total of 60 tablets, a one-month supply. Respondent instructed
18 P-1 to exercise to exhaustion as much as possible and to return in 30 days.

19 22. In prescribing treatment, Respondent did not provide P-1 with different treatment
20 options other than Adderall and Strattera and did not discuss the risks and benefits of all available
21 treatments.

22 23. Respondent also did not discuss sleep hygiene with P-1.

23 24. Respondent did not start P-1 at the lowest potentially effective dosage of Adderall,
24 which for adults is five (5) to ten (10) milligrams once or twice a day and not exceeding 40

25 ² ADD is an outdated, incomplete diagnosis and is no longer used in the DSM-5. The
26 current and more complete diagnosis is ADHD with a subtype specified as inattention,
hyperactivity/impulsivity or combined inattention, hyperactivity and impulsivity.

27 ³ CURES is a database of Schedule II, III, and IV controlled substance prescriptions
dispensed in California.

28 ⁴ Adderall is an amphetamine used to treat ADHD.

⁵ Strattera is a selective norepinephrine reuptake inhibitor used to treat ADHD.

1 milligrams a day.

2 Follow-up Visits

3 25. P-1 had follow-up visits with Respondent on February 28, 2019; April 2, 2019; and
4 May 28, 2019. The visit in May was the last. At each visit, Respondent prescribed a 60 tablet,
5 one-month supply of Adderall, 20 milligrams to be taken in the morning and 20 milligrams to be
6 taken at noon.

7 26. Between each visit, P-1 consumed one-quarter or one-half of the dosage prescribed.
8 According to CURES, P-1 did not refill her prescription monthly despite receiving monthly
9 prescriptions. Respondent did not review the CURES report of P-1 prior to each new prescription
10 of Adderall and did not realize and/or note the discrepancy between P-1's consumption of
11 Adderall and the number of tablets being prescribed.

12 27. Respondent did not assess side effects of the medication with P-1 at any of the
13 follow-up visits, including vital sign assessment. Additionally, Respondent only assessed
14 medication compliance on May 28, 2019.

15 28. Respondent did not assess for efficacy of Adderall through the use of the ADHD
16 rating scales or collateral information.

17 29. Respondent did not document critical mental status exams on February 28, 2019, and
18 April 2, 2019.

19 Medical Issues

20 *Diagnostic Evaluation*

21 30. The standard of medical practice in California for diagnostic evaluation of ADHD in
22 adults is to use the American Psychiatric Association guidelines from the DMS-5.

23 31. Respondent was grossly negligent in his care and treatment of P-1 when he failed to
24 properly use the American Psychiatric Association guidelines from the DSM-5 to diagnose
25 ADHD in P-1.

26 32. Respondent was incompetent in that he demonstrated a lack of knowledge of the use
27 of DSM-5 in the diagnosis of ADHD in adults.

28 ///

1 ***Treatment of ADHD***

2 33. The standard of medical practice for the treatment of ADHD in adults is to use
3 empirical medical evidence to assess and discuss the risks and benefits of various treatment
4 modalities with the patient.

5 34. Respondent was negligent in his care and treatment of P-1 when he failed to provide
6 P-1 with different treatment options for ADHD, including pharmacotherapy, using medical
7 evidence-based options and/or failed to discuss the risks and benefits of the two different
8 medications offered: Adderall and Strattera.

9 35. Respondent was incompetent in that he demonstrated a lack of knowledge of the
10 various treatment options, including pharmacotherapy, available to treat ADHD.

11 ***Prescribing of Adderall***

12 36. The standard of medical practice in California for prescribing Adderall includes
13 starting at the lowest potentially effective dosage and titrating upward weekly, as tolerated and
14 effective, discussing the risks and benefits of Adderall, potential side effects, and alternative
15 treatments, and answering any questions from the patient. The standard of care of prescribing
16 Adderall also includes regular monitoring for efficacy, compliance, and side effects. Finally, the
17 standard of care for prescribing controlled substances, including psychostimulants like Adderall,
18 is to review CURES before prescribing the controlled substance to assess whether the patient is
19 seeking drugs for various reasons.

20 37. Respondent was grossly negligent in his care and treatment of P-1 when he failed to
21 start at the lowest potentially effective dosage of Adderall and/or, in subsequent prescriptions,
22 provided a number of tablets far greater than necessary based upon P-1's consumption.

23 38. Respondent was grossly negligent in his care and treatment of P-1 when he failed to
24 assess P-1 for side effects, including vital sign assessment.

25 39. Respondent was incompetent in that he demonstrated a lack of knowledge of the
26 prescribing of Adderall.

27 ***Medical Documentation***

28 40. The standard of medical practice in California is to keep timely, accurate, legible and

1 complete medical records.

2 41. Respondent was negligent in his care and treatment of P-1 when he failed to
3 document critical mental status exams and medication compliance on two visits: February 28,
4 2019, and April 2, 2019.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Gross Negligence)**

7 42. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
8 the Code, in that he engaged in gross negligence in the care and treatment of P-1. Complainant
9 refers to and, by this reference, incorporates herein, paragraphs 11 through 41, as though fully set
10 forth herein.

11 43. Respondent's acts and/or omissions as set forth in paragraphs 11 through 41, whether
12 proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant
13 to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Repeated Negligent Acts)**

16 44. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
17 the Code, in that he engaged in repeated acts of negligence in the care and treatment of P-1.
18 Complainant refers to and, by this reference, incorporates herein, paragraphs 11 through 43, as
19 though fully set forth herein.

20 45. Respondent's acts and/or omissions as set forth in paragraphs 11 through 43, whether
21 proven individually, jointly, or in any combination thereof, constitute repeated negligent acts
22 pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Incompetence)**

25 46. Respondent is subject to disciplinary action under section 2234, subdivision (d), of
26 the Code, in that he was incompetent in the care and treatment of P-1. Complainant refers to and,
27 by this reference, incorporates herein, paragraphs 11 through 45, as though fully set forth herein.

28 47. Respondent's acts and/or omissions as set forth in paragraphs 11 through 45, whether

1 proven individually, jointly, or in any combination thereof, constitute incompetence pursuant to
2 section 2234, subdivision (d), of the Code. Therefore, cause for discipline exists.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Prescribing without Indication)**

5 48. Respondent is subject to disciplinary action under section 2242 of the Code, in that he
6 prescribed medication without indication. Complainant refers to and, by this reference,
7 incorporates herein, paragraphs 11 through 47, as though fully set forth herein.

8 49. Respondent's acts and/or omissions as set forth in paragraphs 11 through 47, whether
9 proven individually, jointly, or in any combination thereof, constitute prescribing of medication
10 without indication pursuant to section 2242 of the Code. Therefore, cause for discipline exists.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Failure to Maintain Adequate Records)**

13 50. Respondent is subject to disciplinary action under section 2266 of the Code, in that he
14 failed to maintain adequate records in the care and treatment of P-1. Complainant refers to and,
15 by this reference, incorporates herein, paragraphs 11 through 49, as though fully set forth herein.

16 51. Respondent's acts and/or omissions as set forth in paragraphs 11 through 49, whether
17 proven individually, jointly, or in any combination thereof, constitute failure to maintain adequate
18 records pursuant to section 2266 of the Code. Therefore, cause for discipline exists.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct)**

21 52. Respondent is subject to disciplinary action under section 2234 of the Code, in that he
22 engaged in unprofessional conduct generally in the care and treatment of P-1. Complainant refers
23 to and, by this reference, incorporates herein, paragraphs 11 through 51, as though fully set forth
24 herein.

25 53. Respondent's acts and/or omissions as set forth in paragraphs 11 through 51, whether
26 proven individually, jointly, or in any combination thereof, constitute unprofessional conduct
27 pursuant to section 2234 of the Code. Therefore, cause for discipline exists.

28 ///

1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Failure to Obey All Laws)**

3 54. At all times after the effective date of the Decision and Order in Case Number 800-
4 2014-009168, Probation Condition Number 7 provided:

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

8 55. Respondent's probation in Case Number 800-2014-009168 is subject to revocation
9 because he failed to comply with Probation Condition Number 7, referenced above, in that he
10 failed to obey all federal, state and local law, and all rules governing the practice of medicine in
11 California. Complainant refers to and, by this reference, incorporates herein, paragraphs 11
12 through 53, as though fully set forth herein.

13 56. Respondent's acts and/or omissions as set forth in paragraphs 11 through 53, whether
14 proven individually, jointly, or in any combination thereof, constitute failure to obey all laws
15 pursuant to Probation Condition Number 7. Therefore, cause for revocation exists.

16 **DISCIPLINARY CONSIDERATIONS**

17 57. To determine the degree of discipline, if any, to be imposed on Respondent,
18 Complainant alleges that, in a previous disciplinary action entitled *In the Matter of the Accusation*
19 *Against Michael Hirsch Tolwin, M.D.*, in Case Number 800-2014-009168, the Medical Board of
20 California issued a Decision and Order, effective December 14, 2018, in which Respondent's
21 Physician's and Surgeon's Certificate Number G 48816 was revoked. The revocation was stayed
22 and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of
23 three (3) years. Said decision is now final and is incorporated by reference as if fully set forth
24 herein.

25 58. Complainant further alleges that, on August 25, 2020, the Medical Board of
26 California issued Citation No. 800-2020-068598 against the license of Respondent for violation
27 of Condition No. 8 of his probation, due to Respondent's failure to submit quarterly declarations
28 within ten (10) calendar days after the end of the preceding quarter.

///

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 Number 800-2014-009168, and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate Number G 48816, issued to Michael Hirsch Tolwin, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate Number G 48816, issued to Michael Hirsch Tolwin, M.D.;

3. Revoking, suspending or denying approval of Michael Hirsch Tolwin, M.D.'s authority to supervise physician assistants and advanced practice nurses;

4. Ordering Michael Hirsch Tolwin, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: _____

DEC 18 2020


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

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Exhibit A

Decision and Order in Case Number 800-2014-009168

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

In the Matter of the Accusation Against:)
)

MICHAEL HIRSCH TOLWIN, M.D.)
)

Case No. 800-2014-009168

Physician's and Surgeon's)
Certificate No. G 48816)
)

Respondent)
_____)

DECISION AND ORDER

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 December 14, 2018.

IT IS SO ORDERED: November 16, 2018.

MEDICAL BOARD OF CALIFORNIA


**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6538
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 800-2014-009168

14 **MICHAEL HIRSCH TOLWIN, M.D.**
P.O. Box 34841
15 Los Angeles, CA 90034

OAH No. 2018040880

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Physician's and Surgeon's Certificate No. G
17 48816,

18 Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Vladimir
26 Shalkevich, Deputy Attorney General.

27 ///

28 ///

2. Respondent MICHAEL HIRSCH TOLWIN, M.D. (Respondent) is represented in this proceeding by attorney Carolyn Lindholm, whose address is: Bonnie, Bridges, Mueller, O'Keefe & Nichols, 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071.

3. On or about August 30, 1982, the Board issued Physician's and Surgeon's Certificate No. G 48816 to MICHAEL HIRSCH TOLWIN, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2014-009168, and will expire on July 31, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2014-009168 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 25, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2014-009168 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-009168. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2014-009168, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

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

12. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2014-009168 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

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

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

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 48816 issued
9 to Respondent MICHAEL HIRSCH TOLWIN, M.D. is revoked. However, the revocation is
10 stayed and Respondent is placed on probation for three (3) years on the following terms and
11 conditions.

12 1. **CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO**
13 **RECORDS AND INVENTORIES.** Respondent shall maintain a record of all controlled
14 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any
15 recommendation or approval which enables a patient or patient's primary caregiver to possess or
16 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health
17 and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and
18 address of the patient; 2) the date; 3) the character and quantity of controlled substances involved;
19 and 4) the indications and diagnosis for which the controlled substances were furnished.

20 Respondent shall keep these records in a separate file or ledger, in chronological order. All
21 records and any inventories of controlled substances shall be available for immediate inspection
22 and copying on the premises by the Board or its designee at all times during business hours and
23 shall be retained for the entire term of probation.

24 2. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective
25 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
26 advance by the Board or its designee. Respondent shall provide the approved course provider
27 with any information and documents that the approved course provider may deem pertinent.
28 Respondent shall participate in and successfully complete the classroom component of the course

1 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
2 complete any other component of the course within one (1) year of enrollment. The prescribing
3 practices course shall be at Respondent's expense and shall be in addition to the Continuing
4 Medical Education (CME) requirements for renewal of licensure.

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

10 Respondent shall submit a certification of successful completion to the Board or its
11 designee not later than 15 calendar days after successfully completing the course, or not later than
12 15 calendar days after the effective date of the Decision, whichever is later.

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

22 A medical record keeping course taken after the acts that gave rise to the charges in the
23 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
24 or its designee, be accepted towards the fulfillment of this condition if the course would have
25 been approved by the Board or its designee had the course been taken after the effective date of
26 this Decision.

27 Respondent shall submit a certification of successful completion to the Board or its
28 designee not later than 15 calendar days after successfully completing the course, or not later than

1 15 calendar days after the effective date of the Decision, whichever is later.

2 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
3 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
4 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
5 licenses are valid and in good standing, and who are preferably American Board of Medical
6 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
7 relationship with Respondent, or other relationship that could reasonably be expected to
8 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
9 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
10 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

27 The monitor(s) shall submit a quarterly written report to the Board or its designee which
28 includes an evaluation of Respondent's performance, indicating whether Respondent's practices

1 are within the standards of practice of medicine and whether Respondent is practicing medicine
2 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
3 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
4 preceding quarter.

5 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
6 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
7 name and qualifications of a replacement monitor who will be assuming that responsibility within
8 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
9 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
10 notification from the Board or its designee to cease the practice of medicine within three (3)
11 calendar days after being so notified. Respondent shall cease the practice of medicine until a
12 replacement monitor is approved and assumes monitoring responsibility.

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

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

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

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

1 advanced practice nurses, except Respondent is not prohibited from supervising advanced
2 practice nurses at (1) licensed board and care homes; (2) licensed convalescent facilities; and (3)
3 hospitals.

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

7 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
8 under penalty of perjury on forms provided by the Board, stating whether there has been
9 compliance with all the conditions of probation.

10 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
11 of the preceding quarter.

12 9. GENERAL PROBATION REQUIREMENTS.

13 Compliance with Probation Unit

14 Respondent shall comply with the Board's probation unit.

15 Address Changes

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

21 Place of Practice

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

25 License Renewal

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

28 Travel or Residence Outside California

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

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

7 10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
8 available in person upon request for interviews either at Respondent's place of business or at the
9 probation unit office, with or without prior notice throughout the term of probation.

10 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
11 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
12 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
13 defined as any period of time Respondent is not practicing medicine as defined in Business and
14 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
15 patient care, clinical activity or teaching, or other activity as approved by the Board. If
16 Respondent resides in California and is considered to be in non-practice, Respondent shall
17 comply with all terms and conditions of probation. All time spent in an intensive training
18 program which has been approved by the Board or its designee shall not be considered non-
19 practice and does not relieve Respondent from complying with all the terms and conditions of
20 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
21 on probation with the medical licensing authority of that state or jurisdiction shall not be
22 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
23 period of non-practice.

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

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

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

3 Periods of non-practice for a Respondent residing outside of California will relieve

4 Respondent of the responsibility to comply with the probationary terms and conditions with the

5 exception of this condition and the following terms and conditions of probation: Obey All Laws;

6 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or

7 Controlled Substances; and Biological Fluid Testing.

8 12. COMPLETION OF PROBATION. Respondent shall comply with all financial.
9 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
10 completion of probation. Upon successful completion of probation, Respondent's certificate shall
11 be fully restored.

12 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
13 of probation is a violation of probation. If Respondent violates probation in any respect, the
14 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
15 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
16 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
17 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
18 be extended until the matter is final.

19 14. LICENSE SURRENDER. Following the effective date of this Decision, if
20 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
21 the terms and conditions of probation, Respondent may request to surrender his or her license.
22 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
23 determining whether or not to grant the request, or to take any other action deemed appropriate
24 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
25 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
26 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
27 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
28 application shall be treated as a petition for reinstatement of a revoked certificate.

1 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
2 with probation monitoring each and every year of probation, as designated by the Board, which
3 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
4 California and delivered to the Board or its designee no later than January 31 of each calendar
5 year.

6 ACCEPTANCE

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

12
13 DATED: 9/18/18

Michael Hirsch Tolwin
MICHAEL HIRSCH TOLWIN, M.D.
Respondent

15 I have read and fully discussed with Respondent MICHAEL HIRSCH TOLWIN, M.D. the
16 terms and conditions and other matters contained in the above Stipulated Settlement and
17 Disciplinary Order. I approve its form and content.

18 DATED: 9/18/18

Carolyn Lindholm
CAROLYN LINDHOLM
Attorney for Respondent

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ENDORSEMENT

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

Dated: 9/18/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General


VLADIMIR SHALKEVICH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2014-009168

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 CHRISTINE R. FRIAR
Deputy Attorney General
4 State Bar No. 228421
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 269-6472
Facsimile: (213) 897-9395
7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 25 2017
BY: [Signature] ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2014-009168

12 MICHAEL HIRSCH TOLWIN, M.D.

ACCUSATION

13 Post Office Box 34841
14 Los Angeles, California 90034

15 Physician's and Surgeon's Certificate G 48816,
16 Respondent.

17
18 Complainant alleges:

19 PARTIES

- 20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California (Board).
22 2. On August 30, 1982, the Board issued Physician's and Surgeon's Certificate number
23 G 48816 to Michael Hirsch Tolwin, M.D. (Respondent). That license was in full force and effect
24 at all times relevant to the charges brought herein and will expire on July 31, 2018, unless
25 renewed.

26 //

27 //

28 //

JURISDICTION

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

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

5. Section 2234 of the Code, in pertinent part, provides:

"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.

//

//

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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence – Patients J.M. & D.C.)

7. Respondent Michael Hirsch Tolwin, M.D. is subject to disciplinary action under Code sections 2234, subdivisions (a) and (b), in that he committed gross negligence in his care and treatment of Patients J.M. and D.C.¹ The circumstances are as follows:

8. Respondent is a psychiatrist, specializing in treating the chronically mentally ill. Since 1986, he has run and served as the president of an inpatient and outpatient psychiatric practice, the Tolwin Psychiatric Medical Group, Inc., located in Culver City, California. Respondent has also had staff privileges at several area hospitals, where he provided inpatient psychiatric services.

9. The applicable standard of care requires that psychiatrists perform an appropriate and good faith face-to-face evaluation that includes a mental status examination. The psychiatric evaluation may be augmented by testing, such as serology testing, to rule out any metabolic etiologies to the patient's complaints, or psychological testing to help quantify or detect the patient's symptoms.

10. The standard of care for offering mental health treatment is to provide a good faith evaluation so that a proper assessment and a differential diagnosis can be determined. The type of treatment varies depending on the mental health diagnosis. The response to treatment typically requires prospective evaluation, and with this prospective evaluation, treatment can be changed depending on the response. Also, the standard of care for mental health treatment is to inform the patient of the risks and benefits of the treatment.

11. The standard of care for psychiatric practice is to maintain accurate and complete medical records for patients. Specifically, psychiatric records should document an assessment,

¹ All patient references in this Accusation are by initials only. The true names are known to Respondent and will be disclosed to Respondent upon his timely request for discovery.

1 the basis for the assessment, treatment options offered, and response to treatment. Ideally, these
2 records should be legible if handwritten, but it is understood within the standard of care that many
3 physicians typically have poor handwriting, and if the handwriting is illegible to those other than
4 the physician, a typed summary of care can be generated by the physician to make the records
5 understandable.

6 **Patient J.M.**

7 12. Patient J.M. first presented to Respondent on May 1, 2014 at Respondent's Culver
8 City office. At the time, J.M. was a 21-year-old male who reported a history of bipolar disorder
9 and Hodgkin's lymphoma. At his initial evaluation, Respondent documented that, on multiple
10 occasions, J.M. had been hospitalized, psychiatrically, most recently in 2013. J.M. was also
11 noted to have a history of suicide attempts, including by overdosing. Respondent documented
12 that J.M. was taking the following prescription medications: Seroquel (an antipsychotic), Ambien
13 (a hypnotic sleep aid) and Xanax (a benzodiazepine). Respondent diagnosed J.M. with bipolar
14 depression.

15 13. After this first visit and initial assessment, Respondent saw J.M. on an approximately
16 monthly basis until February of 2017, except during a one-year gap between September of 2015
17 and 2016 when J.M. was incarcerated. Respondent noted that while incarcerated, J.M. again
18 attempted suicide. Respondent re-assessed J.M. after this gap in treatment and again diagnosed
19 J.M. with bipolar depression.

20 14. During his course of treatment with Respondent, J.M.'s complaints varied from
21 feeling manic, suffering from severe anxiety and panic, feeling self-destructive and feeling that he
22 suffered from Attention Deficit Hyperactivity Disorder (ADHD).

23 15. During the course of J.M.'s treatment, Respondent repeatedly and frequently
24 prescribed J.M. numerous controlled substances, including Xanax, Ambien, Seroquel, Klonopin
25 (a benzodiazepine), Viagra (for erectile dysfunction), Latuda (an anti-depressant), Cogentin (a
26 benzotropine), Subutex (an opioid), Adderall (an amphetamine) and Remeron (an anti-
27 depressant).

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1 16. In April 2014, Respondent noted that J.M. reported that he was residing in a sober
2 living home.

3 17. In February 2015, Respondent began to prescribe Adderall to Patient J.M., despite
4 being aware that J.M. was a possible drug seeker with substance abuse issues. Adderall is a
5 stimulant medication (amphetamine) that can trigger mania in patients suffering from bipolar
6 disorder, and can be abused by patients who suffer from addiction. J.M. suffered from both
7 bipolar disorder and addiction.

8 18. In April 2015, J.M. reported to Respondent that he had been using heroin
9 intravenously, had tried unsuccessfully to stop and had gone to several detox centers. Respondent
10 noted that J.M. had needle track marks on his hands and arms. J.M. requested Suboxone (a
11 medication used to treat opiate addiction that is a combination of buprenorphine (an opioid) and
12 naloxone (a medication that blocks the effect of opioid medication). Instead, Respondent
13 prescribed Subutex, a substitution treatment for opioid addiction that also contains buprenorphine.

14 19. In November 2016, three months after J.M. was released from prison, Respondent
15 noted that J.M. was in a drug treatment program with strong urges to use heroin. Respondent
16 again prescribed Subutex.

17 20. Despite being informed by Patient J.M. that he had been using heroin and had
18 substance abuse issues, Respondent continued to prescribe Adderall to J.M.

19 21. During the course of J.M.'s treatment, Respondent failed to properly assess and
20 provide an appropriate psychiatric evaluation of J.M., such that the proper diagnosis and
21 treatment could be determined. This failure constitutes an extreme departure from the standard of
22 care. Specifically,

23 A. At the initial evaluation, Respondent did not document how J.M.'s physical
24 conditions, such as lymphoma, could be affecting his mental health.

25 B. In prospectively evaluating J.M., Respondent consistently failed to consider
26 J.M.'s potential for addiction. From Respondent's records, it is clear that J.M. demonstrated
27 numerous behaviors associated with addiction, including admitting to using heroin and to being in
28 a drug treatment program. In his care and treatment of J.M., Respondent failed to consider how

1 J.M.'s substance abuse problems could be influencing symptoms that might be mistakenly
2 interpreted as bipolar disorder.

3 C. Respondent failed to take adequate measures to diagnose J.M. with ADHD
4 and instead prescribed a stimulant, Adderall, which can be abused by patients who have a history
5 of addiction. ADHD is a childhood disorder that can persist into adulthood. Respondent
6 diagnosed J.M. with ADHD without documenting a childhood history of ADHD. Treating
7 patients with bipolar disorder and addiction problems with medications such as Adderall can be
8 dangerous.

9 D. Throughout his evaluation and care of J.M., Respondent never ordered a urine
10 drug screen. When prescribing benzodiazepines to an admitted opiate addict, screenings must be
11 done as the interactions between benzodiazepines and opiates can be lethal.

12 22. During the course of J.M.'s treatment, Respondent also failed to offer appropriate
13 psychiatric treatment to J.M. This failure constitutes an extreme departure from the standard of
14 care. Specifically, because Respondent failed to incorporate J.M.'s addiction issues into his
15 evaluation of J.M., the treatments Respondent provided to J.M. were dangerous. For example, for
16 years, Respondent prescribed multiple benzodiazepines to J.M. Benzodiazepines are addictive
17 and inherently subject to abuse. Respondent also prescribed J.M. Adderall, a potentially addictive
18 stimulant that is contraindicated for a patient with bipolar disorder, as it can cause mania. Finally,
19 Respondent also prescribed J.M. Subutex, a substitute for opioid addiction. When prescribing an
20 opiate substitute, urine drug screens should be conducted to ensure that the patient is compliant
21 with the Subutex and not also using other opiates.

22 23. During the course of J.M.'s treatment, Respondent also failed to maintain accurate
23 and complete psychiatric records for Patient J.M., a simple departure from the standard of care.
24 Specially, Respondent's rationale for choosing the medications he prescribed to J.M. and his
25 reasons for changing Patient J.M.'s medications are not adequately documented in J.M.'s chart.

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1 **Patient D.C.**

2 24. Patient D.C. was a long-term female patient of Respondent. Respondent treated her
3 from at least 2002 and through 2015. At the time, D.C. was 49 years old and had a history of
4 psychiatric hospitalizations.

5 25. During the course of D.C.'s treatment with Respondent, he prescribed numerous
6 controlled substances to her, including, Phentermine (a weight loss amphetamine), Tegretol (an
7 anticonvulsant), Mellaril (an antipsychotic), Tramadol (a narcotic-like pain medication), Prozac
8 (an antidepressant), and Restoril (a hypnotic sleep aid).

9 26. Throughout her care, Respondent documented a number of her psychiatric symptoms
10 (including, hearing voices, rapid speech, delusional thoughts and psychosis) but at no time did
11 Respondent document an, assessment, diagnosis or treatment plan for D.C.

12 27. Respondent's care and treatment of Patient D.C. constitutes an extreme departure
13 from the standard of care in that he failed to maintain accurate and complete psychiatric records
14 for the patient. Specifically, no assessment, diagnosis or treatment plan was present in
15 Respondent's records.

16 28. Respondent's acts and/or omissions as set forth in paragraphs 8 through 27,
17 above, whether proven individually, jointly, or in any combination thereof, constitute gross
18 negligence pursuant to section 2234, subdivision (b), of the Code. As such, cause for discipline
19 exists.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Repeated Negligent Acts – Patients J.M., D.C. & J.A.)**

22 29. Respondent is subject to disciplinary action under Code section 2234, subdivisions (a)
23 and (c), in that he committed repeated negligent acts in his care and treatment of patients J.M.,
24 D.C. and J.A. The circumstances are as follows:

25 30. The allegations of the First Cause for Discipline are incorporated by reference as if
26 set forth fully herein.

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1 **Patient J.A.**

2 31. Patient J.A. was a 32-year-old male when he first presented to Respondent in
3 September 2008 at his outpatient clinic in Culver City, California. Respondent diagnosed J.A.
4 with panic disorder and obsessive compulsive disorder (OCD). At the time he presented, J.A.
5 was being prescribed Remeron (an antidepressant) and Ativan (a benzodiazepine). Respondent
6 continued him on these medications and also added a prescription for Pristiq (an antidepressant).

7 32. During the course of his treatment, Respondent prescribed numerous controlled
8 substances to J.A., including Remeron, Ativan, Pristiq, Celexa (an antidepressant), Ambien,
9 Neurontin (an anti-epileptic medication), Luvox (an antidepressant), Restoril (a benzodiazepine),
10 Valium (a benzodiazepine) and Xanax (a benzodiazepine).

11 33. While being treated by Respondent, J.A. reported that he was also being treated at
12 Kaiser.

13 34. In an August 22, 2013 note, Respondent stated: "Patient is instructed to find
14 alternative care. Do not provide anymore refills." The note does not state why J.A. was
15 instructed to find alternative care. Respondent continued to prescribe medication to J.A. through
16 2017.

17 35. Respondent admits that he did not fully trust J.A., and did once question J.A.'s
18 frequent medication requests. During a visit on March 3, 2010, and then again on a subsequent
19 visit on June 9, 2010, Patient J.A. informed Respondent that his medications had been lost or
20 destroyed. At no time, however, did Respondent run a CURES (Controlled Substance Utilization
21 Review and Evaluation System) Report to determine whether J.A. was obtaining medications
22 from other providers.

23 36. Additionally, on multiple occasions, Respondent received information from
24 pharmacies and from Patient J.A. himself indicating that J.A. may be addicted to prescription
25 medications. On August 14, 2012, J.A. reported to Respondent that he had been having more
26 panic attacks, anxiety and feelings of depression, and had gone to the emergency room. J.A.
27 specifically mentioned that the pharmacist did not want to give him more medication. On June 5,
28 2014, a pharmacy contacted Respondent to let him know that J.A. was going from one pharmacy

1 to another getting refills of Ativan. On September 6, 2016, Respondent called in a prescription to
2 Walgreen's and learned that J.A. was not using insurance and was paying cash for his
3 medications. Despite these warning signs that J.A. could be a drug seeker, however, Respondent
4 continued to prescribe scheduled medications to him.

5 37. During the course of Respondent's treatment of J.A., Respondent failed to maintain
6 accurate and complete psychiatric records for J.A. For example, Respondent admitted that he
7 could not recall, even when reading his own notes, why he wrote on August 22, 2013 that he
8 would no longer prescribe refills to Patient J.A., but then subsequently did prescribe refills to J.A.
9 This constitutes a simple departure from the standard of care.

10 38. Commencing in 2014, it has been part of the standard of care when controlled
11 medications are dispensed to review a patient's CURES Report to ensure that the patient is not
12 drug seeking. During his prospective psychiatric evaluations of J.A., Respondent never ran a
13 CURES Report on J.A., despite the fact that he was prescribing him multiple controlled
14 substances. This constitutes a simple departure from the standard of care.

15 39. During the course of his treatment of J.A., Respondent failed to offer appropriate
16 psychiatric treatment. Specifically, because Respondent never reviewed J.A.'s CURES Report,
17 Respondent did not make the assessment as to whether J.A. was drug-seeking. Additionally,
18 Respondent did not incorporate the information he received from pharmacies regarding the
19 patient going to multiple pharmacies and paying cash for prescriptions, which are signs of
20 addiction to prescription medications. Given that Respondent's assessment of J.A. did not
21 properly take into account addiction potential, his continued prescribing of medications, including
22 benzodiazepines, which have an addiction potential, constitutes a simple departure from the
23 standard of care.

24 40. Respondent's acts and/or omissions as set forth in paragraphs 30 through 39,
25 above, whether proven individually, jointly, or in any combination thereof, constitute repeated
26 negligent acts pursuant to section 2234, subdivision (c), of the Code. As such, cause for
27 discipline exists.

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