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

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
TAN N. TRAN
Deputy Attorney General
State Bar No. 197775
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6535
Facsimile: (916) 731-2117
Attorneys for Complainant

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.** **P.O. Box 34841** **Los Angeles, CA 90034** **Physician's and Surgeon's Certificate No. G 48816,** Respondent.	Case No. 800-2020-069068 OAH No. 2021050194 **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 Tan N. Tran, Deputy Attorney General.

2. Respondent Michael Hirsch Tolwin, M.D. (Respondent) is represented in this proceeding by attorneys Peter R. Osinoff and Edward Idell, of Bonne Bridges Mueller O'Keefe & 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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CULPABILITY

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

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.

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.

13. 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 Accusation/Petition to Revoke Probation No. 800-2020-069068 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by 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

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 65 hours of CME of which 40 hours were in satisfaction of this condition.

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

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

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

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

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

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

4. 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. 800-2020-069068 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 attorneys, Peter R. Osinoff and Edward Idell. 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: 3/16/2022

MICHAEL HIRSCH TOLWIN, M.D.
Respondent

I have read and fully discussed with Respondent Michael Hirsch Tolwin, 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: 3/18/2022

PETER R. OSINOFF, ESQ.
EDWARD IDELL, ESQ.
Attorneys 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: 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

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
BRIAN ROBERTS
Deputy Attorney General
State Bar No. 282868
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6614
Facsimile: (916) 731-2117
Attorneys for Complainant

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.** **P.O. Box 34841** **Los Angeles, CA 90034** **Physician's and Surgeon's Certificate No. G 48816,** Respondent.	Case No. 800-2020-069068 **ACCUSATION AND PETITION TO REVOKE PROBATION**

PARTIES

1. William Prasifka (Complainant) brings this 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 August 30, 1982, the Medical Board issued Physician's and Surgeon's Certificate Number 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 herein and will expire on July 31, 2022, unless renewed.

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DISCIPLINARY HISTORY

3. In a previous disciplinary action entitled *In the Matter of the Accusation Against Michael Hirsch Tolwin, M.D.*, in Case Number 800-2014-009168, the Medical Board of California issued a Decision and Order, effective December 14, 2018, in which Respondent's Physician's and Surgeon's Certificate Number G 48816 was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of three (3) years, with certain terms and conditions. A true and correct copy of that Decision and Order is attached as Exhibit A and is incorporated by reference as if fully set forth herein.

JURSDICTION

4. This 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 Case Number 800-2014-009168. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 2004 of the Code states:

> The board shall have the responsibility for the following:
>
> (a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
>
> (b) The administration and hearing of disciplinary actions.
>
> (c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
>
> (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
>
> (e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.
>
> "..."

6. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

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

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

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

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

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

7. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

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

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

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

(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.

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

8. Section 2242 of the Code states:

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

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

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

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

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

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

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

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

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

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.

FACTUAL SUMMARY

Initial Visit and Diagnosis

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

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

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

14. P-1 reported significant symptoms in the areas of attention, hyperactivity, and impulsivity. Based upon these findings, Respondent diagnosed P-1 with Attention Deficit 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.

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

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

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

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

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

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

Prescribed Treatment

21. Respondent recommended Adderall[4] or Strattera[5] for treatment. P-1 requested Adderall. Respondent prescribed 20 milligrams to be taken in the morning and 20 milligrams to be taken at noon. P-1 was given a total of 60 tablets, a one-month supply. Respondent instructed P-1 to exercise to exhaustion as much as possible and to return in 30 days.

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

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

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

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

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

[4] Adderall is an amphetamine used to treat ADHD.

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

milligrams a day.

Follow-up Visits

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

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

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

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

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

Medical Issues

Diagnostic Evaluation

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

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

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

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Treatment of ADHD

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

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

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

Prescribing of Adderall

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

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

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

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

Medical Documentation

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

complete medical records.

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

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

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

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

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

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

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

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

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

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

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

FOURTH CAUSE FOR DISCIPLINE

(Prescribing without Indication)

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

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

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

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

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

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

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

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

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

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

> 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.

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

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

DISCIPLINARY CONSIDERATIONS

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

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

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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

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

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.** **P.O. Box 34841** **Los Angeles, CA 90034** **Physician's and Surgeon's Certificate No. G 48816,** Respondent.	Case No. 800-2014-009168 OAH No. 2018040880 **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. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Vladimir Shalkevich, Deputy Attorney General.

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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.

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 formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

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

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

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

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

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

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

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

3. 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.

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, 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. 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.

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

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

7. 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.

8. 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.

9. 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(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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Carolyn Lindholm. 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: 9/18/18

MICHAEL HIRSCH TOLWIN, M.D.
Respondent

I have read and fully discussed with Respondent MICHAEL HIRSCH TOLWIN, 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: 9/18/18

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

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

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct. 25, 2017
BY: ANALYST

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. Post Office Box 34841 Los Angeles, California 90034 Physician's and Surgeon's Certificate G 48816, Respondent.	Case No. 800-2014-009168 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On August 30, 1982, the Board issued Physician's and Surgeon's Certificate number G 48816 to Michael Hirsch Tolwin, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2018, unless renewed.

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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.

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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.

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

Patient J.M.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Patient D.C.

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

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

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

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

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

SECOND CAUSE FOR DISCIPLINE

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

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

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

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Patient J.A.

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

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

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

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

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

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

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

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

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

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

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

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THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records - Patients J.M., D.C. & J.A.)

41. Respondent is further subject to disciplinary action under Code sections 2234, subdivision (a) and 2266, in that he failed to maintain adequate and accurate records for patients J.M., D.C. and J.A. The circumstances are as follows:

42. The allegations of the First and Second Causes for Discipline are incorporated by reference as if fully set forth herein.

43. Respondent's acts and/or omissions as set forth in paragraph 42, above, whether proven individually, jointly, or in any combination thereof, constitute the failure to maintain adequate and accurate records pursuant to section 2266 of the Code. As such, cause for discipline exists.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 48816, issued to Respondent;

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

3. If placed on probation, ordering him to pay the Board the costs of probation monitoring; and

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

DATED: October 25, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

LA2017605601