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

In the Matter of the Accusation Against: Alan Charles Schwartz, M.D. Physician's and Surgeon's Certificate No. A 42023 Respondent.	Case No.: 800-2018-048984

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 September 23, 2022.

IT IS SO ORDERED: August 24, 2022.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
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Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **ALAN CHARLES SCHWARTZ, M.D.** **2621 S. Bristol Street, Suite 307** **Santa Ana, CA 92704-5719** **Physician's and Surgeon's Certificate No. A 42023** Respondent.	Case No. 800-2018-048984 OAH No. 2021120593 **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 Tessa L. Heunis, Deputy Attorney General.

2. Respondent Alan Charles Schwartz, M.D. (Respondent) is represented in this proceeding by attorneys Dennis K. Ames, Esq., and Pogey Henderson, Esq., of La Follette

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Johnson DeHaas Fesler & Ames, whose address is: 2677 North Main Street, Suite 901, Santa Ana, CA 92705-6632.

3. On or about July 29, 1985, the Board issued Physician's and Surgeon's Certificate No. A 42023 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought in Accusation No. 800-2018-048984, and will expire on April 30, 2023, unless renewed.

JURISDICTION

4. On October 6, 2021, Accusation No. 800-2018-048984 was filed before the Board and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on October 6, 2021. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2018-048984 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2018-048984. Respondent has also carefully read, fully discussed with his counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

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

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2018-048984 and that his Physician's and Surgeon's Certificate No. A 42023 is therefore subject to discipline. Respondent further agrees that if he ever petitions for early termination or modification of probation, or if an Accusation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2018-048984 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California or elsewhere.

9. Respondent agrees that his Physician's and Surgeon's Certificate No. A 42023 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its

discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

12. 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.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 42023 issued to Respondent Alan Charles Schwartz, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years from the effective date of this Decision on the following terms and conditions:

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Except as mentioned immediately hereinafter, Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedules III, IV and V of the Act. This restriction shall not apply to controlled substances administered to patients who are admitted to hospital and only for their immediate use while they remain so admitted.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. 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.

3. 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.

4. 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.

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

5. 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.

6. 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

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but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

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

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

The monitor(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.

7. 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.

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

9. 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.

10. 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 $ 4,785.00 (four thousand seven hundred and eighty-

five dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

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

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).

11. 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.

12. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

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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.

13. 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.

14. 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' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program

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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..

15. 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.

16. 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.

17. 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 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.

18. 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.

19. 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 No. 800-2018-048984 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, Dennis K. Ames, Esq., and Pogey Henderson, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate A 42023. 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: _____

ALAN CHARLES SCHWARTZ, M.D.
Respondent

I have read and fully discussed with Respondent Alan Charles Schwartz, 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: _____

DENNIS K. AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorney for Respondent

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.

18. 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.

19. 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 No. 800-2018-048984 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, Dennis K. Ames, Esq., and Pogey Henderson, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate A 42023. 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: 6/12/22

ALAN CHARLES SCHWARTZ, M.D.
Respondent

I have read and fully discussed with Respondent Alan Charles Schwartz, 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: 6/13/2022

DENNIS K. AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: June 13, 2022

Respectfully submitted,

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

TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2018-048984

ROB BONTA
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Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **ALAN CHARLES SCHWARTZ, M.D.** **2621 S. Bristol Street, Suite 307** **Santa Ana, CA 92704-5719** **Physician's and Surgeon's Certificate No. A 42023,** Respondent.	Case No. 800-2018-048984 **A C C U S A T I O N**

PARTIES

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 29, 1985, the Board issued Physician's and Surgeon's Certificate Number A 42023 to Alan Charles Schwartz, 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 April 30, 2023, 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 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.
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> ...

5. Section 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes ...
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> ...

STATUTORY PROVISIONS

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.

...

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.

...

8. 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.

9. Section 4021 of the Code states:

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

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10. Section 4022 of the Code states:

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

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

...

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

DEFINITIONS

11. Morphine equivalent dosage (MED) is a value assigned to opioids to represent their relative potencies. A patient's morphine equivalent daily dosage (or MEDD) is determined by using an equivalency factor to calculate a dose of morphine that is equivalent to the ordered opioid and then adding the morphine equivalent dosage of all drugs in the opioid class a patient is likely to take over 24 hours. The sum arrived at is used to determine if the patient is nearing a potentially dangerous threshold. Ideally, the MED of a patient's daily opiate therapy should not exceed 80-90 mg per day. Risks of adverse effects, including drug overdose and death, increase significantly beyond this dosage. The primary side effect of opioid overdose is respiratory depression, which frequently leads to serious complications or death.

12. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

13. Percocet is a brand name for oxycodone HCL-acetaminophen, and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

14. Hydrocodone bitartrate-acetaminophen is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

15. Adderall, a brand name for dextroamphetamine and amphetamine (or amphetamine salt combo), is a Schedule II controlled substance pursuant to Health and Safety Code section

11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is used for attention-deficit hyperactivity disorder and narcolepsy.

16. Buprenorphine is used to treat opioid addiction, as part of a complete treatment program that also includes counseling and behavioral therapy. Buprenorphine is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022

17. Suboxone is a brand name for a combination of buprenorphine and naloxone, and is used to treat opioid dependence/addiction. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

18. Alprazolam, a benzodiazepine, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

19. Diazepam, a benzodiazepine, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

20. Ambien, a brand name for zolpidem tartrate, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is a sedative used for the short-term treatment of insomnia.

21. Tramadol is a Schedule IV controlled substance in the Controlled Substances Act (21 U.S.C. 801, *et seq.*), and a dangerous drug pursuant to Business and Professions Code section 4022.

22. Carisoprodol is a Schedule IV controlled substance in the Controlled Substances Act (21 U.S.C. 801, *et seq.*), and a dangerous drug pursuant to Business and Professions Code section 4022.

23. Controlled Substance Utilization Review and Evaluation System (CURES) is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California. It

is compiled by the California Department of Justice, Bureau of Criminal Identification and Investigative Services as part of its Prescription Drug Monitoring Program.

24. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.[1]

FACTUAL ALLEGATIONS

25. At all relevant times, Respondent was a sole practitioner in the field of internal medicine.

Patient A[2]:

26. Patient A, a male born in 1984, was treated by Respondent from approximately March 17, 2016, through October 16, 2017.

27. A review of Patient A's CURES report shows that he was taking prescribed Percocet, carisoprodol, tramadol, alprazolam, and Adderall, among other medications, prior to initiating care with Respondent.

28. At his first visit to Respondent, on or about March 17, 2016, Patient A listed the following among his medical illnesses: chronic back pains, degenerative spine disease, herniated disc disease, panic attacks, and anxiety. Patient A requested pain management and neurosurgery and physical therapy referrals.

29. Five days later, on or about March 22, 2016, Patient A returned to Respondent, reportedly asking "to change pain medication" and "to do blood work." Respondent's progress note for this visit does not document any extensive spine examination or urine drug testing, and Patient A's patient history on CURES was not consulted. Respondent issued a prescription for 100 x oxycodone 15 mg tablets, to be taken four times daily. Under "detailed history," Respondent notes "Pt. reports worse pain about low back – not seen by pain management." Respondent's diagnosis was "HNP L3-4."

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

[2] The identities of any persons referred to herein are known to Respondent, but not disclosed here to protect privacy.

30. On or about April 27, 2016, Respondent issued a prescription (with one refill) for 90 x tramadol 50 mg tablets, to be taken three times daily. No corresponding note regarding this prescription can be found in Patient A's chart.

31. Except for the three-month period of July, August, and September 2017, Respondent regularly prescribed Patient A roughly four (4) oxycodone 30 mg per day, a MEDD of 180 mg.

32. Respondent's prescriptions to Patient A included the following medications:

Medication	Strength in mg	No. Dispensed	Days' Supply	Date Filled
Oxycodone	5/325	100	12	3/18/16
Carisoprodol	350	90	30	3/18/16
Oxycodone	15	100	25	3/22/16
Oxycodone	15	100	25	5/9/16
Carisoprodol	350	90	30	5/24/16
Tramadol	50	90	30	5/25/16
Oxycodone	15	100	25	6/9/16
Oxycodone	30	120	30	6/27/16
Alprazolam	2	60	30	7/5/16
Oxycodone	30	120	30	7/25/16
Alprazolam	2	60	30	8/1/16
Zolpidem Tartrate	5	10	10	8/2/16
Oxycodone	30	120	30	8/24/16
Alprazolam	2	60	30	8/31/16
Oxycodone	15	120	30	9/27/16
Alprazolam	2	60	30	10/3/16
Oxycodone	30	120	30	10/24/16
Oxycodone	30	120	30	11/28/16
Alprazolam	2	60	30	12/1/16
Oxycodone	30	120	20	12/25/16
Alprazolam	2	60	30	1/18/17
Oxycodone	30	120	30	1/23/17
Oxycodone	15	120	30	2/6/17
Diazepam	10	60	30	2/6/17
Alprazolam	2	60	30	2/15/17
Oxycodone	30	150	25	2/21/17
Oxycodone	15	120	30	4/27/17

Medication	Strength in mg	No. Dispensed	Days' Supply	Date Filled
Oxycodone	30	120	30	5/8/17
Alprazolam	2	60	30	5/16/17
Carisoprodol	350	90	30	5/17/17
Carisoprodol	350	90	30	5/19/17
Oxycodone	15	140	23	5/26/17
Oxycodone	30	140	23	6/6/17
Carisoprodol	350	90	30	6/27/17

33. Respondent sought insurance authorization for referrals to successive pain management providers, all of which were approved. A progress note dated June 27, 2016, states that Patient A was "not happy" with his then pain management provider and asked for a "second opinion." No reasons for Patient A's dissatisfaction with the pain management physician are documented. At an interview conducted with Respondent as part of the Board's investigation into this matter ("the subject interview"), Respondent stated that "the usual reason is that [the pain management physicians are] not going to give enough pain meds ... [n]ot enough pills..."

34. On or about August 29, 2016, Patient A asked Respondent for a referral to an inpatient detox program for OxyContin and alprazolam. On or about the same date, Respondent wrote a note for Patient A, stating, "OK to start a de-tox program." Patient A's chart contains no further information on, discussion of, or reference to, any detox program.

35. Patient A did not show up for his next scheduled visit with Respondent, on October 11, 2016. On or about October 24, 2016, Patient A called Respondent and asked for a prescription for oxycodone 30 mg, Adderall 20 mg, and Benadryl. Respondent issued the prescriptions on the same date, and an additional prescription for oxycodone on or about December 25, 2016.

36. Respondent's chart for Patient A contains a six-month CURES report dated January 23, 2017, that shows that Patient A filled prescriptions for Suboxone on September 9, 2016, and November 28, 2016, and for buprenorphine hydrochloride and diazepam 10 mg (x 30) on January 11, 2017. Another six-month CURES report dated February 16, 2017, shows that Patient A again filled prescriptions for Suboxone, on January 21 and 22, 2017, and on February 6,

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2017. Respondent made no inquiry into these prescriptions or whether they formed part of any chemical addiction treatment.

37. A CURES report in Patient A's chart shows he filled a prescription issued by his then pain management provider for oxycodone HCL-acetaminophen 5/325 mg on February 2, 2017. Respondent's chart for Patient A does not document any discussion of this prescription or its provider.

38. On or about February 6, 2017, Respondent increased the oxycodone prescription to 45 mg, to be taken four times daily. No reason for the increase is provided in Patient A's progress note for this visit.

39. On or about May 19, 2017, Respondent received a copy of a chart note from Patient A's pain management provider regarding a consultation with Patient A on February 16, 2017. In the note, the pain management provider documents that Patient A was not following his opiate contract and had received narcotic medications from his primary care physician despite prior warnings not to do so. Patient A was again instructed (by the pain management provider) not to take any prescriptions from other physicians for opiates but was permitted to finish what he had already received. The note contains a list of Patient A's medications, including Subutex and Suboxone, and includes an observation that Patient A "has a history of long opiate use and dependence." Respondent's chart for Patient A contains no discussion of this chart note or its contents.

40. On or about May 28, 2017, Respondent was consulted by a provider at Hoag Hospital ("Hoag") regarding Patient A, who was at the Emergency Department (ED) asking for narcotic medications. According to ED records, Respondent informed the Hoag provider that Patient A abuses narcotics. Respondent advised the Hoag provider that Patient A should be treated with non-narcotic medications and be encouraged to follow up with Respondent the following week.

41. Respondent next saw Patient A on or about June 5, 2017. Other than "seen in ER x 2," the progress note for this visit contains no reference to any opiate contract, pain management provider, or abuse of narcotics by Patient A. Respondent issued Patient A a prescription for 140 x oxycodone 30 mg tablets. Per Patient A's CURES report, this prescription put the total narcotic

medications received by Patient A, from four different providers in less than 21 days, at 300 oxycodone tablets, 25 hydrocodone tablets and 20 oxycodone/acetaminophen 5/325 mg tablets.

42. A CURES report for Patient A does not show any prescriptions issued by Respondent and filled during July, August, or September 2017. There are no notes in Respondent's chart for Patient A documenting any reason for the change (or absence) of opiate prescriptions.

43. At the subject interview, Respondent stated that he did not regard Patient A as being addicted to opiates.

44. On or about October 16, 2017, the last date on which Respondent saw Patient A, he prescribed 90 x oxycodone 30 mg tablets to Patient A. Respondent's progress note for this visit indicates "Pt is to see pain management."

45. Respondent's chart for Patient A contains no detailed clinical assessment of Patient A's pain intensity scales, analgesic effects, adverse effects, functionality, aberrant behaviors, and/or affect. There are also no detailed orthopedic joint or extensive spine examinations to be found in the chart, including extremity range of motion evaluations.

46. There were no urine drug screenings and no attempts to taper or rotate opioids to minimize side effects.

47. Respondent did not attempt non-addictive medications like NSAIDS, tricyclics, or anti-seizure medications as an alternative to, or concurrently with, long-term narcotic therapy. There was no attempt at non-opioid management, including topical therapy (such as lidocaine or medication cream), heating pads, spinal manipulation, or acupuncture.

48. Respondent did not enter into a pain care agreement with Patient A.

49. Respondent's chart for Patient A contains no documentation of any informed consent or discussion with him of the risks and benefits of using opiates or benzodiazepines.

50. Despite his MEDD of at least 180 mg, Respondent did not prescribe the antidote naloxone to Patient A to prevent risks of drug overdosage.

51. On a "Staying Healthy Assessment" completed by Patient A on or about March 17, 2016, Patient A answered "yes" to the question "do you often feel sad, hopeless, angry, or worried?"

52. Respondent's chart for Patient A shows that, as from on or about July 5, 2016, he was prescribing alprazolam 2 mg to Patient A, to be taken twice daily. The chart contains no discussion of the reason(s) for these prescriptions, screening questionnaire for anxiety, documentation of symptoms, or functional impairment of anxiety. There is also no evaluation for potential causes of anxiety including major depression and opioid withdrawal syndrome. Safer alternative medications for anxiety were not tried and Respondent made no serious attempts to taper down Patient A's dependency on alprazolam, despite warning signs of Patient A's addiction behaviors.

53. A progress note dated January 31, 2017, indicates the addition of Celexa 20 mg to Patient A's medications. The progress note contains no indication or justification for the Celexa or any discussion of Patient A's symptoms.

54. From on or about August 31, 2016, Respondent regularly prescribed Adderall 20 mg daily to Patient A. A telephone call record in Patient A's chart dated September 27, 2016, states that Patient A "needs" a prescription for Adderall, and a brief note by Respondent (also dated September 27, 2016) states "H/O ADD." Patient A's chart contains no discussion of his symptoms, a detailed diagnosis of Attention Deficit Disorder (ADD), or a review of Patient A's past medical records.

55. In the almost nineteen months of treatment, Respondent did not refer Patient A to mental health staff.

56. Respondent did not properly risk assess Patient A's addiction risks prior to starting long term opioid therapy.

Patient B:

57. Patient B, a male born in 1945, started care with Respondent on or about May 12, 2015.

58. At the time he started care with Respondent, Patient B had been on the same combination of temazepam 30 mg for insomnia, and alprazolam 0.25 mg for generalized anxiety,

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since 2012 (under the care of a different physician). Respondent continued these medications and issued regular benzodiazepine prescriptions from May 2015 through October 2019.[3]

59. Respondent's chart for Patient B contains no comprehensive evaluation of Patient B's insomnia.

60. Respondent continuously prescribed alprazolam without ever including an anxiety diagnosis in his assessment of Patient B.

61. Respondent's chart for Patient B contains no confirmation of a diagnosis of depression, no anxiety screening questionnaire, or thorough evaluation of functional impairment. There is no mention of any other anxiolytic medications tried and no CURES searches.

62. Patient B's chart contains no detailed history or indications or any discussion of risks and benefits in prescribing benzodiazepines.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

63. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A by failing to adequately monitor Patient A's opiate therapy, as set out in paragraphs 25 to 56, above.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

64. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A and Patient B, as set out hereinafter:

Patient A:

65. Paragraphs 25 to 56, above, are hereby realleged and incorporated by this reference as if fully set forth herein.

66. (a) Respondent failed to adequately monitor Patient A's opiate therapy;

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[3] Records were obtained and reviewed for the period ending on or about October 24, 2019.

(b) Respondent failed to try additional non-opiate pharmacotherapy and ancillary treatments to help reduce Patient A's dependency on narcotics;

(c) Respondent inappropriately used benzodiazepine monotherapy for management of Patient A's long-term anxiety;

(d) Respondent prescribed Adderall without proper evaluation and confirmation of a diagnosis of attention deficit hyperactivity disorder (ADHD) in Patient A;

(e) Respondent failed to maintain adequate and accurate records of his care and treatment of Patient A;

(f) Respondent prescribed benzodiazepines and opiates concurrently;

(g) Respondent failed to prescribe naloxone to reduce risks of overdose.

Patient B:

67. Paragraphs 25, and 57 through 62, above, are hereby realleged and incorporated by this reference as if fully set forth herein.

68. Respondent failed to maintain adequate and accurate records of his care and treatment of Patient B.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

69. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records in his care and treatment of Patient A and Patient B, as more particularly alleged in paragraphs 25 through 62, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

70. Respondent is further subject to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct that is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly

alleged in paragraphs 25 through 69, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 42023, issued to Respondent Alan Charles Schwartz, M.D.;

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

3. Ordering Respondent Alan Charles Schwartz, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: OCT 0 6 2021

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