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

In the Matter of the Accusation Against: Marlon Cheng DeCastro, M.D. Physician's and Surgeon's Certificate No. C 53594 Respondent.	Case No. 800-2018-047847

DECISION

The attached Stipulated Settlement and Discovery 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 October 14, 2022.

IT IS SO ORDERED September 14, 2022.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
DAVID CARR
Deputy Attorney General
State Bar No. 131672
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3380
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **MARLON CHENG DECASTRO, M.D.** **500 Doyle Park Drive, Suite 303** **Santa Rosa, CA 94505** **Physician's and Surgeon's Certificate** **No. C 53594** Respondent.	Case No. 800-2018-047847 OAH No. 2021110721 **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 David Carr, Deputy Attorney General.

2. Respondent Marlon Cheng DeCastro, M.D. (Respondent) is represented in this proceeding by attorney Lawrence S. Giardina, of Schuering, Zimmerman & Doyle LLP, whose address is: 400 University Avenue, Sacramento, CA 95825-6502.

3. On or about February 25, 2009, the Board issued Physician's and Surgeon's Certificate No. C 53594 to Marlon Cheng DeCastro, 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. 800-2018-047847, and will expire on January 31, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-047847 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 June 21, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-047847 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. 800-2018-047847. 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; 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 and agrees that the charges and allegations in Accusation No. 800-2018-047847, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case or factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2018-047847 and that he has thereby subjected his Physician's and Surgeon's Certificate, No. C 53594, to disciplinary action.

12. Respondent agrees that his Physician's and Surgeon's Certificate 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.

RESERVATION

13. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

14. 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.

15. 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.

16. 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

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Respondent Marlon Cheng DeCastro, Physician's and Surgeon's Certificate No. C 53594, shall be and hereby is publically reprimanded pursuant to Business and Professions Code section 2227. This Public Reprimand, which is issued in connection with Respondent's conduct as set forth in Accusation No. 800-2018-047847, is as follows: Pursuant to Business and Professions Code sections 2234 and 2234, subdivision (c), you demonstrated unprofessional conduct through repeated negligent acts in the treatment of Patient 1 by prescribing high dosages of opioids and a benzodiazepine in combination for a protracted period. Consequently, the Board issues this Public Reprimand.

B. IT IS FURTHER ORDERED:

1. 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.

2. 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. 800-2018-047847 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Lawrence S. Giardina. 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: 9/15/22

MARLON CHENG DECASTRO, M.D.
Respondent

I have read and fully discussed with Respondent Marlon Cheng DeCastro, 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: 5/2/22

LAWRENCE S. GIARDINA
Attorney for Respondent

ENDORSEMENT

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

DATED: 5/2/2022

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

DAVID CARR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2018-047847

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
DAVID CARR
Deputy Attorney General
State Bar No. 131672
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3380
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **MARLON CHENG DECASTRO, M.D.** **1162 Montgomery Dr., Suite 2** **Santa Rosa, CA 94505-4802** Physician's and Surgeon's Certificate No. C 53594, Respondent.	Case No. 800-2018-047847 **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 February 25, 2009, the Medical Board issued Physician's and Surgeon's Certificate Number C 53594 to Marlon Cheng DeCastro, 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 January 31, 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 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.

"...."

5. 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.

"...."

6. The events described herein occurred in Sonoma County, California.

PRESCRIBED DRUGS

7. **Methadone** is a synthetic narcotic analgesic with multiple actions quantitatively similar to those of morphine. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (c) of the Health and Safety Code.

8. **Oxycodone** is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code.

9. **Alprazolam** is a psychotropic analogue in the benzodiazepine class of central nervous system-affecting compounds. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety Code.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts)

10. Respondent Marlon Cheng DeCastro, M.D. is subject to disciplinary action under sections 2234(b) and/or 2234(c), in that his care and treatment of Patient One[1] included departures from the standard of care constituting gross negligence or, in conjunction with the other allegations herein, repeated negligent acts. The circumstances are as follows:

11. As documented in the patient's medical record, Respondent first saw Patient One on September 18, 2013. The 54 year-old female patient presented with an extensive array of medical conditions, including chronic, severe joint and back pain, degenerative disc disease, splenectomy

[1] The patient is identified herein as Patient One to preserve patient confidentiality. The patient's full name is known to Respondent and will be provided to Respondent in discovery.

and partial colectomy subsequent to a gunshot wound to her abdomen, congestive heart failure, obesity, chronic obstructive pulmonary disease, anxiety, and depression. At the time of her first visit with Respondent, Patient One was already being prescribed methadone, oxycodone, and alprazolam. Respondent conducted a general physical examination of Patient One at this initial visit, but he did not document an examination of her back. Respondent ordered a CT of Patient One's back, which reportedly had been recently ordered by her prior primary care physician but had not yet been performed due to complications with insurance coverage. Respondent's chart notes for this visit state that he elected to continue both the methadone and oxycodone prescriptions to address her chronic back pain and the prescription for alprazolam for Patient One's anxiety.

12. Patient One returned for office visits with Respondent in October and November, 2013, at which Respondent re-filled her prescriptions for methadone (60 mg/day), oxycodone (30 mg/day), and alprazolam (6 mg/day). At the office visit of January 8, 2014, in response to the patient's report of increasing lower back pain, Respondent charted his first physical examination of Patient One's back. His exam revealed no gross deformity, no tenderness, and no swelling; negative straight leg lift test; and that her motor strength was normal. These back examination findings were repeated in the record of the next office visit on February 6, 2014, accompanying the reported results of a back MRI, which confirmed the degenerative disc disease and showed soft tissue edema along the lumbar spine. This is the only physical examination by Respondent of Patient One's back documented in Respondent's records, over the next five years of treatment.

13. Respondent continued to see Patient One in his office at regular intervals through at least the last documented visit on November 19, 2019, a total of 41 visits. At most of those visits—with the exceptions noted below--Respondent continued to prescribe oxycodone and methadone for Patient One's pain and alprazolam for her anxiety.

14. The treatment notes for the August 12, 2015, office visit indicate Respondent referred Patient One to a pain management specialist due to the high dose of narcotics he was prescribing for her. By the January 7, 2016, visit, the palliative care physician to whom Patient One had been referred was solely prescribing for her pain; Respondent did not therefore refill her prescriptions

for oxycodone and methadone. Patient One had only three office visits with Respondent between this January 2016 visit and the office visit of December 1, 2016. At this December 1 visit, Patient One requested that Respondent resume prescribing narcotics for her, reportedly due to a refusal of her insurer to cover more visits with the pain management specialist who had been prescribing opiates for her throughout most of 2016. Respondent agreed to Patient One's request, again prescribing oxycodone and methadone for Patient One—now at 100 mg/day of the methadone, continuing the same higher dose last prescribed by her palliative care physician.

15. On December 28, 2016, Patient One was seen in Respondent's office for a follow-up visit after being hospitalized two weeks prior for what the records state was an unintentional overdose of narcotics. The treatment records of her hospitalization diagnosed her as suffering from toxic encephalopathy and associated respiratory distress secondary to methadone overdose. Respondent's chart notes for this visit state that he discussed with Patient One the side effects and guidelines for the proper use of the narcotics she was getting and reviewed the drug contract he had established for her. Her narcotic prescriptions were not yet due for renewal.

16. One month later, on January 25, 2017, Respondent saw Patient One again for medication renewal. Results of a urine test done at the December 28 visit were consistent with the drugs he was prescribing to the patient. Respondent's chart entries for this visit also note that Patient One had again been hospitalized in the preceding weeks, this time for injuries sustained in an automobile accident. Respondent continued to prescribe methadone (100 mg/day) and oxycodone (30 mg/day) to Patient One from this visit and at each of the nine subsequent office visits over the following 18 months. This combined narcotic dosage constitutes a Morphine Milligram Equivalent (MME)[2] of 1245/day.

17. Patient One appeared at a scheduled office visit with Respondent on August 7, 2018; his chart entries for this visit note that Patient One stated she had run out of her prescribed

[2] Morphine Milligram Equivalent (MME) is a calculated value established to allow evaluation of the potency of a prescribed opioid relative to the potency of morphine; i.e., the potency of *X* milligrams of the subject medication is functionally equivalent to 1 milligram of morphine. The MME values used herein are those published in 2016 by the Center for Disease Control.

narcotics about 5 days prior and had been hospitalized just three days before this visit for headache, nausea, and some wheezing. Respondent stated Patient One was diaphoretic and nauseated at the visit. Under the portion of his chart labeled "Assessment and Plan," Respondent also noted that Patient One was narcotic and benzodiazepine dependent and that she appeared to be in opiate withdrawal. He stated she should improve upon resuming her medications; he then renewed both the prescriptions for the opiate narcotics methadone and oxycodone and the prescription for alprazolam. Respondent continued to prescribe the two opiate narcotics—at a dosage of 1245 MME/day--and the benzodiazepine to Patient One through the last recorded visit on November 19, 2019.

18. Respondent has subjected his license to disciplinary action for unprofessional conduct in that his prescribing of high doses of narcotics and a benzodiazepine in combination to Patient One for a protracted period was a departure from the standard of care, constituting gross negligence in violation of section 2234(b) or, in conjunction with the other departures from the standard of care alleged herein, repeated negligent acts in violation of section 2234(c).

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts)

19. The allegations of paragraphs 11 through 18 above are incorporated by reference as if set out in full. Respondent has subjected his license to disciplinary action for unprofessional conduct in that his failure to make clinically significant efforts to taper Patient One's opiate narcotics from the 1245 MME/day combined dose he prescribed to her for years despite multiple indications of adverse effects from the opiates prescribed was a departure from the standard of care constituting gross negligence in violation of section 2234(b) or, in conjunction with the other departures from the standard of care alleged herein, repeated negligent acts in violation of section 2234(c).

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts)

20. The allegations of paragraphs 11 through 18 above are incorporated by reference as if set out in full. Respondent has subjected his license to disciplinary action for unprofessional conduct in that his failure to perform additional follow-up physical examinations of Patient One's back over a protracted period during which he prescribed opiates for her back pain was a departure from the standard of care constituting gross negligence in violation of section 2234(b) or, in conjunction with the other departures from the standard of care alleged herein, repeated negligent acts in violation of section 2234(c).

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:

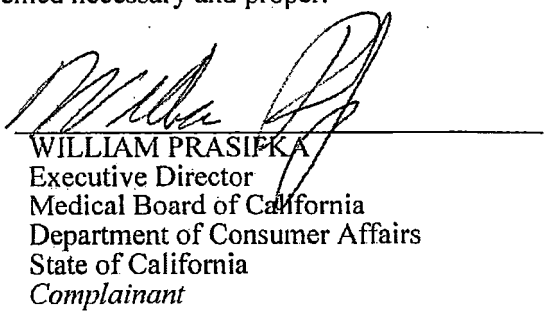
1. Revoking or suspending Physician's and Surgeon's Certificate Number C 53594, issued to Marlon Cheng DeCastro, M.D.;

2. Revoking, suspending or denying approval of Marlon Cheng DeCastro, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Marlon Cheng DeCastro, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: JUN 2 1 2021



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