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

In the Matter of the Accusation Against: Howard Allen Babus, M.D. Physician's and Surgeon's Certificate No. G 33221 Respondent.	Case No. 800-2022-084938

DECISION

The attached Stipulated Surrender of License and 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 27, 2022.

IT IS SO ORDERED December 20, 2022.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
State Bar No. 155307
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6453
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 Against: **HOWARD ALLEN BABUS, M.D.** **504 W. Pueblo St., Ste. 304** **Santa Barbara, CA 93105** **Physician's and Surgeon's Certificate No. G 33221,** Respondent.	Case No. 800-2022-084938 **STIPULATED SURRENDER OF LICENSE AND 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 Judith T. Alvarado, Supervising Deputy Attorney General.

2. Howard Allen Babus, M.D. (Respondent) is represented in this proceeding by attorney Mark Connley, Esq., whose address is: Hall, Hieatt, Connely & Bowen, LLP, 444 Higuera Street, 3rd Floor, San Luis Obispo, California 93401.

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3. On or about October 26, 1976, the Board issued Physician's and Surgeon's Certificate No. G 33221 to Respondent. The Physician's and Surgeon's Certificate expired on March 31, 2022, and has not been renewed.

JURISDICTION

4. Accusation No. 800-2022-084938 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 November 4, 2022. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2022-084938 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2022-084938. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 800-2022-084938, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. 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 those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

RESERVATION

11. 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

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender 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. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. 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 Order:

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 33221, issued to Respondent HOWARD ALLEN BABUS, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2022-084938 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of one thousand eight hundred seventy-seven dollars and fifty cents ($1,877.50) prior to issuance of a new or reinstated license.

6. 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 agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2022-084938 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 licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Mark Connley, Esq. I understand the stipulation and the effect it

will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: _____ Howard A. Babus

HOWARD ALLEN BABUS, M.D.
Respondent

I have read and fully discussed with Respondent HOWARD ALLEN BABUS, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 12/12/22 Mark Connley

MARK CONNLEY, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California

Judith T. Alvarado Digitally signed by Judith T. Alvarado Date: 2022.12.13 18:02:57 -08'00'

JUDITH T. ALVARADO
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2022-084938

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
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In the Matter of the Accusation Against:	Case No. 800-2022-084938
HOWARD ALLEN BABUS, M.D. **504 W. Pueblo St., Ste. 304** **Santa Barbara, CA 93105-6211** **Physician's and Surgeon's Certificate No. G 33221,** Respondent.	**ACCUSATION**

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 October 26, 1976, the Medical Board issued Physician's and Surgeon's Certificate Number G 33221 to Howard Allen Babus, M.D. (Respondent). The Physician's and Surgeon's Certificate expired on March 31, 2022, and has not been renewed.

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.

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4. Section 118, subdivision (b) of the Code provides:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restore, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground.

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 including, but not limited to:
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> (a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.
>
> (b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars ($30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.
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> (c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

6. 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.

STATUTORY PROVISIONS

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 that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct that 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.

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL ALLEGATIONS

9. Respondent is currently retired. He previously practiced as a psychiatrist in a private practice in Santa Barbara, California.

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10. Patient A[1] initially presented to Respondent on or about December 29, 2003,[2] indicating that he wanted to stop using OxyContin. At that time, Patient A was taking 80 mg of OxyContin and 30 mg of Valium per day.

11. The following month Patient A had stopped OxyContin completely and he was taking Valium 40 mg to help with opiate cravings and withdrawal.

12. Respondent continued to treat Patient A regularly between February 2004 and August 2008. Respondent was successful in tapering Patient A's use of Valium and opiates, and tried to prescribe antidepressants for the patient's chronic depressive and anxiety symptoms. Respondent was successful with a treatment combination of Zoloft 12.5 mg and Valium 15 mg. Patient A was tapered to 10 mg of Valium before discontinuing treatment with Respondent in 2008.

13. In or about 2011 Patient A returned to Respondent's care after rehabituating to 50 mg of Valium per day following a back injury in 2010. Respondent's last in-person visit with Patient A occurred on or about October 11, 2012. At the time, Patient A was still taking 50 mg of Valium per day and had restarted OxyContin. Respondent agreed to prescribe Valium for Patient A with a plan to taper, but did not agree to prescribe OxyContin.

14. Per Patient A's CURES Report,[3] Respondent prescribed Valium 10 mg, #75, every 14 days for Patient A between August 16, 2014 and October 27, 2017.

CAUSE FOR DISCIPLINE

(Gross Negligence)

15. Respondent Howard Allen Babus, M.D. is subject to disciplinary action under section 2234, subdivision (b), of the Code in that his prescribing of Valium for Patient A between November 20, 2015 and October 27, 2017, without any follow-up visit constitutes gross negligence. The circumstances are as follows:

16. The facts and allegations set forth in paragraphs 9 through 14 are incorporated by reference as if fully set forth.

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[1] The patient is identified in this Accusation by letter to protect his privacy.

[2] Facts provided prior to 2015 are for informational purposes only.

[3] The Controlled Substance Utilization Review and Evaluation System (CURES) is maintained by the California Department of Justice. It is an electronic platform that tracks all Schedule II through V controlled substances dispensed to patients in California.

17. The standard of care requires frequent monitoring of patients when prescribing controlled substances. It is especially important to monitor patients with a history of substance abuse more closely. Monitoring may include face-to-face visits, telephone visits, or videoconference visits. Depending on the severity of the case, one to three month follow-ups are standard for benzodiazepine monitoring.

18. Respondent trusted the patient to advise him when he found a new psychiatrist. However, Patient A remained on high dose benzodiazepine therapy and was taking opiates, unmonitored. Patient A had no accountability in medication tapering.

19. The failure to monitor Patient A while prescribing him Valium over a span of two years constitutes gross negligence.

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 33221, issued to Howard Allen Babus, M.D.;

2. Revoking, suspending or denying approval of Howard Allen Babus, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Howard Allen Babus, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: NOV 04 2022

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

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