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

In the Matter of the Accusation Against:	)	
Egisto Salerno, M.D.	)	**Case No. 800-2015-014019**
Physician's and Surgeon's Certificate No. A37903	)	
Respondent	)	

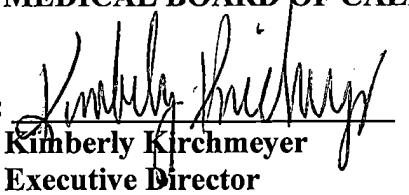
DECISION

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 May 25, 2018 .

IT IS SO ORDERED May 18, 2018 .

MEDICAL BOARD OF CALIFORNIA

By: 
Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
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: **EGISTO SALERNO, M.D.** **5532 El Cajon Boulevard, Suite 1** **San Diego, California 92115** **Physician's and Surgeon's Certificate No. A37903,** Respondent.	Case No. 800-2015-014019 OAH No. 2017-120124 **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. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, and by Joseph F. McKenna III, Deputy Attorney General.

2. Egisto Salerno, M.D., (Respondent) is represented in this proceeding by attorney David Rosenberg, Esq., whose address is 750 B Street, Suite 3210, San Diego, California, 92101.

3. On or about January 4, 1982, the Board issued Physician's and Surgeon's Certificate No. A37903 to Respondent. Physician's and Surgeon's Certificate No. A37903 was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2019, unless renewed.

JURISDICTION

4. On August 2, 2017, Accusation No. 800-2015-014019 was filed against Respondent before the Board, and is currently pending against Respondent. A true and correct copy of Accusation No. 800-2015-014019 and all other statutorily required documents were properly served on Respondent on August 2, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2015-014019 is attached hereto as Exhibit A and hereby incorporated by reference as if fully set forth herein

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with his counsel, and fully understands the charges and allegations in Accusation No. 800-2015-014019. Respondent also has carefully read, fully discussed with his counsel, and fully 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 Accusation No. 800-2015-014019; 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.

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. 800-2015-014019 and that he has thereby subjected his Physician's and Surgeon's Certificate No. A37903 to disciplinary action.

9. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2015-014019 shall be deemed true, correct and admitted by Respondent for purposes of any such proceeding, or any other licensing proceeding involving Respondent in the State of California.

10. Respondent understands that by signing this stipulation he enables the Executive Director of the Board to issue an Order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate A37903 without further notice to, or opportunity to be heard by, Respondent.

RESERVATION

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

CONTINGENCY

12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . . stipulation for surrender of a license."

13. This Stipulated Surrender of License and Order shall be subject to approval of the Executive Director on behalf of the Medical Board. The parties agree that this Stipulated Surrender of License and Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and 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 Executive Director, on behalf of the Medical Board, considers and acts upon it.

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14. The parties agree that this Stipulated Surrender of License and Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of 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 Surrender of License and Order, the Executive Director and/or 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 Executive Director, 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 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and 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 Surrender of License and Order be rejected for any reason by the Executive Director on behalf of the Board, Respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

15. This Stipulated Surrender of License and 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.

16. The parties agree that copies of this Stipulated Surrender of License and Order, including signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

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

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A37903, issued to Respondent Egisto Salerno, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A37903 and the acceptance of the surrendered license by the Medical 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 Medical Board of California.

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement of Physician's and Surgeon's Certificate No. A37903 in the State of California, the Medical Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations, and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2015-014019 shall be deemed to be true, correct, and admitted by Respondent when the Medical Board determines whether to grant or deny the petition.

5. 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. 800-2015-014019 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.

6. Upon a petition for reinstatement, Respondent fully understands, agrees, and stipulates that the Medical Board shall be able to use, as a further basis for denial of a petition for reinstatement, any future settlement plea or convictions from the pending federal criminal case

entitled *United States of America v. Egisto Salerno et al*, Case No. 18MJ1080[1]. Upon a petition for reinstatement, Respondent also fully understands, agrees, and stipulates that any conviction or convictions, and the underlying conduct of said conviction or convictions only, from the above entitled federal criminal case, shall be deemed to be true, correct, and admitted by Respondent when the Medical Board determines whether to grant or deny the petition.

7. The stipulations and waiver made by Respondent as to alleged conduct involved in any future settlement plea or convictions, and the underlying conduct of said conviction or convictions only, from the above entitled federal criminal case, as described in paragraph 6, above, are solely for the purpose of this Stipulated Surrender of License and Order only, and shall not be admissible in any other criminal or civil proceeding, including Case No. 18MJ1080; or any other proceeding before the Medical Board or other licensing proceeding involving Respondent in the State of California.

8. Respondent fully understands, agrees, and stipulates that by entering into this stipulation, that he is permanently waiving any and all claims of laches and/or statute of limitations defenses before the Medical Board as they relate to Case No. 18MJ1080.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, David Rosenberg, Esq., and my attorney of record in Case No. 18MJ1080, Jodi Thorp, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A37903. 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: 5/4/18

EGISTO SALERNO, M.D.
Respondent

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[1] On or about March 7, 2018, the United States Attorney's Office filed Case No. 18MJ1080, a criminal complaint filed against multiple defendants, including Respondent, which charged Respondent with a violation of sections 841, subdivision (a), subsection (1), and 846, (conspiracy to possess with the intent to distribute controlled substances) Title 21, of the United States Code. As of the date that this stipulation was entered into by and between the parties, the federal criminal case was still pending.

I have read and fully discussed with Respondent Egisto Salerno, 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: 5/4/18

DAVID ROSENBERG, ESQ.
Attorney for Respondent

I have read and fully discussed with Respondent Egisto Salerno, 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: _____

JODI THORP, 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,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

SD2017705301
Doc.No.71453387

I have read and fully discussed with Respondent Egisto Salerno, 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: _____

DAVID ROSENBERG, ESQ.
Attorney for Respondent

I have read and fully discussed with Respondent Egisto Salerno, 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: 5-4-18

Jodi Thorp

JODI THORP, 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: May 4, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

SD2017705301
Doc.No.71453387

Exhibit A

Accusation No. 800-2015-014019

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 2, 2017
BY Sara Rasion ANALYST

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

In the Matter of the Accusation Against: **EGISTO SALERNO, M.D.** **5532 El Cajon Blvd., Suite 1** **San Diego, CA 92115** **Physician's and Surgeon's Certificate No. A37903,** Respondent.	Case No. 800-2015-014019 **A C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, and not otherwise.

2. On or about January 4, 1982, the Medical Board issued Physician's and Surgeon's Certificate No. A37903 to Egisto Salerno, M.D. (Respondent). Physician's and Surgeon's Certificate No. A37903 was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2019, unless 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.

4. Section 2227 of the Code states, in pertinent part:

"(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, in pertinent part:

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

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

"(b) Gross negligence.

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

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

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

"..."

6. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

7. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. A37903 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 J.T., as more particularly alleged hereinafter:

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Patient J.T.

9. On or about March 8, 2011, patient J.T., a 38-year old female, went to see Respondent complaining of neck and low back pain. Patient J.T. reported that she took opiates for the pain for four or five years and became dependent. Respondent did not document a detailed substance abuse history or assessment. Patient J.T. stated that her then-current medications were Oxycodone,[1] Norco,[2] Xanax,[3] and NSAIDs.[4] Respondent prescribed patient J.T. Motrin[5] and Norco, 750 mg-7.5 mg, quantity 30, one tablet four (4) times a day as needed.

10. On or about March 16, 2011, Respondent conducted an in-office Suboxone[6] induction on patient J.T., and prescribed her Suboxone, 8 mg-2 mg, quantity 30, half a film, two (2) times a day.

11. On or about April 6, 2011, Respondent prescribed patient J.T. Suboxone, 8 mg-2 mg, quantity 30, one film once a day, and Xanax, 0.5 mg, quantity 30, one tablet two (2) times a day as needed.

12. From in or around February 2009[7] to April 2011, patient J.T. had been treated by S.Y., M.D. (Dr. Y.), who had been prescribing patient J.T. Vicodin, 500 mg-5 mg, quantity 30, approximately every ten (10) days. On or about April 6, 2011, Dr. Y. discovered that patient J.T.

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[1] Oxycodone, brand name Oxycontin, is an opioid. It 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.

[2] Hydrocodone Bitartrate Acetaminophen, brand names Norco and Vicodin, contains acetaminophen and hydrocodone bitartrate, which is an opioid. It 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. Hydrocodone Bitartrate 325 mg-7.5 mg contains 7.5 mg of hydrocodone and 325 mg of acetaminophen.

[3] Alprazolam, brand name Xanax, is a benzodiazepine. It 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.

[4] NSAIDs are non-steroid anti-inflammatory drugs.

[5] Motrin, brand name for ibuprofen, is an NSAID.

[6] Suboxone is a combination of buprenorphine and naloxone. Buprenorphine is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (d).

[7] Conduct occurring more than seven (7) years from the filing date of this Accusation is for informational purposes only and is not alleged as a basis for disciplinary action.

had been filling prescriptions from Respondent for Xanax, Suboxone, and Vicodin. On or about April 13, 2011, Dr. Y. confronted patient J.T., who initially denied filling Respondent's prescriptions. Dr. Y. told patient J.T. that Dr. Y. would no longer be prescribing her any narcotics or sedatives.

13. On or about April 27, 2011, Respondent prescribed patient J.T. Norco, 325 mg-10 mg, quantity 30, one tablet three (3) times a day as needed, and Xanax, 0.5 mg, quantity 30, one tablet three (3) times a day as needed.

14. On or about May 10, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film per day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

15. On or about May 20, 2011, Respondent noted that patient J.T. was experiencing severe headache and that patient J.T. was not taking Suboxone as previously directed. Respondent prescribed patient J.T. Motrin and Norco, 325 mg-10 mg, quantity 40, one tablet three (3) times a day as needed.

16. On or about June 6, 2011, Respondent prescribed patient J.T. the following: Motrin; Norco, 325 mg-10 mg, quantity 40, one tablet (3) three times a day as needed; and Xanax, 0.5 mg, quantity 30, one tablet two (2) times a day as needed.

17. On or about June 20, 2011, patient J.T. filled a prescription for Norco, 325 mg-10 mg, quantity 40, one tablet three (3) times a day as needed, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

18. On or about July 8, 2011, patient J.T. filled a prescription for Norco, 325 mg-10 mg, quantity 40, one tablet four (4) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

19. On or about July 15, 2011, Respondent prescribed patient J.T. the following: Motrin; Norco, 325 mg-10 mg, quantity 40, one tablet four (4) times a day; and Xanax, 0.5 mg, quantity 30, one tablet two (2) times a day as needed.

20. On or about July 25, 2011, patient J.T. filled a prescription for Norco, 325 mg-10 mg, quantity 40, one tablet four (4) times a day as needed, which was prescribed by Respondent. This

prescription is not documented in Respondent's records.

21. On or about July 26, 2011, patient J.T. filled a prescription for Xanax, 0.5 mg, quantity 30, one tablet two (2) times a day as needed, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

22. On or about August 5, 2011, Respondent prescribed patient J.T. Motrin and Norco, 325 mg-10 mg, quantity 60, one tablet four (4) times a day as needed.

23. On or about August 8, 2011, Respondent noted that patient J.T. started taking Suboxone three days prior. Respondent prescribed patient J.T. Suboxone, 8 mg-2 mg, quantity 30, one film two (2) times a day.

24. On or about August 19, 2011, patient J.T. filled a prescription for Norco, 325 mg-10 mg, quantity 60, one tablet four (4) times a day as needed, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

25. On or about September 2, 2011, patient J.T. filled a prescription for Xanax, 0.5 mg, quantity 30, one tablet two (2) times a day as needed, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

26. On or about September 5, 2011, patient J.T. filled a prescription for Norco, 325 mg-10 mg, quantity 60, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

27. On or about September 18, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film two (2) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

28. On or about September 26, 2011, patient J.T. told Respondent that she had taken Methadone[8] and Fentanyl[9] from friends. Patient J.T. submitted to a urine drug screen in

[8] Methadone is an opioid and a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.

[9] Fentanyl is an opioid and a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.

Respondent's office and tested positive for opiates and THC.[10] Respondent prescribed patient J.T. Norco, 325 mg-10 mg, quantity 100, one tablet four (4) times a day as needed, and Suboxone, 8 mg-2 mg, quantity 60, with one (1) refill.

29. On or about October 11, 2011, patient J.T. reported to Respondent that she was off all medications with the exception of naloxone, and that she wanted to get treatment. Patient J.T. submitted to a urine drug screen in Respondent's office and tested positive for Buprenorphine and was negative for all other substances. Respondent prescribed patient J.T. Celexa[11] and ordered a psychiatry consult.

30. On or about October 11, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film two (2) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

31. On or about October 21, 2011, patient J.T. filled a prescription for Xanax, 1 mg, quantity 30, one tablet taken at bedtime, which was prescribed by Respondent.

32. On or about October 27, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film two (2) times a day, which was prescribed by Respondent. Respondent's medical records contain a copy of a prescription dated October 20, 2011 for Suboxone, 8 mg-2 mg, quantity 90 with one refill, one film to be taken three (3) times a day. Respondent's records do not indicate why the dosage was changed.

33. On or about November 7, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film three (3) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

34. On or about November 13, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film three (3) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

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[10] THC, or tetrahydrocannabinol, is the principle psychoactive constituent of cannabis.

[11] Celexa, brand name for Citalopram, is a selective serotonin reuptake inhibitor (SSRI) commonly used to treat depression.

35. On or about November 23, 2011, patient J.T. submitted to a urine drug screen in Respondent's office and tested positive for Buprenorphine only. Respondent prescribed patient J.T. Norco, 325 mg-10 mg, quantity 90, one tablet three (3) times a day as needed, and Xanax, 1 mg, quantity 60, 1 tablet two (2) times a day as needed.

36. On or about November 29, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film three (3) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

37. On or about December 6, 2011, patient J.T. reported feeling mildly depressed. Respondent prescribed patient J.T. Cymbalta.[12]

38. On or about December 9, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film three (3) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

39. On or about December 16, 2011, Respondent noted that patient J.T. was in a diversion program and needed to reduce Suboxone and Xanax. Respondent prescribed patient J.T. Xanax, 0.5 mg, quantity 40, one tablet two (2) times a day. Respondent noted plans to taper patient J.T. off Xanax in two (2) weeks.

40. On or about December 16, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film three (3) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

41. On or about December 23, 2011, patient J.T. filled a prescription for Suboxone, 8 mg-2 mg, quantity 30, one film three (3) times a day, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

42. On or about December 27, 2011, patient J.T. reported having depression and anxiety, and sleeping poorly. Respondent prescribed patient J.T. Tylenol and Motrin.

43. On or about January 3, 2012, Respondent prescribed patient J.T. Suboxone,

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[12] Cymbalta, brand name for Duloxetine, is a SSRI commonly used to treat depression.

8 mg-2 mg, quantity 60, one film two (2) times a day, and Xanax, 0.5 mg, quantity 60, one tablet two (2) times a day as needed.

44. On or about January 12, 2012, Respondent prescribed patient J.T. Effexor,[13] and directed patient J.T. to taper off Suboxone and Xanax. Respondent also noted that patient J.T. was no longer taking Celexa.

45. On or about January 17, 2012, patient J.T. submitted to a urine drug screen in Respondent's office and tested positive for Buprenorphine and benzodiazepines. Respondent noted that patient J.T. was tapering off her medications.

46. On or about February 7, 2012, Respondent prescribed patient J.T. Suboxone, 8 mg-2 mg, quantity 60, one film two (2) times a day, and Benadryl[14] at bedtime.

47. Respondent committed gross negligence in the care and treatment of patient J.T. which included, but was not limited to, the following:

a. Paragraphs 9 through 46, above, are hereby incorporated by reference as if fully set forth herein;

b. Respondent failed to perform and document an adequate and appropriate history and physical examination, including a substance abuse history, and a treatment plan prior to prescribing and refilling controlled substances for patient J.T. on a regular basis;

c. Respondent failed to provide or document the medical justification for prescribing controlled substances, especially given patient J.T.'s aberrant urine drug screen results; and

d. Respondent failed to perform or document the necessary ongoing monitoring while prescribing patient J.T. controlled substances on a regular basis for a lengthy period of time.

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[13] Effexor, brand name for Venlafaxine, is a SSRI commonly used to treat depression.

[14] Benadryl is an over-the counter antihistamine.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

48. Respondent has further subjected his Physician's and Surgeon's Certificate No. A37903 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 patients J.T., D.H., and D.W., as more particularly alleged hereinafter:

Patient J.T.

49. Respondent committed repeated negligent acts in his care and treatment of patient J.T. which included, but was not limited to, the following:

a. Paragraphs 9 through 47, above, are hereby incorporated by reference and realleged as if fully set forth herein; and

b. Respondent failed to maintain adequate and accurate records documenting medications prescribed, the reasons for medication and dosage changes, and the initial and ongoing mental health and alcohol/drug use history for patient J.T.

Patient D.H.

50. On or about May 28, 2008, patient D.H. went to see Respondent and complained of neck and low back pain, anxiety, and depression. Patient D.H. told Respondent that she had been taking Suboxone, Xanax, Lunesta,[15] and NSAIDs.

51. From in or around June 2008 through in or around August 2009, Respondent prescribed patient D.H. a number of controlled substances, including Ativan,[16] Esterified Estrogens-Methyltestosterone,[17] and Ambien.[18]

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[15] Lunesta, brand name for Eszopiclone, is a sedative used to treat insomnia.

[16] Ativan, brand name for Lorazepam, is a benzodiazepine. It 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.

[17] Esterified Estrogens-Methyltestosterone, brand name Estratest, is a controlled substance pursuant to Health and Safety Code section 11056, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022.

[18] Ambien, brand name for Zolpidem Tartrate, is a sedative hypnotic. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous

52. In or around August 2009, Respondent prescribed patient D.H. the following: Subutex,[19] 8 mg, quantity 120, one tablet four (4) times a day; Ativan, 1 mg, quantity 90, one tablet three (3) times a day; and Norco, 325 mg-10 mg, quantity 120, one tablet four (4) times a day. Respondent provided no justification in the medical record for the introduction of Subutex and Norco in patient D.H.'s treatment plan starting on this date.

53. From in or around September 2009 through February 2010, Respondent continued to treat patient D.H. and prescribe her Subutex and Norco.

54. On or about March 31, 2010, Respondent's medical records indicate he had prescribed patient D.H. the following: Suboxone, 8 mg, quantity 120, one film or tablet four (4) times a day; Norco, 325 mg-10 mg, quantity 100, one tablet four (4) times a day as needed; and Alprazolam, 1 mg, quantity 90, one tablet three (3) times a day as needed. Respondent admitted in an interview with the Board that he actually prescribed patient D.H. Subutex rather than Suboxone. Patient D.H. continued to complain of severe neck pain, back pain, headache, poor sleep, and anxiety.

55. From in or around March 2010 through the end of 2014, with the exception of June 2010 through March 2011,[20] Respondent continued to prescribe patient D.H. Subutex, 8 mg, ranging from two to four (2 - 4) tablets a day, or Buprenorphine, 8 mg, three (3) tablets a day. Respondent also prescribed either Norco, 325 mg-10 mg, ranging from three to four (3 - 4) tablets a day, or Vicodin ES, ranging from three to four (3 - 4) tablets a day, Xanax, Temazepam,[21] or Lorazepam on a regular basis. Between in or around June 2010 through in or around February 2011, patient D.H. was also seen by other treatment providers who continued prescribing Subutex, Vicodin ES, Ativan, and Lunesta.

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drug pursuant to Business and Professions Code section 4022.

[19] Subutex is the brand name for Buprenorphine.

[20] Respondent did not prescribe controlled substances to patient D.H. from in or around June 2010 through in or around March 2011 because he did not have a DEA registration number.

[21] Temazepam, brand name Restoril, is a benzodiazepine, and is a controlled substance pursuant to Health and Safety Code section 11057 and a dangerous drug pursuant to Business and Professions Code section 4022.

56. On or about August 5, 2014, Respondent prescribed patient D.H. Norco, 325 mg-10 mg, quantity 60, one tablet four (4) times a day as needed.

57. On or about August 7, 2014, patient D.H. filled a prescription for Esterified Estrogens-Methyltestosterone, quantity 30, prescribed by Respondent. This prescription is not documented in Respondent's records.

58. On or about August 12, 2014, Respondent prescribed patient D.H. Buprenorphine, 8 mg, quantity 90, one tablet three (3) times a day, and Xanax, 1 mg, quantity 75, two and one half (2 ½) tablets once a day as needed.

59. On or about September 2, 2014, patient D.H. filled a prescription for Esterified Estrogens-Methyltestosterone, quantity 30, prescribed by Respondent. This prescription is not documented in Respondent's records.

60. On or about September 8, 2014, patient D.H. submitted to a urine drug screening at Respondent's office, and tested positive for Buprenorphine and benzodiazepines. Respondent continued to prescribe patient D.H. the following: Buprenorphine, 8 mg, quantity 90, one tablet three (3) times a day; Norco, 325 mg-10 mg, quantity 60, one tablet four (4) times a day; and Xanax, 1 mg, quantity 75, two and one half (2 ½) tablets once a day.

61. On or about October 6, 2014, Respondent prescribed Buprenorphine, 8 mg, quantity 90, one tablet three (3) times a day, and Xanax, 1 mg, quantity 70, two and one half (2 ½) tablets once a day as needed.

62. On or about November 26, 2014, Respondent prescribed patient D.H. the following: Buprenorphine, 8 mg, quantity 90, one tablet three (3) times a day; Norco, 325 mg-10 mg, quantity 60, one tablet two (2) times a day as needed; and Xanax, 1 mg, quantity 70, two and one half (2 ½) tablets. Respondent failed to include the dosage instructions for this prescription.

63. On or about January 5, 2015, patient D.H. submitted to a urine drug screening at Respondent's office, and once again, tested positive for Buprenorphine and benzodiazepines. Respondent continued to prescribe patient D.H. the following: Buprenorphine, 8 mg, quantity 90, one tablet three (3) times a day; Norco, 325 mg-10 mg, quantity 60, one tablet three (3) times a day; and Xanax, 1 mg, quantity 60, one tablet two (2) times a day as needed.

64. On or about January 29, 2015, Respondent prescribed patient D.H. Xanax, 1 mg, quantity 60, two and one half (2 ½) tablets as needed, and Ultram,[22] 50 mg, quantity 90, one tablet three (3) times a day as needed. Respondent failed to document the medical indication for prescribing patient D.H. Ultram.

65. On or about February 23, 2015, Respondent prescribed patient D.H. Xanax, 1 mg, quantity 75, two and one half (2 ½) tablets once a day as needed.

66. On or about March 6, 2015, patient D.H. filled a prescription for Tramadol, 50 mg, quantity 90. This prescription is not documented in Respondent's records.

67. On or about March 23, 2015, Respondent prescribed patient D.H. the following: Buprenorphine, 8 mg, quantity 90, one tablet three (3) times a day; Xanax, 1 mg, quantity 75, two and one half (2 ½) tablets once a day as needed; and Estratest, quantity 30, one tablet a day.

68. On or about April 3, 2015, patient D.H. filled a prescription for Norco, 325 mg-10 mg, quantity 30, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

69. On or about April 14, 2015, patient D.H. filled a prescription for Tramadol, 50 mg, quantity 60, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

70. On or about April 22, 2015, patient D.H. submitted to a urine drug screen in Respondent's office and tested positive for Buprenorphine and benzodiazepines. Respondent prescribed patient D.H. Xanax, 1 mg, quantity 75, two and one half (2 ½) tablets once a day as needed.

71. Respondent committed repeated negligent acts in his care and treatment of patient D.H. which included, but was not limited to, the following:

a. Paragraphs 50 through 70, above, are hereby incorporated by reference and realleged as if fully set forth herein;

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[22] Ultram, brand name for Tramadol HCL, is a narcotic used to treat moderate to severe pain. It is a dangerous drug pursuant to Business and Professions Code section 4022.

b. Respondent failed to perform and document adequate and appropriate health and physical examinations, including a substance abuse history, prior to prescribing and refilling controlled substances for patient D.H. on a regular basis;

c. Respondent failed to provide or document the medical justification for prescribing controlled substances and modifying the amounts prescribed to patient D.H.;

d. Respondent failed to perform or document the necessary monitoring while prescribing controlled substances to patient D.H. on a regular basis for a lengthy period of time; and

e. Respondent failed to maintain adequate and accurate records documenting medications prescribed, the reasons for medication and dosage changes, and the initial and ongoing mental health and alcohol/drug use history for patient D.H.

Patient D.W.

72. On or about July 22, 2009, patient D.W. went to see Respondent as a new patient. Respondent notated in the medical record that patient D.W. told Respondent that he had been taking Subutex, and Xanax, among other medications. Respondent later believed that patient D.W. may have said he had been taking Suboxone and that he recorded Subutex in error. At the first visit, Respondent's diagnoses of patient D.W. included, but were not limited to, general anxiety disorder, opiate dependency, insomnia and hypertension. Respondent stated in an interview with the Board that patient D.W. was a referral from another physician who treated patient D.W. for opiate dependency, although this was not notated in the medical record. Respondent did not document a detailed substance abuse history for patient D.W.

73. From in or around July 2009 through March 2011, patient D.W. was prescribed either Suboxone or Subutex at 24 to 32 mg per day by Respondent and by other physicians. Respondent did not prescribe medications to patient D.W. from in or around June 2010 through in or around March 2011 because he did not have a DEA registration.

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74. On or about February 22, 2011, patient D.W. had been prescribed Subutex and Clonazepam,[23] 2 mg, quantity 40, half a tablet three (3) times a day as needed. On or about March 22, 2011, patient D.W. submitted to a urine drug screening test at Respondent's office and tested positive for Buprenorphine. Respondent notated that patient D.W. was continuing to take his medications and prescribed D.W. Subutex, 8 mg, quantity 120, one tablet four (4) times a day, and Clonazepam, 2 mg, quantity 30, one (1) tablet a day.

75. On or about April 19, 2011, Respondent prescribed patient D.W. the following: two separate prescriptions for Nuvigil,[24] 250 mg, quantity 30, one tablet per day, with one refill each; Subutex, 8 mg, quantity 120, one tablet four (4) times a day; and Clonazepam, 2 mg, quantity 40, one tablet (1) per day. Respondent failed to fully document the medical indication for prescribing Nuvigil in the medical record.

76. On or about May 19, 2011, Respondent prescribed patient D.W. Subutex, 8 mg, quantity 120, one tablet four times a day, and Clonazepam, 2 mg, quantity 40, one (1) tablet a day as needed.

77. On or about June 23, 2011, Respondent prescribed patient D.W. the following: Nuvigil, 250 mg, quantity 30, one (1) tablet a day; Subutex, 8 mg, quantity 120, one tablet four (4) times a day; and Clonazepam, 2 mg, quantity 35, one (1) tablet a day as needed. Respondent also prescribed patient D.W. testosterone.[25] Respondent failed to document the medical indication for prescribing patient D.W. testosterone in the medical record.

78. On or about July 21, 2011, Respondent diagnosed patient D.W. with hypogonadism. Respondent failed to document why or how he diagnosed patient D.W. with hypogonadism. Respondent also failed to conduct a physical examination of patient D.W.'s testes and failed to

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[23] Clonazepam, brand name Klonopin, is a benzodiazepine. It is a controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and is a dangerous drug pursuant to Business and Professions Code section 4022.

[24] Nuvigil, brand name for Armodafinil, contains Modafinil, which is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f), and is a dangerous drug pursuant to Business and Professions Code section 4022.

[25] Testosterone, is an anabolic steroid and a Schedule III controlled substance pursuant to Business and Professions Code section 11056, subdivision (f), and a dangerous drug pursuant to Business and Professions Code section 4022.

request or obtain labs to confirm that patient D.W. had low testosterone levels. Respondent prescribed patient D.W. Subutex, 8 mg, quantity 90, one tablet three (3) times a day, and Clonazepam, 2 mg, quantity 30, one (1) tablet at night.

79. From in or around October 2011 through June 2013, Respondent continued to prescribe patient D.W. Subutex or Buprenorphine, Nuvigil, and Clonazepam. Patient D.W.'s last recorded visit with Respondent was on or about June 21, 2013, in which Respondent prescribed Buprenorphine, 8 mg, quantity 30, one (1) tablet per day, and Clonazepam, 2 mg, quantity 30, one (1) tablet per day. Respondent confirmed in an interview with the Board that Respondent last saw patient D.W. on or about June 21, 2013.

80. On or about July 8, 2013, patient D.W. filled a prescription for Buprenorphine, 8 mg, quantity 10, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

81. On or about July 22, 2013, patient D.W. filled a prescription for Buprenorphine, 8 mg, quantity 10, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

82. On or about November 9, 2013, patient D.W. filled a prescription for Buprenorphine, 8 mg, quantity 2, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

83. On or about November 13, 2013, patient D.W. filled a prescription for Buprenorphine, 8 mg, quantity 2, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

84. On or about November 26, 2013, patient D.W. filled a prescription for Buprenorphine, 8 mg, quantity 3, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

85. On or about November 30, 2013, patient D.W. filled a prescription for Buprenorphine, 8 mg, quantity 2, which was prescribed by Respondent. This prescription is not documented in Respondent's records.

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86. Respondent committed repeated negligent acts in his care and treatment of patient D.W. which included, but was not limited to, the following:

a. Paragraphs 72 through 85, above, are hereby incorporated by reference and realleged as if fully set forth herein;

b. Respondent failed to perform and document adequate and appropriate health and physical examinations, including a substance abuse history, prior to prescribing and refilling controlled substances for patient D.W. on a regular basis;

c. Respondent failed to perform or document the necessary monitoring while prescribing controlled substances to patient D.W. on a regular basis; and

d. Respondent failed to maintain adequate and accurate records documenting medications prescribed, the reasons for medication and dosage changes, and the initial and ongoing mental health and alcohol/drug use history for patient D.W.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

87. Respondent has further subjected his Physician's and Surgeon's Certificate No. A37903 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 medical records in his care and treatment of patients J.T., D.H., and D.W. as more particularly alleged in paragraphs 9 through 86, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

88. Respondent has further subjected his Physician's and Surgeon's Certificate No. A37903 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 which 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 9 through 87, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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DISCIPLINARY CONSIDERATIONS

89. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 18, 2001, in a prior disciplinary action entitled, *In the Matter of the Accusation Against Egisto Salerno, M.D.*, before the Medical Board of California, in Case No. 10-1999-99502, Respondent's license was suspended for one year, suspension stayed, and placed on probation for two (2) years with various terms and conditions for gross negligence, repeated negligent acts, and failure to maintain adequate and accurate records.

90. On or about April 29, 2003, in a prior disciplinary action entitled, *In the Matter of the Accusation and Petition to Revoke Probation Against Egisto Salerno, M.D.*, before the Medical Board of California, in Case No. D1-1999-99502, Respondent surrendered his license for pleading guilty to drug-related criminal charges in San Diego Superior Court.

91. On or about May 11, 2006, in a prior action entitled, *In the Matter of the Petition for the Reinstatement of Revoked Certificate of Egisto Salerno*, before the Medical Board of California, in Case No. 20-2005-167794, Respondent's license would be reinstated if three (3) precedent conditions were satisfied: (1) Respondent proved that he was no longer on criminal probation; (2) Respondent submitted to a psychiatric or psychological evaluation, and any psychological testing, if deemed necessary; and (3) Respondent passed the Special Purpose Examination (SPEX) of the Federation of State Medical Boards within one year of the effective date of the Decision. If Respondent satisfied all three (3) of these precedent conditions, his license would be reinstated, immediately revoked, revocation stayed, and placed on five (5) years of probation with various terms and conditions.

92. On or about October 7, 2010, in a prior action entitled, *In the Matter of the Petition for Early Termination of Probation of Egisto Salerno, M.D.*, before the Medical Board of California, in Case No. 26-2009-203824, Respondent successfully petitioned to have his probation terminated early.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. A37903, issued to Respondent Egisto Salerno, M.D.;

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

3. Ordering Respondent Egisto Salerno, M.D., to pay the Medical Board of California the costs of probation monitoring, if placed on probation; and

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

DATED: August 2, 2017

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

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