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

In the Matter of the Accusation Against:	)	
Jeffery Alan Muller, M.D.	)	**Case No. 800-2017-033707**
Physician's and Surgeon's Certificate No. G 52888	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 8, 2019.

IT IS SO ORDERED: October 9, 2019.

MEDICAL BOARD OF CALIFORNIA

By: _____
Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
CHRISTINE R. FRIAR
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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: JEFFERY ALAN MULLER, M.D. 2815 S. Main Street, Suite 210 Corona, CA 92882-2533 Physician's and Surgeon's Certificate No. G 52888, Respondent.	Case No. 800-2017-033707 OAH No. 2018110177 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Christine R. Friar, Deputy Attorney General.

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2. Respondent Jeffrey Allan Muller, M.D. (Respondent) is represented in this proceeding by attorney Barry M. Walker, Esq. of Walker Trial Lawyers, LLP located at Canyon Lake Office, 31504 Railroad Canyon Road, Suite 2, Canyon Lake, California 92587.

3. On or about July 2, 1984, the Board issued Physician's and Surgeon's Certificate No. G 52888 to Jeffrey Allan Muller, 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. 800-2017-033707, and will expire on June 30, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-033707 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 29, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-033707 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. 800-2017-033707. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

9. 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. 800-2017-033707 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if an accusation is ever filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2017-033707 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

11. Respondent agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. 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.

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 Disciplinary Order:

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DISCIPLINARY ORDER

A. PUBLIC REPRIMAND.

IT IS HEREBY ORDERED THAT Physician's and Surgeon's Certificate No. G 52888, issued to Jeffrey Allan Muller, M.D., shall be and is hereby publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This public reprimand, which is issued in connection with Respondent's care and treatment of four patients as set forth in Accusation No. 800-2017-033707, is as follows:

> "Between 2011 and 2017, you failed to regularly check the CURES Reports, to conduct urine testing and/or to adequately document the care and treatment of four chronic pain management patients to whom you prescribed narcotics, in violation of the Business and Professions Code, as more fully described in Accusation No. 800-2017-033707."

B. PRESCRIBING PRACTICES COURSE.

IT IS FURTHER ORDERED THAT within sixty (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.

If Respondent fails to enroll, participate in, or successfully complete the prescribing practices course within the designated time period, Respondent shall receive a notification from

the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until enrollment or participation in the prescribing practices course has been completed. Failure to successfully complete the prescribing practices course outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

C. MEDICAL RECORD KEEPING COURSE.

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

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

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

If Respondent fails to enroll, participate in, or successfully complete the medical record keeping course within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until enrollment or participation in the medical record keeping course has been completed. Failure to successfully

complete the medical record keeping course outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Barry M. Walker. 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: 8/07/2019

JEFFERY ALAN MULLER, M.D.
Respondent

I have read and fully discussed with Respondent Jeffrey Allan Muller, 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: 8/7/19

BARRY M. WALKER
Attorney for Respondent

ENDORSEMENT

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

DATED: 8/7/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

CHRISTINE R. FRIAR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-033707

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 29, 2018
BY: ANALYST

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

In the Matter of the Accusation Against: JEFFERY ALAN MULLER, M.D. 2815 S Main Street, Suite 210 Corona, California 92882-2533 Physician's and Surgeon's Certificate G 52888, Respondent.	Case No. 800-2017-033707 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On July 2, 1984, the Board issued Physician's and Surgeon's Certificate Number G 52888 to Jeffery Alan Muller, M.D. ("Respondent"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2020, 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. The Medical Practice Act ("Act") is codified at Business and Professions Code Section 2000 et seq.

5. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

6. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

". . ."

7. Section 2227 of the Code states:

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

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

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

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

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

"(5) Have any other action taken in relation to discipline as part of an order of probation, as

the board or an administrative law judge may deem proper.

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

8. Section 2234 of the Code states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated 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."

FACTUAL SUMMARY

Patient 1:[1]

9. Patient 1, an adult male, first presented to Respondent on January 15, 2009, with a history of chronic pain due to migraine headaches. In the past, Patient 1 had tried his wife's Imitrex[2] with good results. The records did not show evidence of a neurological exam, but indicated that Patient 1 had obstructive sleep apnea and that prescriptions for Soma[3] and Ambien[4] were refilled. The records also reflect that Patient 1 was taking Aciphex[5] and Tylenol with Codeine #3.[6] Patient 1 was seen periodically and provided refills at each visit generally limited to

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[1] The patients herein are referred to as Patients 1, 2, etc., to protect their privacy.

[2] Imitrex (sumatriptan) is a headache medicine that narrows blood vessels around the brain. Sumatriptan also reduces substances in the body that can trigger headache pain, nausea, sensitivity to light and sound, and other migraine symptoms. It is available as oral tablets, a nasal spray, and as an injection. It used to treat migraine headaches in adults. Imitrex will only treat a headache. It will not prevent headaches or reduce the number of attacks.

[3] Soma (carisoprodol) is a muscle relaxer that blocks pain sensations between the nerves and the brain. Soma is used together with rest and physical therapy to treat skeletal muscle conditions such as pain or injury.

[4] Ambien (zolpidem) is a sedative, also called a hypnotic. Ambien is used to treat insomnia. The immediate-release tablet is used to help one fall asleep when initially going to bed.

[5] Aciphex (rabeprazole) is a proton pump inhibitor that decreases the amount of acid produced in the stomach. It is used short-term to treat symptoms of gastroesophageal reflux disease (GERD) in adults and children who are at least one-year-old. Aciphex is used only in adults to treat conditions involving excessive stomach acid, such as Zollinger-Ellison syndrome.

[6] Codeine is an opioid pain medication, sometimes called a narcotic. Acetaminophen is a less potent pain reliever that increases the effects of codeine. Tylenol with Codeine #3 is a combination medicine used to relieve moderate to severe pain.

monthly supplies. On August 29, 2011, a gastroenterology consultation for a colonoscopy was advised. On November 10, 2011, Respondent prescribed the patient Maxalt.[7] On April 5, 2012, Respondent noted that Maxalt worked well for the patient's headaches and the Tylenol/Codeine prescription was refilled. On May 23, 2012, the notes indicate that Patient 1 was drinking alcohol daily. He was advised to discontinue alcohol and slowly taper off the Soma and Tylenol/Codeine. A controlled substance agreement was signed on July 9, 2012. However, Respondent's notes did not indicate that Patient 1's Controlled Substance Utilization Review and Evaluation System (CURES) report was reviewed on a regular basis or that a urine test was performed.

Patient 2:

10. According to Respondent's records, Patient 2, an adult female, had a history of laminectomy[8] and chronic pain due to lumbar radiculopathy.[9] Treatment included Lyrica,[10] Cymbalta[11] and Fentanyl.[12] Attempts were made to taper the Fentanyl from 50 mcg to 25 mcg. According to Respondent, Patient 2 was referred to a pain management specialist several times. On August 17, 2010, and on multiple other dates, Patient 2 was referred for pain management and

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[7] Maxalt (rizatriptan) is a headache medicine that narrows the blood vessels around the brain. Rizatriptan also reduces substances in the body that can trigger headache pain, nausea, sensitivity to light and sound, and other migraine symptoms. Maxalt is used to treat migraine headaches. Maxalt will only treat a headache that has already begun. It will not prevent headaches or reduce the number of attacks.

[8] A laminectomy is a surgical procedure that removes a portion of the vertebral bone called the lamina. The back muscles are pushed aside rather than cut and the parts of the vertebra adjacent to the lamina are left intact. Recovery occurs within a few days.

[9] Lumbar radiculopathy refers to disease involving the lumbar spinal nerve root. This can manifest as pain, numbness, or weakness of the buttock and leg. Sciatica is the term often used by lay people.

[10] Lyrica (Pregabalin) is used to treat nerve pain from diabetes, shingles, spinal cord injury, and fibromyalgia. It is also used to control seizures in epilepsy.

[11] Cymbalta (Duloxetine) is used to treat depression, anxiety, and different types of chronic pain.

[12] Fentanyl is a powerful synthetic opioid analgesic that is similar to morphine but is 50 to 100 times more potent. It is a Schedule II prescription drug, and it is typically used to treat patients with severe pain or to manage pain after surgery.

a sleep study. On April 16, 2014, Patient 2 was referred to orthopedics, and bariatric surgery (weight loss surgery) was considered. A controlled substance agreement was signed by Patient 2 on September 7, 2017. However, Respondent's notes did not indicate that Patient 2's CURES report was reviewed on a regular basis or that a urine test was performed.

Patient 3:

11. Patient 3, an adult female, first presented to Respondent in 2012 with a history of migraines, blood disorder, seizure and chronic neck and low back pain. She was previously diagnosed with cervical radiculopathy[13] and sacroilitis.[14] Patient 3 was referred to pain management, neurology, rheumatology and physical therapy. According to the pain management consultant's May 8, 2015 reports, Patient 3 had chronic neck and low back pain; she was previously evaluated by neurosurgery; and she previously received treatment with nerve root and facet blocks. Respondent's notes did not indicate that Patient 3's CURES report was reviewed on a regular basis or that a urine test was performed.

Patient 4:

12. Patient 4, an adult female, was first examined by Respondent in early 2016. She previously underwent bilateral mastectomies[15] complicated by leakage. Respondent noted that he requested outside records during her first visit. Patient 4 was taking Percocet[16] for fibromyalgia and back pain. She was prescribed narcotics for a variety of musculoskeletal and abdominal pain. Additionally, a gastroenterology workup was performed. Seizure was noted as a past problem,

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[13] Cervical radiculopathy is a disease process marked by nerve compression from herniated disk material or arthritic bone spurs. This impingement typically produces neck and radiating arm pain or numbness, sensory deficits, or motor dysfunction in the neck and upper extremities." Cervical radiculopathy occurs with pathologies that causes symptoms on the nerve roots. Those can be compression, irritation, traction, and a lesion on the nerve root caused by either a herniated disc, foraminal narrowing or degenerative spondylitic change (Osteoarthritic changed or degeneration) leading to stenosis of the intervertebral foramen.

[14] Sacroiliitis is an inflammation of one or both of the sacroiliac joints — situated where the lower spine and pelvis connect. Sacroiliitis can cause pain in the buttocks or lower back, and can extend down one or both legs. Prolonged standing or stair climbing can worsen the pain.

[15] A mastectomy is surgery to remove a breast.

[16] Percocet or oxycodone and acetaminophen is a prescription drug used to treat moderate to severe pain, and is highly addictive.

but there was no documentation of the etiology of the seizure. No rheumatological or orthopedic evaluation is reflected in Patient 4 records. Also, there is no documentation of suicidal ideation or a referral for psychological counseling. Patient 4 was seen periodically with refills limited to monthly supplies. She was prescribed both an opiate and a benzodiazepine. Patient 4 had a pain contract, and the records indicate that her CURES was checked at least once. On one occasion, however, Patient 4 obtained medication from another physician. Respondent purportedly addressed the issue with Patient 4, and she did not seek medication from other physicians after this episode. A controlled substance agreement was signed on September 18, 2017. According to Respondent, he checked CURES periodically on this patient, but Respondent's notes did not indicate that a urine test was performed.

STANDARD OF CARE

13. The long-term care of a patient with chronic pain requires a history or evaluation sufficient to ascertain the cause of the pain. Initial treatment should not include opiates, but should include physical therapy, counseling, and non-opiate medications when appropriate. Opiates, if necessary, should be started at a low dose and increased only if necessary. Concurrent prescribing of benzodiazepines should be done only if necessary. Urine testing should be done to monitor for appropriate use and evidence of abuse. Prescription Drug Monitoring Program (PDMP) – CURES should be checked periodically. Patients with opioid use disorder or uncontrollable pain should be referred to a pain management and/or addiction medicine specialist.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

14. By reason of the matters set forth above in paragraphs 9 through 13, incorporated herein by reference, Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that Respondent was repeatedly negligent in his care and treatment of Patients 1, 2, 3, and 4.

15. The following acts and omissions, considered individually and collectively, constitute repeated negligent acts in Respondent's practice as a physician and surgeon:

Respondent's treatment of Patient 1's chronic pain and prescribing of opioids constitutes

negligence.

Respondent's treatment of Patient 2's chronic pain and prescribing of opioids constitutes negligence.

Respondent's treatment of Patient 3's chronic pain and prescribing of opioids constitutes negligence.

Respondent's treatment of Patient 4's chronic pain and prescribing of opioids constitutes negligence.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

16. By reason of the matters set forth in paragraphs 9 through 13 above, incorporated herein by this reference, Respondent is subject to disciplinary action under section 2234 of the Code in that Respondent has engaged in unprofessional conduct relating to his provision of services to Patients 1, 2, 3 and 4.

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 52888, issued to Jeffery Alan Muller, M.D.;

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

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

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

DATED: June 29, 2018

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