

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

**In the Matter of the First
Amended Accusation Against:**

Michael Douglas Miller, M.D.

Case No. 800-2018-045987

**Physician's and Surgeon's
Certificate No. C 139329**

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 November 1, 2019.

IT IS SO ORDERED October 25, 2019.

MEDICAL BOARD OF CALIFORNIA

By:



**Kimberly Kirchmeyer
Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 RYAN J. YATES
Deputy Attorney General
4 State Bar No. 279257
1300 I Street, Suite 125
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7

8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the First Amended Accusation
Against:

15 **MICHAEL DOUGLAS MILLER, M.D.**
16 **3173 E. Derbyshire Road**
Cleveland Heights, OH 44118

17 **Physician's and Surgeon's Certificate No. C**
18 **139329**

19 Respondent.

Case No. 800-2018-045987

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

20
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
25 of California (Board). She brought this action solely in her official capacity and is represented in
26 this matter by Xavier Becerra, Attorney General of the State of California, by Ryan J. Yates,
27 Deputy Attorney General.
28

2. Michael Douglas Miller, M.D. (Respondent) is represented in this proceeding by attorney Michael Firestone, Esq., whose address is: 1700 South El Camino Real, Suite 204, San Mateo CA 94402.

3. On or about November 17, 2015, the Board issued Physician's and Surgeon's Certificate No. C 139329 to Michael Douglas Miller, 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 First Amended Accusation No. 800-2018-045987 and will expire on September 30, 2019, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2018-045987 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on October 4, 2019. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A copy of First Amended Accusation No. 800-2018-045987 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 the First Amended Accusation No. 800-2018-045987. 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 First Amended 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.

1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in the First
3 Amended Accusation No. 800-2018-045987, agrees that cause exists for discipline and hereby
4 surrenders his Physician's and Surgeon's Certificate No. C 139329 for the Board's formal
5 acceptance.

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

9 **CONTINGENCY**

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

19 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
20 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
21 thereto, shall have the same force and effect as the originals.

22 12. In consideration of the foregoing admissions and stipulations, the parties agree that
23 the Board may, without further notice or formal proceeding, issue and enter the following Order:

24 **ORDER**

25 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 139329,
26 issued to Respondent Michael Douglas Miller, M.D., is surrendered and accepted by the Board.

27 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
28 acceptance of the surrendered license by the Board shall constitute the imposition of discipline

1 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
2 of Respondent's license history with the Board.

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

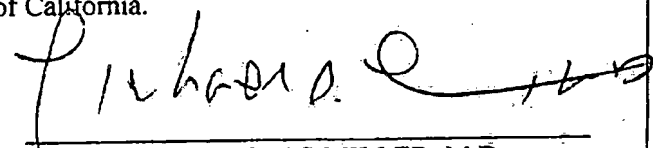
5 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
6 issued, his wall certificate on or before the effective date of the Decision and Order.

7 4. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
9 comply with all the laws, regulations and procedures for reinstatement of a revoked or
10 surrendered license in effect at the time the petition is filed, and all of the charges and allegations
11 contained in Accusation No. 800-2018-045987 shall be deemed to be true, correct and admitted
12 by Respondent when the Board determines whether to grant or deny the petition.

13 **ACCEPTANCE**

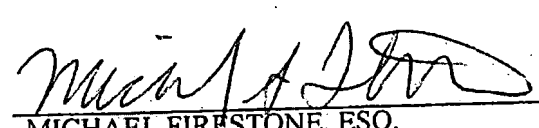
14 I have carefully read the above Stipulated Surrender of License and Order and have fully
15 discussed it with my attorney, Michael Firestone, Esq. I understand the stipulation and the effect
16 it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of
17 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Medical Board of California.

19
20 DATED: 9/27/2019


MICHAEL DOUGLAS MILLER, M.D.
Respondent

22 I have read and fully discussed with Respondent Michael Douglas Miller, M.D. the terms
23 and conditions and other matters contained in this Stipulated Surrender of License and Order. I
24 approve its form and content.

25
26 DATED: 9/26/2019


MICHAEL FIRESTONE, ESQ.
Attorney for Respondent

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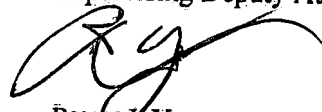
ENDORSEMENT

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: 9/26/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General



RYAN J. YATES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-045987

1 XAVIER BECERRA
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2 STEVEN D. MUNI
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 4 2019
BY D. Richards ANALYST

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 800-2018-045987

14 **Michael Douglas Miller, M.D.**
15 **3173 E. Derbyshire Road**
Cleveland Heights, OH 44118

FIRST AMENDED

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. C 139329,**

18 Respondent.

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about November 17, 2015, the Medical Board issued Physician's and
25 Surgeon's Certificate No. C 139329 to Michael Douglas Miller, M.D. (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
27 charges brought herein and will expire on September 30, 2019, unless renewed.

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1 6. Section 2239 of the Code states:

2 “(a) The use or prescribing for or administering to himself or herself, of any controlled
3 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
4 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
5 any other person or to the public, or to the extent that such use impairs the ability of the licensee
6 to practice medicine safely or more than one misdemeanor or any felony involving the use,
7 consumption, or self-administration of any of the substances referred to in this section, or any
8 combination thereof, constitutes unprofessional conduct. The record of the conviction is
9 conclusive evidence of such unprofessional conduct.

10 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
11 deemed to be a conviction within the meaning of this section. The Medical Board may order
12 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
13 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
14 affirmed on appeal or when an order granting probation is made suspending imposition of
15 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
16 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
17 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
18 indictment.”

19 7. Section 2242 of the Code states:

20 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
21 without an appropriate prior examination and a medical indication, constitutes unprofessional
22 conduct.

23 “(b) No licensee shall be found to have committed unprofessional conduct within the
24 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
25 the following applies:

26 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
27 absence of the patient’s physician and surgeon or podiatrist, as the case may be, and if the drugs
28

1 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
2 of his or her practitioner, but in any case no longer than 72 hours.

3 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
4 vocational nurse in an inpatient facility, and if both of the following conditions exist:

5 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
6 who had reviewed the patient’s records.

7 “(B) The practitioner was designated as the practitioner to serve in the absence of the
8 patient’s physician and surgeon or podiatrist, as the case may be.

9 “(3) The licensee was a designated practitioner serving in the absence of the patient’s
10 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
11 the patient’s records and ordered the renewal of a medically indicated prescription for an amount
12 not exceeding the original prescription in strength or amount or for more than one refill.

13 “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
14 Code.”

15 8. Section 2266 of the Code states, in pertinent part:

16 “The failure of a physician and surgeon to maintain adequate and accurate records relating
17 to the provision of services to their patients constitutes unprofessional conduct.”

18 9. Section 2228.1 of the Code states:

19 “(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board
20 shall require a licensee to provide a separate disclosure that includes the licensee’s probation
21 status, the length of the probation, the probation end date, all practice restrictions placed on the
22 licensee by the board, the board’s telephone number, and an explanation of how the patient can
23 find further information on the licensee’s probation on the licensee’s profile page on the board’s
24 online license information Internet Web site, to a patient or the patient’s guardian or health care
25 surrogate before the patient’s first visit following the probationary order while the licensee is on
26 probation pursuant to a probationary order made on and after July 1, 2019, in any of the following
27 circumstances:
28

1 “(1) A final adjudication by the board following an administrative hearing or admitted
2 findings or prima facie showing in a stipulated settlement establishing any of the following:

3 “(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or
4 client as defined in Section 726 or 729.

5 “(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use
6 impairs the ability of the licensee to practice safely.

7 “(C) Criminal conviction directly involving harm to patient health.

8 “(D) Inappropriate prescribing resulting in harm to patients and a probationary period of
9 five years or more.

10 “(2) An accusation or statement of issues alleged that the licensee committed any of the acts
11 described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement
12 based upon a nolo contendere or other similar compromise that does not include any prima facie
13 showing or admission of guilt or fact but does include an express acknowledgment that the
14 disclosure requirements of this section would serve to protect the public interest.

15 “(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain
16 from the patient, or the patient’s guardian or health care surrogate, a separate, signed copy of that
17 disclosure.

18 “(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if
19 any of the following applies:

20 “(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign
21 the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is
22 unavailable to comprehend the disclosure and sign the copy.

23 “(2) The visit occurs in an emergency room or an urgent care facility or the visit is
24 unscheduled, including consultations in inpatient facilities.

25 “(3) The licensee who will be treating the patient during the visit is not known to the patient
26 until immediately prior to the start of the visit.

27 “(4) The licensee does not have a direct treatment relationship with the patient.
28

1 “(d) On and after July 1, 2019, the board shall provide the following information, with
2 respect to licensees on probation and licensees practicing under probationary licenses, in plain
3 view on the licensee’s profile page on the board’s online license information Internet Web site.

4 “(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the
5 operative accusation along with a designation identifying those causes by which the licensee has
6 expressly admitted guilt and a statement that acceptance of the settlement is not an admission of
7 guilt.

8 “(2) For probation imposed by an adjudicated decision of the board, the causes for
9 probation stated in the final probationary order.

10 “(3) For a licensee granted a probationary license, the causes by which the probationary
11 license was imposed.

12 “(4) The length of the probation and end date.

13 “(5) All practice restrictions placed on the license by the board.

14 “(e) Section 2314 shall not apply to this section.

15 10. Section 11157 of the California Health and Safety Code states:

16 “No person shall issue a prescription that is false or fictitious in any respect.”

17 **PERTINENT DRUG INFORMATION**

18 11. Alprazolam – Generic name for the drug Xanax. Alprazolam is a short-acting
19 benzodiazepine used to treat anxiety, and is a Schedule IV controlled substance pursuant to Code
20 of Federal Regulations Title 21 section 1308.14. Alprazolam is a dangerous drug pursuant to
21 California Business and Professions Code section 4022 and is a Schedule IV controlled substance
22 pursuant to California Health and Safety Code section 11057(d).

23 12. Azithromycin – Generic name for the drug Zithromax, is an antibiotic used for the
24 treatment of a number of bacterial infections. This includes middle ear infections, strep throat,
25 pneumonia, traveler's diarrhea, and certain other intestinal infections. It may also be used for a
26 number of sexually transmitted infections, including chlamydia and gonorrhea infections. Along
27 with other medications, it may also be used for malaria. It can be taken by mouth or
28 intravenously with doses once per day, is not currently controlled under the Controlled

1 Substances Act, however, it is a dangerous drug, pursuant to Business and Professions Code
2 section 4022.

3 13. Cyclobenzaprine – Generic name for the drug Flexeril, is a medication used for
4 muscle spasms from musculoskeletal conditions of sudden onset. Cyclobenzaprine is not
5 currently controlled under the Controlled Substances Act, however, it is a dangerous drug,
6 pursuant to Business and Professions Code section 4022.

7 14. Hydrocodone bitartrate with acetaminophen – Generic name for the drugs Vicodin,
8 Norco, and Lortab. Hydrocodone with acetaminophen is classified as an opioid analgesic
9 combination product used to treat moderate to moderately severe pain. Prior to October 6, 2014,
10 Hydrocodone with acetaminophen was a Schedule III controlled substance pursuant to Code of
11 Federal Regulations Title 21 section 1308.13(e). On October 6, 2014, Hydrocodone combination
12 products were reclassified as Schedule II controlled substances. Federal Register Volume 79,
13 Number 163, Code of Federal Regulations Title 21 section 1308.12. Hydrocodone with
14 acetaminophen is a dangerous drug pursuant to California Business and Professions Code section
15 4022 and is a Schedule II controlled substance pursuant to California Health and Safety Code
16 section 11055, subdivision (b).

17 15. Metaxalone – Metaxalone is a muscle relaxant. It works by blocking nerve impulses
18 (or pain sensations) in the brain. Metaxalone is used together with rest and physical therapy to
19 treat skeletal muscle conditions such as pain or injury. Metaxalone is not currently controlled
20 under the Controlled Substances Act, however, it is a dangerous drug, pursuant to Business and
21 Professions Code section 4022.

22 16. Robitussin AC – Brand name for the generic mixture of Codeine and Guaifenesin in
23 syrup form. Codeine is a narcotic cough suppressant. It affects the signals in the brain that
24 trigger cough reflex. Guaifenesin is an expectorant. It helps loosen congestion in your chest and
25 throat, making it easier to cough out through your mouth. Codeine syrup is a Schedule V
26 Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.15(c).
27 Promethazine with codeine syrup is a Dangerous Drug as defined by California Business and
28

1 Professions Code section 4022 and a Schedule V Controlled Substance pursuant to California
2 Health and Safety Code section 11058(c).

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 17. Respondent's license is subject to disciplinary action under section 2234, subdivision
6 (b), of the Code, in that he committed gross negligence during the care and treatment of Patient
7 A, by prescribing controlled and non-controlled substances, with no exam or documentation.
8 Respondent additionally committed gross negligence when he prescribed controlled medication
9 with the intent to divert for self-use. The circumstances are as follows:

10 **Patient A:**

11 18. Between February 28, 2015, and April 18, 2018, Respondent prescribed the following
12 controlled and non-controlled substances to his domestic partner, Patient A.¹: Cyclobenzaprine
13 and Ibuprofen, Metaxolone and ibuprofen, Azithromycin, Alprazolam, Robitussin AC, and
14 Hydrocodone.

15 19. Prior to prescribing these substances to Patient A, Respondent failed to conduct an
16 examination on Patient A. Additionally, during Respondent's care and treatment of Patient A,
17 Respondent failed to maintain adequate and accurate medical records.

18 **Prescription with Intent to Divert for Self-Use**

19 20. On or about June 6, 2018, Respondent prescribed alprazolam, in the amount of 1 gm,
20 to his physician's assistant, with the intent of having the physician's assistant file the prescription
21 under her name, then give the medication to Respondent, in return for the reimbursement of the
22 medication's copay. Additionally, Respondent incorrectly prescribed "1 gm" of alprazolam,
23 which is one-hundred times the normal therapeutic dose of the medication.

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28 ¹ Patient names and information have been removed. All witnesses will be identified in
discovery.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violating Statute Regulating Drugs)**

3 25. Respondent's license is subject to disciplinary action under section 2238, of the Code,
4 in that he violated Health and Safety Code sections 11157, in that he issued false and/or fictitious
5 prescriptions, as more fully described in paragraph 18 above, which is incorporated by reference
6 as if fully set forth herein.

7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 139329,
11 issued to Michael Douglas Miller, M.D.;
- 12 2. Revoking, suspending or denying approval of Michael Douglas Miller, M.D.'s
13 authority to supervise physician assistants and advanced practice nurses;
- 14 3. Ordering Michael Douglas Miller, M.D., if placed on probation, to pay the Board the
15 costs of probation monitoring;
- 16 4. Ordering Michael Douglas Miller, M.D., if placed on probation, to disclose the
17 disciplinary order to patients pursuant to section 2228.1 of the Code. and
- 18 5. Taking such other and further action as deemed necessary and proper.

19
20 DATED: October 4, 2019


21 KIMBERLY KIRCHMEYER
22 Executive Director
23 Medical Board of California
24 Department of Consumer Affairs
25 State of California
26 Complainant

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