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

In the Matter of the Accusation Against:	)	
James C. Lee, M.D.	)	**Case No. 800-2015-019156**
Physician's and Surgeon's Certificate No. A 126831	)	
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 December 18, 2019.

IT IS SO ORDERED November 18, 2019.

MEDICAL BOARD OF CALIFORNIA

By: _____
Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
LAWRENCE MERCER
Deputy Attorney General
State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3488
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **JAMES C. LEE, M.D.** **505 Parnassus Avenue #M1286** **San Francisco, CA 94143** **Physician's and Surgeon's Certificate No. A126831** Respondent.	Case No. 800-2015-019156 OAH No. 2019070915 **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 Lawrence Mercer, Deputy Attorney General.

2. Respondent James C. Lee, M.D. (Respondent) is represented in this proceeding by his attorneys Marvin Firestone, M.D., J.D., and Marvin Firestone & Associates, 1700 South El Camino Real, Suite 203, San Mateo, CA 94402.

3. On or about August 7, 2013, the Board issued Physician's and Surgeon's Certificate No. A126831 to James C. Lee, 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. 800-2015-019156, and will expire on March 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-019156 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 October 19, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2015-019156 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-019156. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2015-019156 and that he has thereby subjected his Physician's and Surgeon's Certificate to

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

CONTINGENCY

9. 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.

10. 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.

11. 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:

DISCIPLINARY ORDER

1. **IT IS HEREBY ORDERED:** that Physician's and Surgeon's Certificate No. A126831 issued to Respondent James C. Lee, M.D., shall be and is hereby publicly reprimanded pursuant to California Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in connection with Respondent's actions as set forth in Accusation No. 800-2015-019156, is as follows:

Beginning in 2011, when you were licensed to practice in the State of New

York and continuing after you were issued your California license in 2013, you inappropriately prescribed medications, including controlled substances, to family members, an intimate partner and yourself. You failed to document an appropriate work up, treatment plan or periodic review before or after prescribing these medications.

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

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

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

3. MEDICAL RECORD KEEPING COURSE. Within 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 no later than 15 calendar days after successfully completing the course, or no later than 15 calendar days after the effective date of the Decision, whichever is later.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Marvin Firestone, M.D., J.D. 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: 10-10-19

JAMES C. LEE, M.D.
Respondent

I have read and fully discussed with Respondent James C. Lee, 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: 10/11/19

MARVIN FIRESTONE, M.D., J.D.
Attorney for Respondent

ENDORSEMENT

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

DATED: Oct 11 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

LAWRENCE MERCER
~~Deputy~~ Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2015-019156

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
LAWRENCE MERCER
Deputy Attorney General
State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5539
Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct 19 2017
BY ANALYST

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

In the Matter of the Accusation Against: **JAMES C. LEE, M.D.** 505 Parnassus Avenue #M1286 San Francisco, CA 94143 Physician's and Surgeon's Certificate No. A126831, Respondent.	Case No. 800-2015-019156 **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.

2. On or about August 7, 2013, the Medical Board issued Physician's and Surgeon's Certificate Number A126831 to James C. Lee, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

Statutes:

4. Section 2227 of the Code states:

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

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

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

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

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

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(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."

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 2242 of the Code states in pertinent part:

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

7. 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."

Professional Guidelines:

8. American Medical Association, Journal of Ethics, Opinion 8.19, provides in pertinent part:

"Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional judgment, thereby interfering with the care being delivered."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct, Gross Negligence, Repeated Negligent Acts)

9. Respondent James C. Lee, M.D. is subject to disciplinary action under section 2234 and/or 2234(b) and/or 2234(c) in that Respondent prescribed inappropriately to himself, to

persons with whom he was in an intimate relationship and to family members. The circumstances are as follows:

10. Beginning in or about 2011, when Respondent was in a residency program and was licensed to practice medicine in the State of New York, he undertook to prescribe medications to U.L.,[1] J.L. and himself, including antidepressants (buproprion, sertraline) and stimulants (methylphenidate). Neither U.L. nor J.L. were patients of Respondent and he was not treating them for any condition. Although Respondent asserted that he did thorough research before prescribing and, in particular, took a complete cardiac history before prescribing methylphenidate to his mother, Respondent admitted that he did not document a history, physical examination, treatment plan, informed consent or periodic review of the treatment's efficacy for U.L. or J.L. -- albeit these are required by the standard of care when recommending, prescribing or dispensing any medication.

11. Beginning in October, 2012, Respondent began prescribing medications to Patient J.P., a 26-year old female with whom he was involved in a romantic relationship. At J.P.'s request, Respondent prescribed an ophthalmologic eye drop medication, which J.P. intended to use for off-label cosmetic purposes.

12. Beginning in February 2013, the medications prescribed by Respondent for J.P. included methylphenidate. Methylphenidate, which is marketed under the trade names Ritalin and Concerta, is a controlled substance and an amphetamine-like stimulant which has the potential for habituation and abuse. Ritalin is indicated for the treatment of Attention Deficit Hyperactivity Disorder (ADHD). J.P. had no history of being diagnosed with ADHD and, albeit Respondent later stated that J.P. had an existing prescription for methylphenidate from other physicians in Colorado, prescribing records show only the prescriptions written by Respondent. J.P. reported to the Board that the methylphenidate prescribed in her name was actually used by Respondent, which allegation Respondent denied.

[1] Names are abbreviated to protect privacy rights. Respondent will be provided with full information should he request discovery.

13. Also beginning in February 2013, Respondent prescribed antidepressant medications to J.P., including buproprion, citalopram and venlafaxine. These drugs are marketed under the trade names Wellbutrin, Celexa and Effexor, respectively. Albeit J.P. had been prescribed buproprion by another provider in the past, Respondent did not have access to her past medical records, nor did he document the elements of a work up for a diagnosis of depression for J.P. Respondent did not document a treatment plan and there is no evidence in his prescribing that he had a treatment plan for J.P. According to prescribing records, Respondent prescribed antidepressants intermittently, with unexplained gaps in treatment and switches from medication to medication: Buproprion was discontinued after several months and, after a gap of several months, was replaced by citalopram, and then the citalopram was discontinued and Buproprion was resumed after another gap in treatment. A final prescription, this time for venlafaxine was written in July 2015. In a subsequent interview, Respondent stated that he recognized that he was practicing beyond the scope of his expertise in prescribing the antidepressants to J.P. and that he recommended that she go to a clinic for further care.

14. In 2014-15, Respondent prescribed cyclobenzaprine, which is a muscle relaxant, and hydromorphone, which is an opiate, to J.P. for musculoskeletal pain related to scoliosis. Respondent admitted that he never spoke with J.P.'s treating physicians and that he maintained no records of any physical examination related to these prescriptions.

15. Respondent also prescribed hypnotic medications to J.P., including zolpidem and trazadone. When asked why the prescriptions for these sleep medications were clustered within a short period of time, Respondent stated that J.P. was anticipating the end of her medical insurance coverage.

16. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to discipline pursuant to Sections 2234 and/or 2234(b) and/or 2234(c) and/or 2242 based upon his inappropriate prescribing to non-patients without a history, physical examination, diagnosis, treatment plan, informed consent or periodic review of the treatment's efficacy.

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SECOND CAUSE FOR DISCIPLINE

(Inadequate Records)

17. Respondent is subject to disciplinary action under Sections 2234 and/or 2266 of the Code in that Respondent failed to keep adequate and accurate records of the treatment provided to U.L., J.L. and J.P., as more fully alleged in Paragraphs 10-15 above, which are incorporated here by reference.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A126831, issued to James C. Lee, M.D.;

2. Revoking, suspending or denying approval of James C. Lee, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering James C. Lee, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: October 19, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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