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

In the Matter of the First Amended Accusation Against:	)	
Annamalai Ashokan, M.D.	)	**Case No. 800-2017-032152**
Physician's and Surgeon's Certificate No. A 43142	)	
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 27, 2019.

IT IS SO ORDERED November 20, 2019.

MEDICAL BOARD OF CALIFORNIA

By: Christine J. Lally
Christine J. Lally
Interim Executive Director

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
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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 First Amended Accusation Against: **ANNAMALAI ASHOKAN, M.D.** **581 McCray Street, Ste. E** **Hollister, CA 95023** **Physician's and Surgeon's Certificate No. A 43142** Respondent.	Case No. 800-2017-032152 **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. Christine J. Lally (Complainant) is the Interim 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. Annamalai Ashokan, M.D. (Respondent) is represented in this proceeding by his attorney, Philip Heithecker, 1560 Humboldt Road, Suite 1, Chico, California 95928.

3. On or about September 29, 1986, the Board issued Physician's and Surgeon's Certificate No. A 43142 to Annamalai Ashokan, M.D. (Respondent). The certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-032152

and will expire on June 30, 2020, unless renewed. On June 5, 2019, an Interim Suspension Order was entered, prohibiting Respondent from practicing medicine pending a final decision in this disciplinary action.

JURISDICTION

4. First Amended Accusation No. 800-2017-032152 ("Accusation") 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 July 1, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-032152 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-032152. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

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

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

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 800-2017-032152, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

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

CONTINGENCY

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

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

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 43142, issued to Respondent Annamalai Ashokan, M.D., is surrendered and accepted by the Board.

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

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2017-032152 shall be deemed to be true, correct and admitted by Respondent when the 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. 800-2017-032152 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

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

DATED: 11/8/19

ANNAMALAI ASHOKAN, M.D.
Respondent

I have read and fully discussed with Respondent Annamalai Ashokan, 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: 11/11/19

PHILIP HEITHECKER
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: Nov 12 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. 800-2017-032152

XAVIER BECERRA
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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 First Amended Accusation Against: **Annamalai Ashokan, M.D.** 581 McCray Street, Ste. E Hollister, CA 95023 **Physician's and Surgeon's Certificate No. A 43142,** Respondent.	Case No. 800-2017-032152 (Consolidated with Case No. 800-2018-045205) **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 29, 1986, the Medical Board issued Physician's and Surgeon's Certificate No. A 43142 to Annamalai Ashokan, M.D. (Respondent). Effective September 24, 2001, said certificate was revoked, the revocation stayed, and Respondent was placed on probation for five years, with terms and conditions. Respondent completed the probation and his certificate was restored to clear status, effective September 24, 2006. The

certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2020, unless renewed. On June 5, 2019, an Administrative Law Judge issued an Interim Suspension Order, suspending the certificate until the Board enters a decision on the charges in this Accusation.

JURISDICTION

3. This First Amended Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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:

"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:

"(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 726 of the Code states, in pertinent part:

"(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this or under any initiative act referred to in this division."

7. 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."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Repeated Negligent Acts)

8. Respondent Annamalai Ashokan, M.D. is subject to disciplinary action under section 2234 and/or 2234(c) and/or 2242(a) in that he engaged in repeated acts or omissions constituting negligence and/or unprofessional conduct. The circumstances are as follows:

9. At all relevant times, Respondent was board-certified in pain management.

10. On or about October 17, 2011, Patient 1[1], a 31 year old male, came under Respondent's care and treatment for chronic pain. The patient's presenting complaint was back pain that radiated into his left leg, was aggravated by bending and ascending/descending stairs, and had associated symptoms, which included nocturnal awakening, nocturnal pain, spasms and tingling in the legs.

11. Respondent obtained a brief medical, family and social history from the patient, but did not review prior treatment records or refer to CURES reports[2] regarding his past medications. Patient 1 told Respondent that he had been treated by multiple providers, who had prescribed oxycodone, 30 mg, QID.[3]

12. Respondent performed a physical examination which included the back and shoulders, but did not constitute the comprehensive examination that should precede initiation of potent opioid therapy. Respondent noted that the patient was morbidly obese, weighing 331 lbs.

13. Respondent diagnosed the patient with an unspecified disorder of the lumbar region, hip arthritis and morbid obesity. He stated that ideally the patient's condition could be improved with weight loss, epidurals, steroid and facet injections; however, Respondent prescribed the opioid medication oxycodone, 30 mg, QID, #120 for pain relief, and Medrol, 4 mg, a steroid anti-inflammatory.

14. Respondent also obtained a urine sample, which was subsequently analyzed and reported to be positive for oxycodone, as well as non-prescribed opiates and marijuana. Respondent did not document a discussion with the patient regarding the positive test results. Respondent did not document an informed consent discussion with the patient regarding the risks of opioid therapy, nor did he establish a medication agreement with the patient by which the patient agreed not to abuse his medications or to take non-prescribed drugs.

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[1] Patient's names are redacted to protect privacy interests.

[2] CURES (Controlled Substance Utilization Review and Evaluation System) is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement.

[3] Oxycodone is a narcotic analgesic with multiple actions similar to those of morphine. Oxycodone is a controlled substance and is available in combination with other drugs or alone. It can produce drug dependence and, therefore has the potential for being abused.

15. Respondent continued to treat Patient 1 from October 17, 2011, through April 8, 2013. His treatment plan consisted primarily of opioid therapy utilizing oxycodone, 30 mg, #120, albeit the patient did not improve on this regimen. In October, 2012, Patient 1 again tested positive for non-prescribed medications, i.e. marijuana and benzodiazepines, but Respondent did not document a discussion with the patient regarding the risks of taking non-prescribed medications in addition to his opioid regimen. In December, 2012, the patient requested an increased dosage because "he runs out early" and Respondent complied with this request, increasing the amount prescribed to #140/month. While Respondent did discuss alternative treatments with the patient, Patient 1 either rejected these (e.g., steroid injections and/or orthopedic evaluation) or was non-compliant (e.g., weight loss and exercise). Respondent did not seek a specialty consultation or refer the patient to a pain management clinic.

16. On April 22, 2013, Patient 1 was seen by another physician, who performed a more complete physical examination, provided Patient 1 with a final refill of his medications and referred him to a pain management clinic. On May 12, 2013, Patient 1 died after a heroin overdose.

17. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject to disciplinary action based on his repeated negligent acts and/or unprofessional conduct as set forth above and including, but not limited to, the following:

A. Respondent failed to perform the comprehensive physical examination of the patient before initiating long-term opioid medication management;

B. Respondent failed to provide and/or document informed consent and failed to establish a medication agreement with Patient 1;

C. Respondent failed to follow up on positive drug screen tests, failed to utilize the CURES system and failed to discuss why Patient 1 was running out of his prescribed narcotics early;

D. Respondent continued the patient's medication management for back pain over many months, despite his lack of improvement, without requesting a specialty consultation or referring the patient to a pain management clinic.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Gross Negligence/Sexual Misconduct)

18. Respondent Annamalai Ashokan, M.D. is subject to disciplinary action under section 2234 and/or 2234(b) and/or 726 in that he engaged in acts constituting unprofessional conduct, gross negligence and/or sexual misconduct. The circumstances are as follows:

19. At all relevant times, Patient 2 was a female patient under Respondent's care for treatment of chronic pain at his office in Chico, California.

20. On April 6, 2018, Patient 2 lay in a prone position on an examination table while Respondent administered bilateral injections to her neck. Patient 2 lost consciousness. When she awoke, she found that she had been shifted from the prone position on the exam table and had been propped up on her side. Her clothing and bra had been moved aside and Respondent was sucking on her left breast. As Patient 2 tried to get up from the examination table, she lost her balance. Respondent grabbed her torso to hold her up. As he did so, his hands were on her breasts, his waist was against her body and she felt his erect penis through his clothing.

21. Patient 2 reported what Respondent had done to her to the police. With the assistance of Chico Police, a Sexual Assault Response Team (SART) examination was performed. On the same day, a Butte County Superior Court judge signed a search warrant for a DNA sample from Respondent. On May 22, 2018, initial test results identified male DNA on the left breast.

22. On June 20, 2018, Patient 2 returned to see Dr. Ashokan wearing a wire. She advised Respondent that she was afraid to let him treat her again and stated that her "boob was just a little weird feeling, you know? I'm married, you know?" Police officers monitored and recorded her interaction with Respondent. During that meeting, Respondent apologized several times and asked the patient to forgive him for what had occurred at her prior visit.

23. On December 6, 2018, the DOJ DNA Laboratory matched the DNA obtained from the patient's left breast with the DNA on the buccal swab obtained from Respondent. On March 19, 2019 the Butte County District Attorney filed charges of sexual battery against Respondent.

DISCIPLINARY CONSIDERATIONS

24. To determine the degree of discipline, if any, to be imposed on Respondent Annamalai Ashokan, M.D., Complainant alleges that on or about September 24, 2001, in a prior disciplinary action entitled: *In the Matter of the Accusation Against Annamalai Ashokan, M.D.* before the Medical Board of California, in Case Number 03-1999-95983, Respondent's certificate was revoked, the revocation stayed, and Respondent was placed on probation for five years, with terms and conditions. That decision is final and is incorporated by reference as if fully set forth herein. Attached to and incorporated into the Decision is the underlying Accusation, which set forth the charges brought against Respondent. That document alleged that Respondent administered bilateral occipital injections to a female patient on February 23, 1999, after which she became dizzy and nauseated. Respondent had the patient lay down on an examination table, at which time he proceeded to caress her hand and the exposed skin on her midriff while he rubbed his erect penis, through his clothing, against her bare right arm. He also allegedly caressed the patient's nipples with his hand under her blouse. When the patient tried to rise from the table, she felt dizzy and Respondent allegedly grabbed her around the waist and, while holding her against his body, rubbed his erect penis against her groin area and kissed her cheek.

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. A 43142, issued to Respondent;

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

3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: July 1, 2019

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

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