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

In the Matter of the Second Amended Accusation Against: JOHN CHIH CHIU, M.D. Physician's & Surgeon's Certificate No. C31784 Respondent.	)	Case No. 05-2013-234396

ORDER CORRECTING NUNC PRO TUNC
ERROR IN EFFECTIVE DATE OF DECISION

On its own motion, the Medical Board of California (hereafter "board") finds that there is an error reflecting the effective date of the Decision in the above-entitled matter, and that such clerical error should be corrected.

IT IS HEREBY ORDERED that the Decision dated December 5, 2019, in the above-entitled matter be and hereby is amended and corrected nunc pro tunc to reflect that the effective date of the Decision is **February 28, 2020**.

IT IS SO ORDERED December 11, 2019.

Christine J. Lally, Interim Executive Director
Medical Board of California

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

In the Matter of the Second Amended Accusation Against:	)	
John Chih Chiu, M.D.	)	**Case No. 05-2013-234396**
Physician's and Surgeon's Certificate No. C 31784	)	
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 December 12, 2019

IT IS SO ORDERED December 5, 2019

MEDICAL BOARD OF CALIFORNIA

By: _____
Christine J. Lally
Interim Executive Director

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
COLLEEN M. MCGURRIN
Deputy Attorney General
State Bar Number 147250
California Department of Justice
300 South Spring Street, Suite 1702
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Telephone: (213) 269-6546
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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 Second Amended Accusation Against: JOHN CHIH CHIU, M.D. 1001 Newbury Road Newbury Park, CA 91360 Physician's and Surgeon's Certificate No. C 31784 Respondent.	Case No. 05-2013-234396 OAH No. 2016080139 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

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

2. JOHN CHIH CHIU, M.D. (Respondent) is represented in this proceeding by attorney Brian P. Kamel Esq., whose address is: 12400 Wilshire Boulevard, Suite 1150, Los Angeles, California 90025.

3. On or about November 4, 1969, the Board issued Physician's and Surgeon's Certificate No. C 31784 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect, subject to prior disciplinary actions, at all times relevant to the charges brought in Second Amended Accusation No. 05-2013-234396 and will expire on August 31, 2021, unless renewed.

JURISDICTION

4. Second Amended Accusation No. 05-2013-234396 was filed before the Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on January 28, 2019. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation. A copy of Second Amended Accusation No. 05-2013-234396 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 Second Amended Accusation No. 05-2013-234396. 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 Second 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 freely, voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent understands that the charges and allegations in Second Amended Accusation No. 05-2013-234396, if proven at a hearing, could constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Second Amended Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima facie factual basis for the charges in the Second Amended 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 Respondent's decision to surrender 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:

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 31784, issued to Respondent JOHN CHIH CHIU, 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 Second Amended Accusation No. 05-2013-234396 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 Second Amended Accusation, No. 05-2013-234396 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 Brian P. Kamel Esq. 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 freely, voluntarily, knowingly, and intelligently, and agree to be bound by the

Decision and Order of the Medical Board of California.

DATED: 10/8/19

JOHN CHIH CHIU, M.D.
Respondent

I have read and fully discussed with Respondent JOHN CHIH CHIU, 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: 10/8/19

BRIAN P. KAMEL ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 10/14/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

COLLEEN M. MCGURRIN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 05-2013-234396

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan 28 20 19
BY ANALYST

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

In the Matter of the Second Amended Accusation Against: JOHN CHIH CHIU, M.D. 1001 Newbury Road Newbury Park, California 91320 Physician's and Surgeon's Certificate No. C 31784, Respondent.	Case No. 05-2013-234396 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On November 4, 1969, the Medical Board issued Physician's and Surgeon's Certificate Number C 31784 to John Chih Chiu, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2019, unless renewed.

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JURISDICTION

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

4. Section 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.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. 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."

6. 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:

"...

"(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.

"..."

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

"..."

7. Section 725 of the Code, states, in pertinent part:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"..."

8. Section 2266 of the Code provides:

"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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence, Patients 1, 2, 3, 4, & 5)

9. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he engaged in gross negligence in the care and treatment of five patients. The circumstances are as follows:

Circumstances Related to Patient 1

10. On or about July 14, 2014, Patient 1, a 65-year-old woman, presented to Respondent after suffering a fall one week prior. She complained of persistent headache, shoulder pain, nausea, and emesis (vomiting). Respondent performed a physical evaluation and ordered a battery of tests, including a Computed Tomography (CT) scan of the brain, skull x-rays, facial x-rays, thoracic spine x-rays, lumbar spine x-rays, bilateral sacroiliac joint x-rays, cervical spine x-rays, and a bone densitometry study. Respondent performed the following injections: a bilateral supraorbital nerve block, bilateral occipital nerve blocks, bilateral trapezius trigger point

injections, and bilateral sacroiliac joint trigger point injections. Respondent failed to document informed consent for any of these procedures.

11. The standard of care requires documentation of informed consent, either as a signed informed consent form or as a medical record progress note outlining that an informed consent discussion took place.

12. Respondent's failure to document informed consent for either the radiographic studies he ordered or the injections he performed constitutes gross negligence.

13. The standard of care requires that any medical intervention have a justification founded on medical necessity. The standard of care also necessitates that any medical intervention have an expected diagnostic or therapeutic benefit.

14. Respondent performed multiple redundant and unnecessary diagnostic studies. The x-rays of the skull and face are redundant following the CT scan of the head already performed. Similarly, the x-rays of the cervical spine are redundant following the CT scan already performed. A bone densitometry study has no role given this patient's history, presentation, or condition, and would not be expected to yield any diagnostic benefit. Respondent's performance of multiple unnecessary and redundant studies represents gross negligence.

15. The standard of care requires that aggressive interventions be considered and performed only when appropriate. When more conservative interventions with less potential for risk and complication are available, they should be considered and offered to the patient before turning to more aggressive interventions.

16. Respondent performed multiple trigger point injections for the treatment of pain without first offering less invasive, more conservative procedures such as an oral or intravenous analgesic. Indeed, Respondent placed the patient on an intravenous analgesic, Demerol, only after performing trigger point injections. Respondent's failure to offer or demonstrate the failure of a more conservative treatment, prior to performing trigger point injections, constitutes gross negligence.

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Circumstances Related to Patient 2

17. On or about April 10, 2013, Patient 2, a 55-year-old male, presented to Respondent for evaluation of neck and back pain. Over the next 16 days, Patient 2 underwent a number of radiographic and other diagnostic tests, including skull, chest, cervical spine, and lumbar spine x-rays, an electrocardiogram, blood tests, an electromyography and nerve conduction study, and MRIs of the cervical and lumbar spine. He underwent a variety of injection procedures, including trigger point injections, epidural injections, and sacroiliac joint injections. He did not achieve relief of his symptoms with this battery of tests and injections.

18. On or about April 18, 2013, Patient 2 signed an informed consent for a right transforaminal epidurogram and lumbar and cervical epidural steroid injections under fluoroscopic control and guidance. Respondent performed a right transforaminal[1] lumbar epidural steroid injection; however, in the cervical region, Respondent performed right paracervical[2] nerve blocks. Respondent failed to document a reason for performing a different procedure from the one to which the patient consented, and Respondent failed to document any discussion with Patient 2 to explain the difference between the consent form and the operative report.

19. The standard of care requires that a procedure-specific consent be obtained prior to performing any surgical procedure. The consent should document clearly the procedure to be performed with the risks, benefits, and alternatives to the procedure.

20. Respondent's failure to complete the procedure for which informed consent was obtained, or to document a reason why this procedure could not be completed, and his completion of a procedure for which consent was not obtained, constitute gross negligence.

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[1] A transforaminal injection is an approach toward the epidural space via the intervertebral foramen where the spinal nerves exit.

[2] A paracervical injection, in this context, means an injection into the cervical (neck) area of the spine, in the vicinity of but not penetrating the epidural space.

Circumstances Related to Patient 3

21. On or about October 2, 2013, Patient 3, an adult male, presented to Respondent for the first time for treatment of pain related to a motor vehicle collision that occurred in 2011. The patient had been treated by other providers, and had most recently reported low back pain that limited his ability to do yard work and intermittent neck pain 2-3 times per week. Respondent's evaluation noted intractable low back and left lower extremity pain with rare right lower extremity pain associated with numbness and tingling of the left posterior leg, foot, and toes; mid back pain with muscle spasm; right sided rib cage pain and tenderness; increasing neck pain and stiffness associated with some left arm pain; numbness and tingling of the left third and fourth digits; and frequent right sided and bilateral occipital headaches with forgetfulness, short term memory issues, and slow mentation.

22. Respondent documented that he reviewed the patient's prior medical treatment records from other providers, and diagnostic studies including:

a. CT scan of the head and cervical spine dated November 3, 2011, interpreted as normal;

b. MRI of the lumbar spine, dated December 7, 2011, interpreted as normal;

c. MRI of the cervical spine, dated December 7, 2011, interpreted as revealing a loss of lordosis and mild encroachment upon the ventral surface of the spinal cord at C3-4, C4-5, and C5-6 but without cord compression or foramen compromise; and

d. Chest and right-sided rib series X-rays, dated December 7, 2011, interpreted as revealing no fracture or acute disease.

23. On or about October 2, 2013, Respondent obtained a CT scan of the brain, and X-rays of the cervical, thoracic, and lumbar spine, the ribs, and the skull. He also obtained an MRI of the cervical and lumbar spine, and the brain. As the patient did not report any trauma in the interval since the motor vehicle collision in 2011, there was no medical necessity for repeating the X-rays of the ribs and cervical spine, nor the CT scan or X-rays of the skull. Furthermore, the X-rays of the skull would not reveal any findings not otherwise seen in the CT of the head. The X-rays of the lumbar and cervical spine would not show any findings not seen on the MRI of the same regions of the spine.

24. On or about November 7, 2013, Respondent obtained a prone CT scan of the abdomen and pelvis as a pre-operative study to evaluate for obstruction. This study was unnecessary, as the surgery Respondent ultimately performed had no possibility of bowel involvement.

25. On or about November 8, 2013, Respondent obtained repeat X-rays of the lumbar spine for no apparent reason.

26. On or about December 2, 2013, Respondent obtained repeat X-rays of the cervical spine without any medical expectation of any new finding.

27. Respondent obtained multiple radiological studies that lack medical necessity or were redundant to other studies performed at the same time. Obtaining these unnecessary and excessive studies constitutes gross negligence.

28. On or about October 2, 2013, Respondent documented a diagnosis of post traumatic lumbar disc with lumbar radiculopathy. On the following day, Respondent performed bilateral L3, L4, and L5 facet nerve blocks, which would not be expected to provide any benefit for a lumbar radiculopathy.

29. On or about October 2, 2013, Respondent obtained an MRI of the lumbar spine which was interpreted as showing foraminal stenosis at L3-4 and L4-5 secondary to facet hypertrophy and disc bulge, which could contribute to an L3 and L4 nerve root compression but without central canal stenosis, and no mention of significant L4 or L5 nerve root compression. The same day, electrodiagnostic testing was interpreted as suggesting bilateral L4 and L5 radiculopathy. The patient's complaints to Respondent were most consistent with an S1 radiculopathy. In light of the complete lack of correlation between the MRI, electrodiagnostics, and history and physical exam, no surgery was medically justified in this patient. Nonetheless, on or about November 7, 2013, Respondent performed lumbar discography with microdecompressive lumbar discectomy at L3-4 and L4-5 under magnification.

30. On or about October 2, 2013, Respondent performed thoracic facet nerve blocks. The only diagnostic study of the thoracic spine consisted of X-rays which were interpreted as revealing mild disc space narrowing and spondylosis at multiple levels, but no specific indication

of the levels Respondent injected.

31. Performing lumbar facet nerve blocks for a diagnosis of lumbar radiculopathy, performing thoracic facet nerve blocks of levels that had not been demonstrated to exhibit pathology, and performing lumbar discectomy without clinical, radiographic, and electrodiagnostic correlation, individually and collectively constitute gross negligence.

32. Respondent failed to provide the patient with a less invasive, less aggressive, and less risky intervention prior to attempting nerve blocks and surgery. Although the patient had been tried on less aggressive interventions by other providers, near in time to the original injury in 2011, it had been two years since these interventions. Respondent's failure to attempt less aggressive interventions on the patient before proceeding to nerve blocks and surgery constitutes gross negligence.

Circumstances Related to Patient 4

33. On or about October 1, 2014, Patient 4, an adult male, first presented to Respondent complaining of severe and intractable increasing neck and shoulder pain, difficulty swallowing, poor finger and thumb coordination, hand tremor, and soft tissue swelling in the left supraclavicular area. Over the preceding three months, the patient had lost 30 pounds, which he attributed to his swallowing difficulty. Additionally, he had suffered a syncopal episode on July 22, 2014.

34. The patient had undergone an MRI of the brain on July 30, 2014, and an MRI of the cervical spine on August 22, 2014. Despite any reported change in the patient's condition since these studies had been performed, Respondent ordered repeat MRIs of both the brain and cervical spine. Additionally, on or about October 2, 2014, Respondent performed bilateral sacroiliac joint injections, despite no noted history of sacroiliac joint pain or any supporting physical exam findings or diagnostic studies revealing sacroiliac joint disease. Ordering unnecessary repeat MRI studies and performing sacroiliac joint injections without medical indication each constitutes acts amounting to gross negligence.

35. Respondent suspected malignancy based on the patient's weight loss, difficulty swallowing, and swelling in the left supraclavicular region. Respondent ordered a CT scan of the

chest, abdomen, and pelvis, which was performed on or about October 23, 2014. This study was interpreted as showing at least two large liver masses and thickening and increased density of the stomach and esophagus concerning for a mass, likely a metastatic carcinoma. The radiologist recommended a repeat study and an endoscopy. Nonetheless, on or about October 24, 2014, Respondent failed to discuss the results of the CT study with the patient, and instead proceeded with neck surgery. Despite noting a concern for possible malignancy and obtaining a diagnostic study to evaluate for this possibility, Respondent failed to review and thus consider the findings of the CT study prior to recommending and proceeding with surgery. This constitutes gross negligence.

36. In his initial consultation with the patient, Respondent recommended physical and massage therapy, injection therapy, and treatment for osteoporosis. Respondent performed trigger point injections on or about October 2, 2014, and facet injections on or about October 16, 2014. Respondent failed to document the response to any of these therapies, and instead performed surgery on the patient a mere 23 days after the initial consultation. Performing surgery without documented failure of more conservative therapies constitutes gross negligence.

Circumstances Related to Patient 5

37. Patient 5, an adult female, presented to Respondent for an initial consultation on December 21, 2015, after learning of Respondent through an Internet search. She complained of pain in the lower back, both hips, and legs. She stated it was painful to walk and hard to carry anything. She had difficulty sleeping and ached from the middle back down to her feet. Respondent recorded a two-year history of progressive low back and leg pain with an inability to ambulate more than 20-30 steps, difficulty climbing stairs, neck pain, and bilateral shoulder pain.

38. On December 21, 2015, Respondent obtained an MRI of the thoracolumbar spine with and without weight bearing. Respondent's impression was advanced multilevel degenerative herniated lumbar discs at L1-2, L2-3, L3-4, L4-5, and L5-S1 with spondylosis, lumbar central and foraminal stenosis with lumbar radiculopathy, multi-level lumbar stenosis,

especially at L3-4, and osteopenia[3]. The addition of a weight bearing MRI was unnecessary to determine the pathology of the spine.

39. On December 21, 2015, Respondent obtained a pre-surgery CT scan of the abdomen and pelvis, which was interpreted as revealing "no evidence for obstruction to preclude surgery." There was no medical justification for this study.

40. On January 11, 2016, the day prior to scheduled lumbar surgery, Respondent ordered and performed an MRI of the cervical spine as a result of Patient 5's complaints of shoulder and neck pain. Given that Patient 5's primary concerns were her low back and lower extremity issues for which surgery was scheduled the following day and that findings of an MRI of the cervical spine would not be expected to alter the surgical plan, the MRI was unnecessary at that time and should have performed at a later date.

41. Respondent documented that on January 12, 2016, he performed a microdecompressive lumbar laminotomy[4] and discectomy, foraminoplasty, and decompression at L2-3, L3-4, L4-5, and L5-S1 with partial corpectomy[5] at L3-4 and insertion of a Coflex[6] device for stabilization and fixation at L4-5. He also performed lumbar facet nerve blocks at L3-4 and L4-5.

42. On March 30, 2016, Respondent reported that the patient twisted her back and/or fell while climbing onto a tractor.

43. Respondent performed an MRI of the lumbar spine on April 13, 2016, which was interpreted to reveal severe foraminal stenosis at L2-3 and L3-4, central stenosis at L4-5 and post-operative changes at L4-5.

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[3] Osteopenia, or bone loss, is a condition in which the body does not make new bone as quickly as it reabsorbs old bone.

[4] Laminotomy is the removal of part of the lamina of a vertebral arch to relive pressure in the vertebral canal.

[5] Corpectomy is the removal of part or all of a vertebral body.

[6] A Coflex device is a titanium implant placed in the back of the spine to support the spine.

44. On April 21, 2016, Respondent ordered and obtained a CT scan of the lumbar spine. Noted in the report interpreting the scan is a Coflex device at L4-5, vacuum disc and disc space narrowing throughout the spine, and a partial laminectomy at L4-5. Actual images depict no appreciable laminectomy.

45. On April 21, 2016, Respondent performed selective nerve blocks and transforaminal epidural steroid injections at L2-3, L3-4, and L4-5.

46. On May 6, 2016, Respondent ordered and obtained a weight-bearing MRI of the lumbar spine. According to Respondent, he identified moderate central and bilateral foraminal stenosis. He believed that additional disc removal could improve the patient's condition. During the interval between April 13, 2016, and May 6, 2016, Respondent performed injections with some improvement in Patient 5's condition. Accordingly, there was no medical necessity for this repeat study.

47. On May 10, 2016, Patient 5 returned to surgery for microdecompression. Respondent performed a multilevel discography without sufficient medical justification.

48. On June 6, 2016, Respondent noted that Patient 5 complained of increased low back pain, right pain, and is walking with a limp. He performed another CT scan and MRI which did not significantly differ from the studies obtained on December 21, 2015.

49. Respondent performed additional injections on or about June 7, June 8, and June 23, 2016. On June 23, 2016, he also performed a rhizotomy[7] to sever nerve roots.

50. An additional MRI of the sacroiliac joints and lumbar spine was completed on July 13, 2016. The images are not significantly different than those obtained on December 21, 2015.

51. Respondent obtained multiple radiological studies that lack medical necessity or that were redundant to other studies performed. Obtaining these unnecessary and excessive studies constitutes gross negligence.

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[7] A rhizotomy is a neurosurgical procedure that selectively destroys problematic nerve roots in the spinal cord.

52. Respondent documented laminotomies at L2-3, L3-4, L4-5, and L5-S1, which were not performed. Failing to perform documented interventions constitutes gross negligence.

53. After the performance of minimally invasive microdecompression, Respondent performed similar procedures and performed repeated injection procedures. Respondent's repeated performance of these procedures and failure to consider or offer more aggressive treatment constitutes gross negligence.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts – All Patients)

54. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he engaged in repeated negligent acts. The circumstances are set forth in paragraphs 9 through 53, which are incorporated here by reference as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Clearly Excessive Diagnostic Testing – All Patients)

55. Respondent is subject to disciplinary action under section 725, subdivision (a), of the Code in that he engaged in repeated acts of clearly excessive use of diagnostic procedures. The circumstances are set forth in paragraphs 9 through 53, which are incorporated here by reference as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records – All Patients)

56. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records. The circumstances are set forth in paragraphs 9 through 53, which are incorporated here by reference as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty)

57. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he committed an act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

58. On or about April 12, 2016, Respondent signed a declaration under penalty of perjury, and caused that declaration to be filed in Los Angeles Superior Court, in case number BS160687, a matter entitled *Awet Kidane v. John Chih Chiu, M.D.* In his declaration, Respondent stated, *inter alia*, that "I have never provided any patient records or any kind of documents to Golden Hawk Insurance Company or Global Century Insurance Brokers regarding [Patient 3]." He further declared, "I have not provided any patient's medical records to defense counsel at Higgs, Fletcher & Mack or any other attorneys." These statements were, at best, misleading. In fact, Patient 3's records had previously been provided by Respondent's custodian of records to a law firm representing an insurance company involved in a lawsuit filed by Patient 3.

59. The matter of *Awet Kidane v. John Chih Chiu, M.D.* was a petition filed by the Board to enforce a subpoena for medical records. In support of that petition, the Board filed declarations that established that Patient 3's medical records had previously been obtained in civil discovery by a party that later complained to the Board. Those records had then been provided to the Board by the Complainant, and reviewed by a medical consultant employed by the Board. The medical consultant then submitted a declaration that established that good cause existed for the Superior Court to enforce the Board's subpoena, based on medical issues the consultant had noted in his review of the records. Respondent's declaration was submitted in support of an argument that the records that the Board's consultant had reviewed were inauthentic, and thus good cause had not been established, and thus the subpoena should not be enforced. The Superior Court did not opine on Respondent's veracity, but ruled that the Board had established good cause and that the subpoena should be enforced.

DISCIPLINARY CONSIDERATIONS

60. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 26, 2015, in a prior disciplinary action entitled "*In the Matter of the First Amended Accusation Against John Chiu, M.D.*" before the Medical Board of California, in Case Number 19-2011-214264, the Medical Board issued a public reprimand to Respondent stating that he violated Business and Professions Code section 2266. Respondent

failed to document that he informed his patient of a diagnosis of cauda equina syndrome. Respondent also failed to document that his patient understood the diagnosis and the potential consequences if the patient failed to seek immediate treatment. That decision is now final and is incorporated by reference as if fully set forth.

61. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 27, 2012, in a prior disciplinary action entitled *In the Matter of the Accusation/Petition to Revoke Probation Against John C. Chiu, M.D.* before the Medical Board of California, in Case Number D1-2002-141331, Respondent's license was revoked, for failing to disclose the existence of two malpractice lawsuits in his probation quarterly reports. However, the revocation was stayed and probation was extended for a period of seven months with numerous terms and conditions. That decision is now final and is incorporated by reference as if fully set forth.

62. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 21, 2008, in a prior disciplinary action entitled *In the Matter of the Accusation Against John Chih Chiu, M.D.* before the Medical Board of California, in Case Number 17-2002-141331, Respondent's license was placed on three years' probation with terms and conditions related to the failure to properly render post-operative care to two patients. That decision is now final and is incorporated by reference as if fully set forth.

63. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about August 16, 2002, in a prior disciplinary action entitled "*In the Matter of the Accusation Against John Chiu, M.D.*" before the Medical Board of California, in Case Number 05-1996-59826, the Medical Board issued a public letter of reprimand to Respondent stating that he violated Business and Professions Code section 650.1 by referring two patients to diagnostic imaging and physical therapy providers without disclosing to these patients that he had an ownership interest in these facilities and practices. That decision is now final and is incorporated by reference as if fully set forth.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 31784, issued to John Chih Chiu, M.D.;

2. Revoking, suspending or denying approval of John Chih Chiu, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering John Chih Chiu, M.D. to pay the Board the costs of probation monitoring; and

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

DATED: January 28, 2019

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

Complainant

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