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

| | | |
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| **In the Matter of the Accusation Against:** | ) | |
| **Timothy Rogers Mulligan, M.D.** | ) | **Case No. 800-2017-032499** |
| **Physician's and Surgeon's Certificate No. G85038** | ) | |
| **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 February 21, 2020.**

**IT IS SO ORDERED: January 24, 2020.**

**MEDICAL BOARD OF CALIFORNIA**

**Kristina D. Lawson, J.D., Chair**
**Panel B**

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
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*Attorneys for Complainant*

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

| In the Matter of the Accusation Against:<br><br>**TIMOTHY ROGERS MULLIGAN, M.D.**<br><br>1850 Sullivan Avenue, Suite 115<br>Daly City, CA 94015-2209<br><br>Physician's and Surgeon's<br>Certificate No. G 85038<br><br>Respondent. | Case No. 800-2017-032499<br><br>OAH No. 2019061218<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |
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In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

## 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 David Carr, Deputy Attorney General.

2. Timothy Rogers Mulligan, M.D. is represented in this proceeding by attorney Joseph Gharrity, Hassard Bonnington, LLP, whose address is: 275 Battery St., Suite 1600, San Francisco CA 94111.

3. On February 11, 1999, the Board issued Physician's and Surgeon's Certificate No. G 85038 to Timothy Rogers Mulligan, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-032499, and will expire on June 30, 2020, unless renewed.

## JURISDICTION

Accusation No. 800-2017-032499 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 12, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

4. A copy of Accusation No. 800-2017-032499 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. 800-2017-032499. 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 understands and agrees that the charges and allegations in Accusation No. 800-2017-032499, 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 Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

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

action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 85038, issued to Respondent Timothy Rogers Mulligan, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT. Respondent is prohibited from practicing medicine until Respondent provides documentary proof to the Board or its designee that Respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, Respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection

and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

4. 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.

5. 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 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.

6. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision

and Accusation and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine and whether Respondent is practicing medicine safely, billing appropriately, or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a

replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

STANDARD CONDITIONS

7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

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11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than

30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

14. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition

of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joseph Gharrity. 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: 10/07/2019

TIMOTHY ROGERS MULLIGAN, M.D.
*Respondent*

I have read and fully discussed with Respondent Timothy Rogers Mulligan, 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: 10/8/19

JOSEPH GHARRITY
*Attorney for Respondent*

**ENDORSEMENT**

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

DATED: October 10, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

DAVID CARR
Deputy Attorney General
*Attorneys for Complainant*

SF2018400678
Stipulated Settlement and Discipline

# Exhibit A

**Accusation No. 800-2017-032499**

XAVIER BECERRA
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*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 12, 2018
BY [illegible] ANALYST

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

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|---|---|
| In the Matter of the Accusation Against:<br><br>**Timothy Rogers Mulligan, M.D.**<br><br>1850 Sullivan Avenue, Suite 115<br>Daly City, CA 94015-2209<br><br>Physician's and Surgeon's<br>Certificate No. G 85038,<br><br>Respondent. | Case No. 800-2017-032499<br><br>**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, Department of Consumer Affairs (Board).

2. On or about February 11, 1999, the Board issued Physician's and Surgeon's Certificate Number G 85038 to Timothy Rogers Mulligan, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the allegations brought herein and will expire on June 30, 2020, unless renewed.

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## JURISDICTION

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

"...."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states, in relevant portion:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

"...."

7. The incidents described herein occurred in California.

**FIRST CAUSE FOR DISCIPLINE**

**(Negligence)**

8. Respondent's license is subject to disciplinary action for unprofessional conduct under section 2234(b) and/or 2234(c) in that his treatment and care provided to patient P-1[1] included departures from the standard of care constituting gross negligence and/or, in conjunction with the other departures from the standard of care alleged herein, repeated negligent acts.

9. Respondent first saw patient P-1 on November 22, 2013. P-1 stated that his primary care physician was retiring and that he had lost his medical insurance coverage. Respondent noted that P-1 had a ten-year history of debilitating back and knee pain incurred in a car accident. Respondent's notes of his physical examination describe abnormalities of the lower back and right hip. Respondent's review of an earlier imaging study showed P-1 suffering from discogenic disease.

[1] The patient is identified herein as patient P-1 to preserve patient confidentiality. The patient's full name will be provided to Respondent in discovery.

10. P-1 reportedly told Respondent that non-steroidal anti-inflammatory medications aggravated his gastric reflux disease and that other analgesic medications did not control his pain sufficiently to allow P-1 to work in his physically demanding trade. P-1 told Respondent that his pain had been tolerable only during the preceding year, during which he was taking a daily dose of ten 30 mg. oxycodone[2] tablets. In his chart notes for this initial visit, Respondent states that he informed P-1 that the amount of oxycodone he was taking "was a dangerous dose even if he is tolerant. Patient understands this and understands he may have to undergo detoxification to quit using opioids. Patient may require psychological counseling as well." Respondent's notes reflect a discussion of the terms under which he would continue to prescribe opiates to P-1; there was no written pain management agreement. There is no indication that P-1 was counseled on countermeasures to be taken in the event of opioid overdose nor any prescription for P-1 of an opioid overdose antidote kit. Respondent prescribed oxycodone at a reduced dose of six 30 mg. tablets per day for P-1 at this initial visit and directed P-1 to return in one month.

11. P-1 returned to Respondent only three weeks later, stating that the 6 tablets of oxycodone per day Respondent had allowed him was insufficient. Respondent increased the daily dosage to 7 tablets and added fentanyl transdermal patches[3]. P-1 saw Respondent regularly thereafter for the next three years, 40 documented visits in all. Respondent continued to prescribe oxycodone and fentanyl in varying amounts. Between February 2015 and February 2016, Respondent was prescribing opioids to P-1 that averaged 640 morphine milligram equivalents per day. Respondent referred P-1 to the Stanford pain management clinic but there is no indication that the patient acted on that referral. Over the three year course of his treatment, Respondent

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[2] Oxydodone is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance as defined by section 11055, subdivision (b)(1) of the Health and Safety Code. Respiratory depression is a primary risk with opiates, particularly in combination with other drugs. Oxycodone can produce drug dependence of the morphine type and has the potential for being abused.

[3] Fentanyl is an opioid analgesic, a dangerous drug as defined in section 4022 and a schedule II controlled substance as defined by section 11055 of the Health and Safety Code. Fentanyl transdermal is indicated only for treatment of chronic pain (such as that of malignancy) that cannot be managed by lesser means and requires continuous opioid administration. Fentanyl presents a risk of life-threatening hypoventilation. Fentanyl can produce drug dependence similar to that produced by morphine and has the potential for abuse.

ordered one urine drug screen for P-1, which was collected on December 15, 2015; it was negative for all controlled substances tested, including opioids. Respondent continued to prescribe oxycodone and fentanyl to P-1, but did taper the oxycodone dose; between March 2016 and March 2017 the average morphine milligram equivalents P-1 was receiving declined by about 25%.

12. In January 2016 patient P-1 was seen in the emergency department of a local hospital and admitted for treatment of severe asthma. He was admitted twice again for asthmatic symptoms, in May and June of 2016. One of the hospital physicians documented his suspicions that P-1 was using illicit drugs during his hospital stay; the history portion of P-1's chart notes a "history of polysubstance abuse." A urine drug screen performed during the May 2016 admission was positive for methamphetamine and opiates. That laboratory result was included in the medical records of the hospital stay which were provided to Respondent at that time. In October 2016, Respondent referred P-1 to a specialist for an asthma evaluation, but it does not appear that P-1 saw that specialist. In December of 2016, Respondent obtained a repeat diagnostic imaging study of P-1's back, which showed severe discogenic disease with associated nerve impingement.

13. Respondent saw P-1 for an office visit on March 14, 2017. His chart notes for that visit include reference to P-1's current prescriptions of oxycodone and fentanyl and that he discussed "issues regarding necessity of reducing use of narcotic analgesics." Respondent prescribed oxycodone and fentanyl to P-1 on this visit.

14. In the early morning hours of March 18, 2017, P-1 was having difficulty breathing. According to his mother, neither his inhaler nor nebulizer treatment afforded any relief. P-1 collapsed and was taken to the hospital, where he died about 5 a.m. The coroner's report cites the cause of death as acute fentanyl, methamphetamine, amphetamine, and morphine intoxication.

15. Respondent has subjected his license to disciplinary action for unprofessional conduct, in that his failure to consider and pursue non-opioid pain management modalities with P-1 over a three year course of treatment with high-dose narcotics was a departure from the standard of care constituting gross negligence in violation of section 2234(b) or, in conjunction with the other departures alleged herein, repeated negligence in violation of section 2234(c).

## SECOND CAUSE FOR DISCIPLINE

**(Negligence)**

16. The allegations of paragraphs 9-14 above are incorporated herein by reference as if set out in full. Respondent has subjected his license to disciplinary action for unprofessional conduct, in that his failure to document specific clinical counseling to P-1 about opioid overdose treatment and provide available medication for treatment of such potential overdose while prescribing high doses of opiate medication was a departure from the standard of care constituting gross negligence in violation of section 2234(b) or, in conjunction with the other departures alleged herein, repeated negligence in violation of section 2234(c).

## THIRD CAUSE FOR DISCIPLINE

**(Negligence)**

17. The allegations of paragraphs 9-14 above are incorporated herein by reference as if set out in full. Respondent has subjected his license to disciplinary action for unprofessional conduct, in that his continued prescribing of high dose opioid therapy to P-1 after being informed of P-1's positive test for methamphetamine was a departure from the standard of care constituting gross negligence in violation of section 2234(b) or, in conjunction with the other departures alleged herein, repeated negligence in violation of section 2234(c).

## FOURTH CAUSE FOR DISCIPLINE

**(Negligence)**

18. The allegations of paragraphs 9-14 above are incorporated herein by reference as if set out in full. Respondent has subjected his license to disciplinary action for unprofessional conduct, in that his failure to follow-up on his referral of P-1 to specialists while engaged in long-term, high dose opioid therapy was a departure from the standard of care constituting gross negligence in violation of section 2234(b) or, in conjunction with the other departures alleged herein, repeated negligence in violation of section 2234(c).

## PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 85038, issued to Timothy Rogers Mulligan, M.D.;

2. Revoking, suspending or denying approval of Timothy Rogers Mulligan, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Timothy Rogers Mulligan, 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: June 12, 2018

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

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