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

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| **In the Matter of the Second Amended Accusation Against:** | ) | |
| **Michael F. Schafle, M.D.** | ) | **Case No. 800-2015-014920** |
| **Physician's and Surgeon's Certificate No. C42249** | ) | |
| **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 March 13, 2020.**

**IT IS SO ORDERED: February 12, 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
GREG W. CHAMBERS
Deputy Attorney General
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*Attorneys for Complainant*

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

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| In the Matter of the Second Amended Accusation Against:<br><br>**MICHAEL F. SCHAFLE, M.D.**<br>**21 Pinecrest Drive**<br>**Fortuna, CA 95540**<br><br>**Physician's and Surgeon's Certificate No. C 42249**<br><br>Respondent. | Case No. 800-2015-014920<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |

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

**PARTIES**

1. Christine Lally (Complainant) is the Deputy 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 Greg W. Chambers, Deputy Attorney General.

2. Respondent Michael F. Schafle, M.D. (Respondent) is represented in this proceeding by attorney Amelia R. Burroughs, Esq., whose address is: 730 Fifth Street, P.O. Drawer 1288, Eureka, CA 95501.

3. On or about October 3, 1986, the Board issued Physician's and Surgeon's Certificate No. C 42249 to Michael F. Schafle, 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 Second Amended Accusation No. 800-2015-014920, and will expire on December 31, 2019, unless renewed.

## JURISDICTION

Accusation No. 800-2015-014920 was filed before the Board, and was properly served on Respondent on June 28, 2018, along with all other statutorily required documents. Respondent timely filed his Notice of Defense contesting the Accusation. A First Amended Accusation and then, subsequently, a Second Amended Accusation were filed and served. The Second Amended Accusation is currently pending against Respondent.

4. A copy of Second Amended Accusation No. 800-2015-014920 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 Second Amended Accusation No. 800-2015-014920. 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.

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## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Second Amended Accusation No. 800-2015-014920.

9. 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.

## CONTINGENCY

10. 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.

11. 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.

12. 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. C 42249 issued to Respondent Michael F. Schafle, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. 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.

2. EDUCATION COURSE. Within sixty (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 forty (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 sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

3. PRESCRIBING PRACTICES COURSE. Within sixty (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 fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program 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 program would have been approved by the Board or its designee had the program 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 fifteen (15) calendar days after successfully completing the program or not

later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

5. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

6. MONITORING - PRACTICE. Within thirty (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(s), 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(s) and Accusation(s), and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), 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 sixty (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 sixty (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(s) 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 ten (10) calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five (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 fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (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.

7. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within sixty (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. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within sixty (60) calendar days of the practice setting change, 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. The Respondent shall not resume practice until an appropriate practice setting is established.

8. 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 fifteen (15) calendar days.

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

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 ten (10) calendar days after the end of the preceding quarter.

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 thirty (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 fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (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 forty (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 eighteen (18) calendar months, Respondent shall successfully complete the Federation of State Medical Boards' 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; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

14. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than one-hundred twenty (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.

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## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Amelia Burroughs. 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: 11-14-19

MICHAEL F. SCHAFLE, M.D.
*Respondent*

I have read and fully discussed with Respondent Michael F. Schafle, 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: 11. 14. 19

AMELIA F. BURROUGHS
*Attorney for Respondent*

## ENDORSEMENT

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

DATED: 11/14/2019

Respectfully submitted,

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

GREG W. CHAMBERS
Deputy Attorney General
*Attorneys for Complainant*

XAVIER BECERRA
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*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan. 2 20 19
BY [signature] ANALYST

**BEFORE THE**
**MEDICAL BOARD OF CALIFORNIA**
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| In the Matter of the Second Amended Accusation Against:<br><br>**Michael F. Schafle, M.D.**<br><br>21 Pinecrest Drive<br>Fortuna, CA 95540<br><br>Physician's and Surgeon's Certificate No. C 42249,<br><br>Respondent. | Case No. 800-2015-014920<br><br>**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, Department of Consumer Affairs (Board).

2. On October 3, 1986, the Board issued Physician's and Surgeon's Certificate Number C 42249 to Michael F. Schafle, M.D. (Respondent). Respondent's certificate will expire, unless renewed, on December 31, 2019.

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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 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 2001.1 of the Code provides that the Board's highest priority shall be public protection.

6. 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:

"(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. Section 2242 of the Code states:

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

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

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

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

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

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

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

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

8. Section 2266 of the Code states:

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

9. 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.

10. All of the incidents alleged herein occurred in California.

**PERTINENT DRUGS**

11. Alprazolam, also known by the trade name Xanax, is a psychotropic triazolo analogue of the 1,4 benzodiazepine class of central nervous system-active compounds. Xanax is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety Code. Xanax has a central nervous system depressant effect and patients should be cautioned about the simultaneous ingestion of alcohol and other CNS depressant drugs during treatment with Xanax. Addiction-prone individuals (such as drug addicts or alcoholics) should be under careful surveillance when receiving alprazolam because of the predisposition of such patients to habituation and dependence. The usual starting dose of Xanax is 0.25 to 0.5 mg. three times per day.

12. Benzodiazepines (ben-zoe-dye-AZ-e-peens) belong to the group of medicines called central nervous system (CNS) depressants (medicines that slow down the nervous system). Some benzodiazepines are used to relieve anxiety. However, benzodiazepines should not be used to relieve nervousness or tension caused by the stress of everyday life. Some benzodiazepines are used to treat insomnia (trouble in sleeping). However, if used regularly (for example, every day) for insomnia, they usually are not effective for more than a few weeks.

13. Clonazepam, also known by the trade name Klonopin, is an anticonvulsant of the benzodiazepine class of drugs. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. It produces central nervous system depression and should be used with caution with other central nervous system depressant drugs. Like other benzodiazapines, it can produce psychological and physical dependence. Withdrawal symptoms similar to those noted with barbiturates and alcohol have been noted upon abrupt discontinuance of Klonopin. The initial dosage for adults should not exceed 1.5 mg. per day divided in three doses.

14. Diazepam, also known by its trade name Valium, is a psychotropic drug for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. Diazepam can produce psychological and physical dependence and it should be prescribed with caution particularly to addiction-prone individuals (such as drug addicts and alcoholics) because of the predisposition of such patients to habituation and dependence. Valium is available in 5 mg. and 10 mg. tablets. The recommended dosage is 2 to 10 mg. 2 to 4 times daily.

15. Fentanyl is an opioid analgesic. Fentanyl is 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 is a strong opioid medication and is indicated only for treatment of chronic pain that cannot be managed by lesser means and requires continuous opioid administration.

16. Fluoxetine hydrochloride, also known by the trade name Prozac, is an antidepressant and is a dangerous drug within the meaning of Business and Professions code section 4022.

Fluoxetine is an antidepressant agent chemically unrelated to tricyclic, tetracyclic, or other available antidepressant agents. A significant percentage (12 to 16%) of patients on fluoxetine experienced anxiety, nervousness, or insomnia. In general, the maximum dose of fluoxetine should not exceed 80 mg per day.

17. Gabapentin, also known by the trade name Neurontin, is an antiepileptic and is indicated as adjunctive therapy in the treatment of partial seizures with and without secondary generalization in adults with epilepsy. It is a dangerous drug within the meaning of Business and Professions Code section 4022. The most commonly observed adverse events associated with the use of Neurontin in combination with other antiepileptic drugs are somnolence, dizziness, ataxia, fatigue, and nystagmus.

18. Imitrex is a trade name for Sumatriptan, which is used to treat migraines. Side effects include tingling/numbness/prickling/hear, tiredness, weakness, drowsiness, or dizziness. It is a dangerous drug as defined in section 4022.

19. Levothyroxine (T4) sodium, also known by the trade name Levothroid, is indicated as replacement or substitution therapy for diminished or absent thyroid function resulting from functional deficiency, primary atrophy, from partial or complete absence of the gland or from the effects of surgery, radiation or antithyroid agents. It is a dangerous drug within the meaning of Business and Professions Code section 4022.

20. Lorazepam, also known by the trade name Ativan, is a medication of the benzodiazepine group used for short-term relief from the symptoms of anxiety or anxiety associated with depressive symptoms. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. Lorazepam is not recommended for use in patients with primary depressive disorders. Sudden withdrawal from Lorazepam can produce withdrawal symptoms including seizures. Like other benzodiazepines, Lorazepam can produce psychological and physical dependence.

21. Methadone hydrochloride is a synthetic narcotic analgesic with multiple actions quantitatively similar to those of morphine. It also goes by the trade names Methadose and Dolophine. It is a dangerous drug as defined in section 4022 and a schedule II controlled

substance and narcotic as defined by section 11055, subdivision (c) of the Health and Safety Code. Methadone can produce drug dependence of the morphine type and, therefore, has the potential for being abused. Psychic dependence, physical dependence, and tolerance may develop upon repeated administration of methadone, and it should be prescribed and administered with the same degree of caution appropriate to the use of morphine. Methadone should be used with caution and in reduced dosage in patients who are concurrently receiving other narcotic analgesics. The usual adult dosage is 2.5 mg. to 10 mg. every three to four hours as necessary for severe acute pain.

22. Morphine sulfate is for use in patients who require a potent opioid analgesic for relief of moderate to severe pain. Morphine is a dangerous drug as defined in section 4022, a schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code. Morphine can produce drug dependence and has a potential for being abused. Tolerance and psychological and physical dependence may develop upon repeated administration. Abrupt cessation or a sudden reduction in dose after prolonged use may result in withdrawal symptoms. After prolonged exposure to morphine, if withdrawal is necessary, it must be undertaken gradually.

23. Norco is a trade name for hydrocodone bitartrate with acetaminophen. Norco tablets contain 10 mg of hydrocodone bitartrate and 350 mg of acetaminophen. Acetaminophen is a non-opiate, non-salicylate analgesic and antipyretic. Hydrocodone bitartrate is semisynthetic narcotic analgesic and a dangerous drug as defined in section 4022 of the Business and Professions Code. Norco is a schedule II controlled substance and narcotic as defined by section 11055, subdivision (e) of the Health and Safety Code. Repeated administration of hydrocodone over a course of several weeks may result in psychic and physical dependence. The usual adult dosage is one tablet every four to six hours as needed for pain. Dosage should be adjusted according to the severity of the pain and the response of the patient. However, it should be kept in mind that tolerance to hydrocodone can develop with continued use and that the incidence of untoward effects is dose related. The total 24-hour dose should not exceed 6 tablets.

24. Oxycodone is a white odorless crystalline powder derived from the opium alkaloid, thebaine. Oxycodone 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 and narcotic as defined by section 11055, subdivision (b)(1) of the Health and Safety Code. Oxycodone can produce drug dependence of the morphine type and, therefore, has the potential for being abused.

25. SOMA, known by the trade name Carisoprodol, is a muscle-relaxant and sedative. It is a dangerous drug as defined in section 4022 of the Business and Professions Code, and a schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. Since the effects of carisoprodol and alcohol, or carisoprodol and other central nervous system depressants, or psychotropic drugs may be addictive, appropriate caution should be exercised with patients who take more than one of these agents simultaneously. Carisoprodol is metabolized in the liver and excreted by the kidneys; to avoid its excess accumulation, caution should be exercised in administration to patients with compromised liver or kidney functions.

26. Toradol, a trade name for ketorolac tromethamine, is a nonsteroidal anti-inflammatory drug (NSAID) and is indicated for the short-term management (up to 5 days) of moderately severe, acute pain, that requires analgesia at the opioid level and is not indicated for minor or chronic painful conditions. Toradol is a potent NSAID analgesic, and its administration carries many risks including the risks of peptic ulcers, gastrointestinal bleeding, and/or perforation, renal complications, and, in patients at high risk of bleeding, other bleeding-related complications. It is a dangerous drug within the meaning of Business and Professions Code section 4022.

27. Trazodone hydrochloride, also known by the trade name Desyrel, is a triazolopyridine derivative antidepressant. Desyrel may enhance the response to alcohol and other CNS depressants. It is a dangerous drug as defined in section 4022 of the Code.

28. Tramadol hydrochloride, also known by the trade name Ultram, is a centrally acting synthetic analgesic compound. It is a dangerous drug as defined in section 4022 of the Business and Professions Code, and a schedule II controlled substance as defined by section 11057 of the

Health and Safety Code. Ultram is indicated for the management of moderate to moderately severe pain.

29. Vistaril, the trade name for Hydroxyzine, reduces activity in the central nervous system and also acts as an antihistamine. It is used as a sedative to treat anxiety and tension. Hydroxyzine is a dangerous drug as defined in Business and Professions Code section 4022.

30. Zyban, a trade name for bupropion hydrochloride, an antidepressant of the aminoketone class, is a dangerous drug within the meaning of Business and Professions code section 4022. Zyban is an antidepressant agent used to help stop smoking. Wellbutrin, made by the same company as Zyban, is also called bupropion, but used to treat depression.

**FIRST CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Gross Negligence/Repeated Negligent Acts/Lack of Knowledge/ Furnishing Drugs Without Appropriate Examination – Patient One)**

31. Respondent has subjected his license to disciplinary action under section 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], and/or 2242 [furnishing dangerous drugs without examination] for unprofessional conduct, in that his care and treatment of Patient One[1] included departures from the standard of care constituting gross negligence, and or repeated negligent acts, and/or lack of knowledge, in conjunction with the other departures alleged herein, repeated negligent acts. The circumstances are as follows:

32. Respondent began providing medical care to patients at a clinic in Scotia, California about April 1, 2014. According to pharmacy records, on or about June 9, 2014, Respondent wrote a prescription for Patient One for Lorazepam. Respondent did not create a medical record of a clinical interaction with Patient One on or near this date that included this prescription, document a physical examination or diagnosis, record the patient's informed consent, or set out the clinical basis for the prescription Respondent wrote for Patient One.

33. The pharmacy records for Patient One establish that Respondent refilled the Lorazepam prescription to Patient One on six separate dates between June 9, 2014 and April 7, 2015. The pharmacy records also reveal that on eight separate dates in that same ten-month

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

period Respondent wrote prescriptions for Patient One for Hydrocodone. No medical records exist that reflect any clinical care afforded Patient One by Respondent on the dates of the prescriptions Respondent wrote for Patient One over this period of time.

34. Respondent first created a medical record of his care and treatment of Patient One at the clinic where Respondent was working on April 7, 2015. The record of that visit states that Patient One was returning for a second injection for pain in her shoulder. Vital signs are recorded and brief social and family histories noted. The physical examination described in the record is limited to Patient One's left shoulder. The current medication list includes Lorazepam and Hydrocodone. Respondent notes the need for a follow-up visit only "as needed." No informed consent is documented in the record, nor is there a pain management agreement pertaining to the controlled substances Respondent prescribed.

35. Patient One's next documented visit with Respondent occurred on April 16, 2015. The chart notes for that date state that Patient One was a walk-in with a complaint of stress and medication issues. The chart notes under History of Present Illness state: "Patient is here to establish care. She had a recent psychotic break and has since been started on Zyprexa with some resolution. She is requesting refills of her Ativan and Norco. She is not suicidal and appears to have most of the mania under control." The information entered in the record reflects a general physical examination of the major body systems. The chart entry for diagnosis lists "Bipolar I Disorder" and "Anxiety State" as well as gastric reflux and pain in her back and left shoulder. Respondent refilled Patient One's prescriptions for Lorazepam and Hydrocodone at this office visit.

36. Patient One's third recorded office visit with Respondent occurred on or about May 7, 2015. The notes for this visit indicate Patient One appeared for "routine FU (follow up) and medication refill." The section pertaining to her current complaint states: "Patient is here to update her medication list, and to get paperwork filled out. She is feeling much better, her thinking is clearer, and her behavior is much less frenetic." The portion of the chart under the heading "Examination" is a verbatim recitation of the information presented in that section of the chart of Patient One's preceding office visit. Pharmacy records indicate Respondent renewed

Patient One's prescriptions for Lorazepam and Hydrocodone on or about the time of this visit; the chart entries reflect the Lorazepam prescription but make no mention of the Hydrocodone prescription.

37. Pharmacy records indicate that Respondent authorized a re-fill of Patient One's Hydrocodone prescription that was filled on or about May 26, 2015. The records do not show any subsequent prescriptions written by Respondent for Patient One, nor are there any medical records reflecting any care or treatment provided to Patient One by Respondent after the third office visit on May 7, 2015.

38. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], and/or 2242 [furnishing dangerous drugs without examination], of the Code, including but not limited to, the following:

A. Respondent failed to conduct an appropriate prior physical examination before prescribing dangerous drugs.

B. Respondent failed to classify Patient One's risk stratification prior to prescribing an opiate and benzodiazepine.

C. Respondent failed to have patient consent and discussion of risks/benefits when prescribing chronic controlled substances.

D. Respondent failed to have a comprehensive treatment plan and objectives when treating Patient One.

E. Respondent failed to ensure appropriate compliance monitoring of Patient One after prescribing opioids or other controlled substances.

F. Respondent failed to obtain a pain management agreement/or controlled substances contract with Patient One at the time he began prescribing controlled substances to the patient.

**SECOND CAUSE FOR DISCIPLINE**
**(Failure to Maintain Adequate Medical Records – Patient One)**

39. The allegations of paragraphs 25 through 30 above are incorporated by reference as if set out in full. Respondent's license is subject to disciplinary action in that his failure to maintain

adequate and accurate records relating to his medical care and treatment of Patient One constitutes unprofessional conduct by application of section 2266.

**THIRD CAUSE FOR DISCIPLINE**
**(Unprofessional Conduct – Gross Negligence/Lack of Knowledge – Patient Two)**

40. Respondent has subjected his license to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], and/or 2234(d) [lack of knowledge], for unprofessional conduct, in that his care and treatment of Patient Two included departures from the standard of care constituting gross negligence and/or lack of knowledge, in conjunction with the other departures alleged herein, lack of knowledge. The circumstances are as follows:

41. On or about June 1, 2015, Patient Two first visited Respondent at Scotia Bluffs Community Health Center. Patient Two reported a history of neuropathy, migraines, insomnia from chronic pain, bi-polar disorder and one suicide attempt. Patient Two requested refills of Norco and Soma.

42. Patient Two reported that she became suicidal and psychotic on gabapentin.

43. Although Respondent was aware of Patient Two's report of adverse effects of gabapentin, Respondent still prescribed #90 gabapentin, 100 mg. every eight hours, with five (5) refills.

44. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(d) [lack of knowledge], of the Code, including but not limited to, the following:

A. Respondent prescribed a medication known to cause an adverse effect in Patient Two.

**FOURTH CAUSE FOR DISCIPLINE**
**(Unprofessional Conduct: Gross Negligence/Lack of Knowledge – Patient Three)**

45. Respondent has subjected his license to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], and/or 2234(d) [lack of knowledge], in that Respondent's care and treatment of Patient Three included departures from the standard of care constituting gross negligence and/or incompetence, in conjunction with the other departures alleged herein, lack of knowledge. The circumstances are as follows:

46. On March 23, 2015, Patient Three first presented to Respondent complaining of lower back pain from a fall, anxiety, seizures secondary to alcohol and a history of bi-polar disorder.

47. On April 20, 2015, Patient Three reported flu-like symptoms, which were subsequently replaced by more congestion and a sore throat. Respondent's examination reported that Patient Three had a normal oropharynx and no lymphadenopathy.

48. On June 30, 2015, Patient Three presented for a sore throat on the right hand side and to obtain medication refills. On July 14, 2015, Patient Three again presented for a sore throat on the right hand side and to obtain medication refills.

49. On August 6, 2015, Patient Three had an ultrasound of the right side of the neck that noted an enlarged lymph node measuring 4 cm. by 1.4 cm.

50. On August 17, 2015, Patient Three had a mildly tender enlarged lymph node on the neck and Respondent noted that if swelling persisted he would order a biopsy. On September 22, 2015, Patient Three still had a swollen lymph node on the right side of the neck. Medical records noted, "if still present, get ultrasound and surgical referral." Respondent advised Patient Three to return for a follow-up appointment in three months.

51. On October 20, 2015, Patient Three was referred to consult with an ENT physician for possible biopsy as there had been no change to the swollen lymph node. Patient Three's weight had dropped from 162 lbs. to 146 lbs.

52. On November 24, 2015, Patient Three weighed 141 lbs., the sore throat persisted, and the swollen lymph node in the neck area continued. Additionally, the ENT consult failed to go through because Patient Three changed her phone number. Respondent advised having a follow-up appointment in two months.

53. On December 11, 2015, Patient Three had increased swelling of the mass on the neck. Patient Three stated that the ENT consult was now scheduled for January, but Respondent had Patient Three emergently seen by a general surgeon who obtained an ultrasound guided biopsy that showed metastatic squamous cell carcinoma. Patient Three's weight was recorded as 139 lbs.

54. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(d) [lack of knowledge], of the Code, including but not limited to, the following:

A. Eight weeks after becoming aware of the lymphadenopathy, Respondent delayed appropriate diagnostic evaluation after noting that the node was still present and advised that Patient Three return in three months.

B. Respondent failed to record why the referral to an ENT did not result in a patient visit, and ordered an ultrasound for an unexplained lymphadenopathy rather than a computed tomography (CT) scan.

**FIFTH CAUSE FOR DISCIPLINE**
**(Unprofessional Conduct: Gross Negligence/Repeated Negligent Acts/ Lack of Knowledge - Patient Four)**

55. Respondent has subjected his license to disciplinary action under sections 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], for unprofessional conduct, in that his care and treatment of Patient Four included departures from the standard of care constituting gross negligence, and or repeated negligent acts, and/or lack of knowledge, in conjunction with the other departures alleged herein, lack of knowledge. The circumstances are as follows:

56. On April 27, 2015, Patient Four first presented following a trip and fall which resulted in an L1 compression fracture. Patient Four had a history of depression, methamphetamine abuse (4 years prior), a suicide attempt with psychiatric admission, and use of painkillers.

57. Patient Four presented almost monthly for a year, and was seen five times by Respondent, and seven times by his partner, though Respondent provided the prescriptions that were picked-up monthly at the pharmacies. During that year Respondent prescribed Patient Four Tramadol, Norco, and Xanax, never reviewed CURES,[2] or required Patient Four to sign a

[2] The CURES is a program operated by the California Department of Justice (DOJ) to assist health care practitioners in their efforts to ensure appropriate prescribing of controlled substances, and law enforcement and regulatory agencies in their efforts to control diversion and abuse of controlled substances. (Health & Saf. Code, § 11165.) California law requires

controlled substance contract, and never discussed the risks and benefits of long-term use of controlled substances.

58. On August 1, 2015, Patient Four was seen at the ER for shortness of breath and was given a toxicology screen, which tested positive for benzodiazepines and opioids. However, Respondent was not prescribing benzodiazepines to Patient Four at that time.

59. On August 19, 2015, Respondent noted that Patient Four should receive random drug tests because of methamphetamine abuse history, but this was never acted upon. Respondent prescribed Tramadol HCL 100 mg. three times daily for three months; Norco 10/325 mg. three times daily for three months; and Alprazolam 0.5 mg. twice daily, among other medications.

60. On October 9, 2015, Patient Four presented to Respondent's partner who noted Patient Four complained of memory loss.

61. On October 9, 2015, Patient Four presented to the ER with a left-sided headache. Patient Four noted that Imitrex and Toradol were not effective, but that she has been provided Norco in the past. The ER physician avoided providing Norco.

62. On October 23, 2015, Patient Four reported to Respondent's partner that Patient Four had gradual and progressive memory loss, difficulty with short-term memory, and denied head injury.

63. On November 18, 2015, Patient Four was seen by Respondent, who increased Xanax prescription in place of Vistaril and Trazadone for insomnia.

64. On January 8, 2016, Patient Four was seen by Respondent's partner who noted that on November 18, 2015, Respondent prescribed Tramadol HCL 100 mg. three times daily; Norco 10/325 mg. three times daily; and Alprazolam 0.5 mg. twice daily, among other medications.

65. On February 9, 2016, Respondent noted that Patient Four reported that hallucinations and paresthesia had resolved. Respondent prescribed Tramadol HCL 100 mg. three times daily; Norco 10/325 mg. three times daily; Alprazolam 0.5 mg. four times daily.

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dispensing pharmacies to report to the DOJ the dispensing of Schedule II, III and IV controlled substances as soon as reasonably possible after the prescriptions are filled. (Health & Saf. Code, § 11165, subd. (d).) The history of controlled substances dispensed to a specific patient based on the data contained in the CURES is available to a health care practitioner who is treating that patient. (Health & Saf. Code, § 11165.1, subd. (a).)

66. On March 29, 2016, Patient Four was seen at the ER and reported hearing and seeing things in the evening. Patient Four also reported tremors and cold sweats, and was diagnosed with anxiety with hallucinations and insomnia. On April 1, 2016, Patient Four was found dead at her home. The Coroner determined cause of death to be Tramadol toxicity.

67. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], of the Code, including but not limited to, the following:

A. Respondent failed to establish the necessity of chronic opioid therapy.

B. Respondent failed to classify Patient Four's risk stratification.

C. Respondent failed to have a comprehensive treatment plan and objectives when treating Patient Four.

D. Respondent failed to have patient consent and discussion of risks/benefits of long-term opioid use, combined opioid use, and combined narcotic and benzodiazepine use.

E. Respondent failed to ensure appropriate compliance monitoring of Patient Four after prescribing opioids or other controlled substances.

F. Respondent failed to base Patient Four's care on outcomes such as making progress toward functional goals, presence and nature of side effects, pain status and lack of evidence of patient misuse, abuse or diversion.

G. Respondent failed to provide Patient Four with a long-term controlled substance contract.

## SIXTH CAUSE FOR DISCIPLINE
**(Unprofessional Conduct: Gross Negligence/Repeated Negligent Acts/ Lack of Knowledge - Patient Five)**

68. Respondent has subjected his license to disciplinary action under sections 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], for unprofessional conduct, in that his care and treatment of Patient Five included departures from the standard of care constituting gross negligence, and or repeated negligent acts, and/or lack of

knowledge, in conjunction with the other departures alleged herein, lack of knowledge. The circumstances are as follows:

69. Respondent treated Patient Five from May 27, 2014 to March 17, 2017, totaling approximately 30 visits. Patient Five had a history of bipolar disorder, anxiety, depression, and suicide attempts. During this period of treatment, Respondent prescribed controlled substance without reviewing CURES, and never discussed an exit strategy with the patient in light of all the failed drug tests produced by Patient Five

70. On May 27, 2014, Patient Five noted chronic pain to the left hip and knee, and requested methadone and Norco. According to the records for that visit, Patient Five tested positive for amphetamines. Respondent prescribed Norco 10/325 mg. tid; Lorazepam 1 mg. bid; and Fentanyl patch on that visit.

71. On June 18, 2014, Respondent added a refill for Norco 10/325 mg. tid; Lorazepam 1 mg. bid; and added Methadone HCL 5 mg. tablet.

72. On July 16, 2014, Patient Five tested negative for Norco, Lorazepam, and methadone even though they had been prescribed one month earlier.

73. On April 17, 2015, Patient Five was prescribed methadone and Norco, among other medications.

74. On May 18, 2015, Patient Five tested positive for morphine, amphetamine, methamphetamine, THC, and a heroin metabolite. Patient Five tested negative for methadone and Norco.

75. On July 2, 2015, Patient Five tested positive for methamphetamine, amphetamine, THC, and alcohol, but tested negative for methadone prescribed on May 18, 2015.

76. On January 5, 2016, Patient Five was prescribed Norco 10/325 mg. once every six hours, and methadone 5mg. On March 7, 2016, Patient Five was prescribed Clonazepam, methadone, and Norco. On March 8, Patient Five submitted to a urine toxicology test that revealed positive results for codeine, morphine, amphetamines, methamphetamines, THC, and heroin metabolites. Patient Five tested negative for Clonazepam, methadone, and Norco.

77. On September 12, 2016, Patient Five tested positive for methamphetamine, cocaine and heroin metabolite.

78. On October 17, 2016, Patient Five was prescribed a one-month supply of methadone, clonazepam, and Norco. On November 5, 2016, Patient Five tested negative for methadone, but tested positive for THC.

79. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], of the Code, including but not limited to, the following:

A. Respondent failed to establish the necessity of chronic opioid therapy.

B. Respondent failed to classify Patient Five's risk stratification and to fully evaluate potential risks of combined opioid therapy (Norco and methadone) or with the other respiratory depressants such as benzodiazepines (clonazepam or lorazepam).

C. Respondent failed to have a comprehensive treatment plan and objectives when treating Patient Five.

D. Respondent failed to ensure appropriate compliance monitoring of Patient Five after prescribing opioids or other controlled substances.

E. Respondent failed to base Patient Five's care on outcomes such as making progress toward functional goals, presence and nature of side effects, pain status and lack of evidence of patient misuse, abuse or diversion.

## SEVENTH CAUSE FOR DISCIPLINE
**(Unprofessional Conduct: Gross Negligence/Repeated Negligent Acts/ Lack of Knowledge - Patient Six)**

80. Respondent has subjected his license to disciplinary action under sections 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], for unprofessional conduct, in that his care and treatment of Patient Six included departures from the standard of care constituting gross negligence, and or repeated negligent acts, and/or lack of knowledge, in conjunction with the other departures alleged herein, lack of knowledge. The circumstances are as follows:

81. Respondent treated Patient Six from October 29, 2014 to August 22 2017, totaling 22 visits. Patient Six had a history of depression and anxiety, smoked one and a half packs of cigarettes daily, and was a daily consumer of alcohol. Patient was treated for chronic neck and shoulder pain, and initially prescribed Norco and Oxycodone.

82. On February 24, 2015, Patient Six was provided refills for Oxycodone and Norco for a three-month period.

83. On May 18, 2015, Patient Six claimed that his son is an addict and stole eight oxycodone pills. Patient Six was also taking Xanax from another prescriber, as well as Maxzide, a blood pressure medicine.

84. On March 30, 2016, Patient Six requested a change from Zyban to Wellbutrin for depression and in order to stop smoking. Respondent was aware that the medications were the same and wrote in the records, "I will see if a simple name change results in any improvement in either, since both are the same medication." Respondent prescribed Wellbutrin XI 150 mg. to Patient Six instead of the previously prescribed Zyban SR 150 mg.

85. On August 29, 2016, Patient Six complained that his testosterone injection made him aggressive, irritable and short tempered. Respondent failed to consider whether these symptoms may be related to the patient's use of controlled substances. On that same date, Respondent wrote, "he complains of running out of his medications one day early, but he is overusing the medications. He has had refills early in the past, but always seems to run out early."

86. On February 27, 2017, Patient Six took a PHQ-9 Depression Screening, which indicated a moderate-major depressive disorder. The records for that examination do not indicate any treatment for depression.

87. There were no drug tests; pill counts, or CURES reports noted in the records. Nor were there any records of discussions regarding mixing narcotics with benzodiazepines, or narcotics with alcohol, even though Patient Six was a daily consumer of alcohol.

88. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c)

[repeated negligent acts], and/or 2234(d) [lack of knowledge], of the Code, including but not limited to, the following:

A. Respondent failed to establish the necessity of chronic opioid therapy.

B. Respondent failed to classify Patient Six's risk stratification.

C. Respondent failed to have a comprehensive treatment plan and objectives when treating Patient Six.

D. Respondent failed to have patient consent and discussion of risks/benefits of long-term opioid use and combined narcotic and benzodiazepine use.

E. Respondent failed to ensure appropriate compliance monitoring of Patient Six after prescribing opioids or other controlled substances.

F. Respondent failed to base Patient Six's care on outcomes such as making progress toward functional goals, presence and nature of side effects, pain status and lack of evidence of patient misuse, abuse or diversion.

**EIGHTH CAUSE FOR DISCIPLINE**
**(Unprofessional Conduct: Gross Negligence/Repeated Negligent Acts/ Lack of Knowledge - Patient Seven)**

89. Respondent has subjected his license to disciplinary action under sections 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], for unprofessional conduct, in that his care and treatment of Patient Seven included departures from the standard of care constituting gross negligence, and or repeated negligent acts, and/or lack of knowledge, in conjunction with the other departures alleged herein, lack of knowledge. The circumstances are as follows:

90. On or about March 16, 2015, Patient Seven was seen for the first of eleven visits at Scotia Bluffs Community Health Center, with the last visit occurring on August 22, 2017. On the first visit Patient Seven reported arthritis in her back and ulcerative colitis, as well as a history of depression and fluoxetine use. Patient Seven smoked one pack of cigarettes daily, consumed alcohol daily, and was taking Norco for degenerative joint disease.

91. By June 9, 2015, Patient Seven had weaned herself off the antidepressants and reported feeling better.

92. On September 1, 2015, Patient Seven was seen for anxiety and panic attacks and was placed on alprazolam.

93. On December 7, 2015, Patient Seven met with Respondent again. It was noted that Patient Seven was taking the following medications: alprazolam (a benzodiazepine), Norco (an opioid), Trazodone (anti-depressant), Diazepam (Valium), fluoxetine (Prozac) and levothyroxine (for thyroid).

94. During remaining visits, Patient Seven complained of fatigue and other issues, including an infection post-tooth dental appointment where a tooth was removed. On May 23, 2017, Respondent prescribed an antibiotic, but recorded no mention of directing Patient Seven back to the dentist.

95. During the course of treatment, Respondent never checked CURES, did not have a signed pain management contract, or a signed opioid consent agreement for Patient Seven, and failed to establish medical necessity for long-term use of opioids. Additionally, Respondent failed to fully evaluate potential risks of combining opiate therapy with other respiratory depressants such as benzodiazepines.

96. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(b) [gross negligence], and/or 2234(c) [repeated negligent acts], and/or 2234(d) [lack of knowledge], of the Code, including but not limited to, the following:

A. Respondent failed to establish the necessity of chronic opioid therapy.

B. Respondent failed to classify Patient Seven's risk stratification.

C. Respondent failed to have a comprehensive treatment plan and objectives, such as an exit strategy for discontinuing opioid therapy in the event that tapering or termination of opioid therapy became necessary, when treating Patient Seven.

D. Respondent failed to have patient consent and discussion of risks/benefits of long-term opioid use and combined narcotic and benzodiazepine use.

E. Respondent failed to ensure appropriate compliance monitoring of Patient Seven after prescribing opioids or other controlled substances.

F. Respondent failed to base Patient Seven's care on outcomes such as making progress toward functional goals, presence and nature of side effects, pain status and lack of evidence of patient misuse, abuse or diversion.

G. Respondent failed to provide Patient Seven with a long-term controlled substance contract.

H. Respondent failed to reverse clinical progression of depression by placing Patient Seven on benzodiazepine therapy rather than returning Patient Seven to selective serotonin reuptake inhibitor (SSRI) therapy.

I. Respondent failed to refer Patient Seven to a dentist after treating a dental infection.

## DISCIPLINARY CONSIDERATIONS

97. To determine the degree of discipline to be imposed on Respondent, Complainant alleges by the December 24, 2008, Decision and Order in Medical Board Case No. 12-2005-169517, Respondent's Physician's and Surgeon's Certificate was revoked and the revocation stayed for a probationary period of three years. Respondent successfully completed his period of probation and his license was restored by the Board's order on March 24, 2012. In resolution of Medical Board Case No. 25-2012-221531, Respondent was issued a Public Reprimand by the Board on March 29, 2013. Those decisions are now final and are incorporated by reference as if fully set forth herein.

## 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 42249, issued to Michael F. Schafle, M.D.;

2. Revoking, suspending or denying approval of Michael F. Schafle, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Michael F. Schafle, M.D., 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: January 2, 2019

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