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

In the Matter of the Accusation Against:	)	
Robert L. Uslander, M.D.	)	**Case No. 800-2016-026076**
Physician's and Surgeon's Certificate No. G83484	)	
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 April 10, 2020.

IT IS SO ORDERED March 11, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Kristina Lawson

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

XAVIER BECERRA
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **ROBERT L. USLANDER, M.D** **Integrated MD Care** **2262 Carmel Valley Rd., Ste. H** **Del Mar, CA 92014-3742** **Physician's and Surgeon's Certificate No. G 83484** Respondent.	Case No. 800-2016-026076 OAH No. 2019060025 **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 J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). Former Executive Director Kimberly Kirchmeyer brought this action solely in her official capacity as Executive Director of the Board.[1] Christine J. Lally is

[1] Kimberly Kirchmeyer became Director of the California Department of Consumer Affairs, effective October 28, 2019.

represented in this matter by Xavier Becerra, Attorney General of the State of California, by Jason J. Ahn, Deputy Attorney General.

2. Respondent Robert L. Uslander, M.D (Respondent) is represented in this proceeding by attorney David Rosenberg, Esq., whose address is: 10815 Rancho Bernardo Road, Suite 310 San Diego, CA 92127.

3. On or about November 27, 1996, the Board issued Physician's and Surgeon's Certificate No. G 83484 to Robert L. Uslander, 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. 800-2016-026076, and will expire on August 31, 2020, unless renewed.

JURISDICTION

4. On May 15, 2019, Accusation No. 800-2016-026076 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 May 15, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-026076 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-026076. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. 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.

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2016-026076, a copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G 83484 to disciplinary action.

10. Respondent agrees that if an accusation is ever filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2016-026076 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

11. Respondent agrees that his Physician's and Surgeon's Certificate No. G 83484 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and fully 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 agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and

agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final, and exclusive embodiment of the agreements of the parties in the above-entitled matter.

15. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree the Board may, without further notice to or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent, Robert L. Uslander, M.D., holder of Physician's and Surgeon's Certificate No. G 83484, shall be and hereby is Publicly Reprimanded pursuant to Business and Professions Code section 2227. This Public Reprimand, which is issued in connection with the allegations as set forth in Accusation No. 800-2016-026076, is as follows:

1. Between July 2016 through September 2016, Respondent departed from the standard

of care in documenting his care and treatment of Patient A, as more fully described in Accusation No. 800-2016-026076.

2. 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.

3. FAILURE TO COMPLY.

Any failure by Respondent to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary action.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David Rosenberg, Esq. I fully 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 fully agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 1/28/20

ROBERT L. USLANDER, M.D
Respondent

I have read and fully discussed with Respondent Robert L. Uslander, 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: 1/28/20

DAVID ROSENBERG, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 1/29/20

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

JASON J. AHN
Deputy Attorney General
Attorneys for Complainant

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO, Sept 12 20 19
BY _____ ANALYST

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

In the Matter of the First Amended Accusation Against: **Robert L. Uslander, M.D.** **INTEGRATED MD CARE** **2262 CARMEL VALLEY RD., STE. H** **DEL MAR, CA 92014-3742** **Physician's and Surgeon's Certificate No. G 83484,** Respondent.	Case No. 800-2016-026076 **FIRST AMENDED A C C U S A T I O N**

Complainant alleges:

PARTIES

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

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2. On or about November 27, 1996, the Medical Board issued Physician's and Surgeon's Certificate Number G 83484 to Robert L. Uslander, M.D (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2020, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
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> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

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5. Section 2234 of the Code, states, in pertinent part:

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

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

(b) Gross negligence.

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

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

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

6. Section 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.

7. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. G 83484 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

9. On or about July 8, 2016, Patient A, a 72 year-old male who was diagnosed with dementia with Lewy bodies,[2] was admitted to Sonata Hospice. Respondent became the attending doctor for Patient A, who was prescribed Geodon[3] 40 mg, twice a day.

10. On or about July 11, 2016, Patient A was prescribed trazodone 100 mg to be taken at bedtime.

11. On or about July 18, 2016, Patient A was prescribed trazodone 25 mg every three hours, prn.[4]

12. On or about July 21, 2016, Respondent prescribed BuSpar[5] 7.5 mg twice a day by mouth for four days, for anxiety. Both BuSpar and Geodon were continued together.

13. On or about July 25, 2016, the prescription of BuSpar for Patient A was increased to 10 mg, twice a day.

14. On or about August 10, 2016, a registered nurse made a routine visit and noted that Patient A was pleasant, cooperative, alert, and "oriented X 2 with confusion." Patient A was also noted to be ambulatory, but required assistance due to poor balance and safety insight. No agitation was noted and there were no signs or complaints of being in pain.

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[1] References to "Patient A" are used to protect patient privacy.

[2] Lewy body dementia, also known as dementia with Lewy bodies, is the second most common type of progressive dementia after Alzheimer's disease dementia.

[3] Geodon (ziprasidone) is an antipsychotic that can be used to treat schizophrenia and bipolar disorder.

[4] PRN is an abbreviation for the Latin term, "*pro re nata*," which means "as needed."

[5] BuSpar (buspirone) is a medication that may be used to treat anxiety.

15. On or about August 11, 2016, the prescription of BuSpar to Patient A was increased to 12.5 mg, twice a day.

16. On or about August 13, 2016, Patient A was prescribed Ativan 1 mg, every four hours, prn, an increase from Ativan 1 mg twice a day that Patient A had been on since on or about July 8, 2016.

17. On or about August 17, 2016, the prescription of BuSpar for Patient A was increased to 15 mg, twice a day.

18. On or about August 19, 2016, Patient A was prescribed ABH cream,[6] every four hours, prn.

19. On or about August 24, 2016, Patient A barred his door at the Sonata Hospice and falsely claimed that he had killed his wife. A caregiver was able to calm him down.

20. On or about August 25, 2016, it was documented in the Interdisciplinary Team (IDT) notes that Patient A is "alert, oriented X 2, with confusion, pleasant, and cooperative." It was also noted that Patient A was able to perform 3 out of 6 activities of daily living (ADL).

21. On or about August 31, 2016, Respondent placed three separate orders for Ativan, one for 2 mg every eight hours "routinely," one for 1 mg every two hours, prn, and another one for 2 mg every two hours, prn. On the same day, Respondent prescribed fentanyl 25 mcg for Patient A's pain. Respondent failed to ascertain and/or failed to document having ascertained whether or not the fentanyl dose was appropriate. Respondent prescribed fentanyl without any documented pain indication. Respondent failed to justify in the medical record his non-standard,

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[6] ABH cream is a mixture of Ativan (lorazepam), Benadryl (diphenhydramine), and Haldol (haloperidol). Ativan® (lorazepam), a benzodiazepine, is a centrally acting hypnotic-sedative that is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the management of anxiety disorders or for the short term relief of anxiety or anxiety associated with depressive symptoms. Concomitant use of Ativan® with opioids "may result in profound sedation, respiratory depression, coma, and death." The Drug Enforcement Administration (DEA) has identified benzodiazepines, such as Ativan®, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2011 Edition), at p. 53). Benadryl is an antihistamine used to relieve symptoms of allergy, hay fever, and the common cold. Haldol is an antipsychotic that can be used to treat certain types of mental disorders.

off-label use of fentanyl. In addition, Respondent placed three separate orders of Roxanol[7] prescriptions for Patient A, 10 mg every two hours, prn, for "mild pain / SOB,[8]" 20 mg every two hours, prn, for "moderate pain / SOB," and 30 mg every two hours, prn, for "severe pain / SOB."

22. Skilled nursing notes for September 1, 2016 stated, among other things, that Patient A had shown "a semi-dramatic change of condition since the implementation of the fentanyl patch on August 31, 2016." Patient A had suffered a fall. Patient A "now requires max assist for all transfers." Patient A had slept all night on August 31, 2016 and much of the day on September 1, 2016.

23. On or about September 2, 2016, a care conference was held with Respondent and other healthcare professionals who were involved with Patient A's care. During the meeting, Patient A's wife stated that her priority was treating Patient A's agitation and that she did not want Patient A to be offered food unless he asked. Respondent agreed and ordered that Patient A shall not be given food or fluids unless Patient A specifically asked for them. Thereafter, food or fluids were withheld from Patient A, unless Patient A specifically asked for them. Patient A was noted to have a very unsteady gait.

24. On or about September 3, 2016, Respondent placed a telephone order increasing Patient A's fentanyl patch from 25 mcg to 50 mcg, increasing trazodone to 100 mg and increasing "routine Ativan" to 2 mg every 6 hours, despite evidence that Patient A was heavily sedated on the current dose. On the same day, ABH cream was increased to 2 ml, every 4 hours, prn. The order did not specify whether ABH or liquid Ativan should be used or whether both should be used concurrently.

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[7] Roxanol (morphine sulfate) is a highly concentrated solution of the narcotic analgesic morphine sulfate for oral administration used for the treatment of severe, chronic pain. It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

[8] SOB refers to shortness of breath.

25. Hospice aide notes for July 20, 2016, August 1, 2016, September 2, 2016, September 7, 2016, September 9, 2016, and September 12, 2016 indicated that Patient A was not in pain and there were no comments of aggressive or concerning behavior noted under the "Observations" section.

26. On or about September 7, 2016, a routine registered nurse visit on Patient A was completed. No discomfort was noted. There were no complaints or signs of being in pain.

27. On or about September 8, 2016, it was documented in the Interdisciplinary Team (IDT) notes that Patient A was becoming weaker and had not eaten in several days. Patient A was noted to be non-ambulatory, but alert, oriented X 2, with confusion, and "declining fast."

28. During the time period Respondent provided care and treatment to Patient A, from on or about July 8, 2016 to on or about September 13, 2016, Respondent repeatedly failed to document in the medical records adequate justifications for the care and treatment he provided to Patient A, including, but not limited to: Respondent prescribed medications that were not supported by Patient A's conditions; Respondent sedated Patient A without adequate evidence that Patient A had severe agitation; Respondent ordered more sedating medications when sedating medications already caused Patient A sedation and affected his safety; and Respondent prescribed fentanyl without adequate evidence of Patient A experiencing pain and increased the fentanyl prescription, after just one dose.

29. Respondent committed gross negligence in his care and treatment of Patient A, which included, but was not limited to, the following:

(a) Respondent inappropriately prescribed fentanyl;

(b) Respondent used multiple sedating medications concurrently and/or in increasing amounts, despite a reduction in Patient A's functioning;

(c) Respondent repeatedly failed to document adequate justifications for the care and treatment he was providing Patient A; and

(d) Respondent failed to ensure that Patient A was receiving adequate nutrition and hydration.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

30. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 83484 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A as more particularly alleged herein:

31. Paragraphs 8 through 29, above, are hereby incorporated by reference and realleged as if fully set forth herein;

(a) Respondent inappropriately prescribed fentanyl;

(b) Respondent used multiple sedating medications concurrently and/or in increasing amounts, despite a reduction in Patient A's functioning;

(c) Respondent repeatedly failed to document adequate justifications for the care and treatment he was providing Patient A; and

(d) Respondent failed to ensure that Patient A was receiving adequate food and nutrition.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

32. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 83484 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records regarding his care and treatment of Patient A, as more particularly alleged in paragraphs 8 through 29, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

33. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 83484 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 8 through 32, above, which are hereby 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 G 83484, issued to Robert L. Uslander, M.D;

2. Revoking, suspending or denying approval of Robert L. Uslander, M.D's authority to supervise physician assistants and advanced practice nurses;

3. Ordering Robert L. Uslander, 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: September 12, 2019

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