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

In the Matter of the Accusation Against:	)	
Andrew Hwang, M.D.	)	**Case No. 800-2017-032867**
Physician's and Surgeon's Certificate No. A80397	)	
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 24, 2020.

IT IS SO ORDERED March 27, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
GREG W. CHAMBERS
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455 Golden Gate Avenue, Suite 11000
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Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **ANDREW HWANG, M.D.** **220 E. Hacienda Avenue** **Campbell, CA 95008** **Physician's and Surgeon's Certificate No. A 80397** Respondent.	Case No. 800-2017-032867 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Greg W. Chambers, Deputy Attorney General.

2. Respondent Andrew Hwang, M.D. (Respondent) is represented in this proceeding by attorney Thomas E. Still, Esq., whose address is: 12901 Saratoga Avenue, Saratoga, CA 95070-9988.

JURISDICTION

3. On or about September 6, 2002, the Board issued Physician's and Surgeon's Certificate No. A 80397 to Andrew Hwang, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-032867, and will expire on September 30, 2020, unless renewed.

4. Accusation No. 800-2017-032867 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 April 29, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-032867 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. 800-2017-032867. Respondent has also carefully read, fully discussed with counsel, and 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.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2017-032867, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate 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.

12. Respondent further agrees that if he fails to successfully complete the program(s) or course(s), which are more fully described below, within the required time, all of the charges and allegations contained in Accusation No. 800-2017-032867, shall be deemed true, correct, and fully admitted by Respondent for purposes of any further proceeding before the Board, and that his failure to complete the program(s) or course(s) shall constitute unprofessional conduct.

CONTINGENCY

13. 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.

14. 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.

15. 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

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 80397 issued to Respondent Andrew Hwang, M.D. shall be and hereby is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This public reprimand is issued in connection with Respondent's prescribing without an appropriate prior exam of three patients and/or failing to adequately document those examinations, as set forth in Accusation No. 800-2017-032867.

B. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, 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 fifteen (15) hours. The educational program(s) or course(s) **shall be in the area of prescribing or opioid use/abuse** 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. A course taken after the facts 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. 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 these additional fifteen (15) hours of CME in satisfaction of this condition. Failure to complete the course within one-hundred twenty (120) days of the effective date of this

Decision shall constitute unprofessional conduct and ground for further disciplinary action.

C. **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.

D. **MEDICAL RECORD KEEPING COURSE.** Within sixty (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 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.

E. **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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Thomas E. Still, Esq. 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: 3/10/2020

ANDREW HWANG, M.D.
Respondent

I have read and fully discussed with Respondent Andrew Hwang, 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: 3-11-2020

THOMAS E. STILL 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: 3/12/2020

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 April 29 2019
BY Kilroong ANALYST

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

In the Matter of the Accusation Against: **Andrew Hwang, M.D.** **220 E. Hacienda Avenue** **Campbell, CA 95008** **Physician's and Surgeon's Certificate No. A 80397,** Respondent.	Case No. 800-2017-032867 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 6, 2002, the Medical Board issued Physician's and Surgeon's Certificate Number A 80397 to Andrew Hwang, 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 September 30, 2020, unless renewed.

JURISDICTION

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

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

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

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

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

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

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

6. Section 2234 of the Code, states:

"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.

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

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

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."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts/Prescribing Without an Appropriate Examination – Patient 1[1])

8. Respondent is subject to disciplinary action under sections 2234 [unprofessional conduct], and/or under section 2234(c) [repeated negligent acts], and/or under section 2242 [prescribing without an appropriate examination], in that his care and treatment of Patient 1 included departures from the standard of care constituting repeated negligent acts, and/or prescribing without appropriate examinations. The circumstances are as follows:

[1] The patient is identified herein as Patient 1 to preserve confidentiality. The names of all patients will be provided to Respondent in discovery.

9. Patient 1 treated with Respondent from February 11, 2011 through February 21, 2017. Patient 1 complained of chronic pain from ankle surgery, post-motorcycle accident. After a December 2011 motor vehicle accident, Patient 1 complained of back pain, and later complained of knee and elbow pain following other incidents.

10. During the course of treatment, Respondent prescribed dangerous drugs to Patient 1, such as Carisoprodol,[2] Ativan,[3] Percocet,[4] Norco,[5] and Dilaudid[6] with minimal physical examinations in light of the chronic pain complaints; refilled prescriptions early, even with repeated "red flags" such as alcohol and marijuana use, and loss of prescriptions; and continued a narcotic therapy that was not working.

11. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(c) [repeated negligent acts], and/or 2242 [prescribing without an appropriate examination], of the Code, including but not limited to, the following:

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

B. Respondent refilled prescriptions early, even with repeated "red flags" such as alcohol and marijuana use, and loss of prescriptions.

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[2] Carisoprodol, also known by the trade name SOMA, 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.

[3] Ativan, the trade name for Lorazepam, is used for anxiety and sedation in the management of anxiety disorder 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.

[4] Percocet, a trade name for a combination of oxycodone hydrochloride and acetaminophen, is a semisynthetic narcotic analgesic with multiple actions qualitatively similar to those of morphine, a dangerous drug as defined in section 4022 and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (b)(1)(N) of the Health and Safety Code.

[5] Norco, the trade name for Hydrocodone w/APAP (hydrocodone with acetaminophen), a semisynthetic narcotic analgesic, is a dangerous drug as defined in section 4022 of the Business and Professions Code, and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (e) of the Health and Safety Code.

[6] Dilaudid is a trade name for hydromorphone hydrochloride. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance as defined by section 11055, subdivision (d) of the Health and Safety Code. Dilaudid is a hydrogenated ketone of morphine and is a narcotic analgesic. Its principal therapeutic use is relief of pain.

C. Respondent continued a narcotic therapy that was not working.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts/Prescribing Without an Appropriate Examination – Patient 2 & Patient 3)

12. Respondent is subject to disciplinary action under sections 2234 [unprofessional conduct], and/or under section 2234(c) [repeated negligent acts], and/or under section 2242 [prescribing without an appropriate examination], in that his treatment of Patient 2 and Patient 3 included departures from the standard of care constituting repeated negligent acts, and/or prescribing without appropriate examinations. The circumstances are as follows:

13. Respondent treated Patient 2 from 2009 through May 1, 2015, for chronic back pain, among other issues, by prescribing fentanyl[7] and hydrocodone.[8] However, Respondent failed to perform and document adequate physical examinations on Patient 2 for the complaints of chronic back pain.

14. Respondent treated Patient 3 from February 14, 2012 through June 18, 2015, for ADD/ADHD, among other issues. In treating Patient 3 for ADD, Respondent prescribed Adderall[9] without adequately evaluating and documenting Patient 3's ADD symptoms and treatment response.

15. Respondent is guilty of unprofessional conduct and subject to disciplinary action under sections 2234 [unprofessional conduct], and/or 2234(c) [repeated negligent acts], and/or 2242 [prescribing without an appropriate examination], of the Code, including but not limited to, the following:

A. Respondent failed to conduct appropriate prior physical examinations of Patient 2 before prescribing dangerous drugs.

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[7] Fentanyl is a potent narcotic analgesic. 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)(8), of the Health and Safety Code.

[8] Hydrocodone is a dangerous drug as defined in section 4022 and a Schedule III controlled substance and narcotic as defined by section 11056 of the Health and Safety Code.

[9] Adderall, a trade name for mixed salts of a single-entity amphetamine product (dextroamphetamine sulphate, dextroamphetamine saccharate, amphetamine sulfate, amphetamine aspartate), 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. Adderall is indicated for Attention Deficit Disorder with Hyperactivity and Narcolepsy.

B. Respondent failed to adequately evaluate and document Patient 3's ADHD symptoms and treatment response, before and after prescribing a dangerous drug.

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 A 80397, issued to Andrew Hwang, M.D.;

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

3. Ordering Andrew Hwang, 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: April 29, 2019

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