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

In the Matter of the Accusation Against: **Anthony T. Nasser, M.D.** **Physician's & Surgeon's Certificate No A 113112** **Respondent.**	**Case No. 800-2016-024117**

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 SEP 09 2020

IT IS SO ORDERED AUG 10 2020

MEDICAL BOARD OF CALIFORNIA

Kristina Lawson

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

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
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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: **ANTHONY T. NASSER, M.D.** **355 Placentia Avenue, Suite 205** **Newport Beach, California 92663-3302** **Physician's and Surgeon's Certificate No. A 113112,** Respondent.	Case No. 800-2016-024117 OAH No. 2020020586 **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. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). This action was brought by then Complainant Kimberly Kirchmeyer,[1] solely in her official capacity. Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, and by Joseph F. McKenna III, Deputy Attorney General.

2. Respondent Anthony T. Nasser, M.D., (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, Esq., whose address is: 355 South Grand Avenue, Suite 1750, Los Angeles, California, 90071.

[1] Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

3. On or about July 2, 2010, the Board issued Physician's and Surgeon's Certificate No. A 113112 to Anthony T. Nasser, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-024117, and will expire on October 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-024117 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 20, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of the Accusation is attached hereto as Exhibit A and hereby incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, discussed with his counsel, and fully understands the charges and allegations contained in Accusation No. 800-2016-024117. Respondent has also carefully read, discussed with his counsel, and fully 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 contained 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, having been fully advised of same by his counsel.

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands and agrees that the charges and allegations contained in Accusation No. 800-2016-024117, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate No. A 113112.

9. Respondent stipulates that, at a hearing, Complainant could establish a *prima facie* case or factual basis for the charges and allegations contained in the Accusation; that he gives up his right to contest those charges and allegations contained in the Accusation; and that he has thereby subjected his Physician's and Surgeon's Certificate to disciplinary action.

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 Board 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. Respondent agrees that if an accusation is ever filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2016-024117 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

ADDITIONAL PROVISIONS

12. 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.

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

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

DISCIPLINARY ORDER

1. PUBLIC REPRIMAND.

IT IS HEREBY ORDERED that Respondent Anthony T. Nasser, M.D.'s, Physician's and Surgeon's Certificate No. A 113112 shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a), subsection (4). This Public Reprimand, which is issued in connection with the charges and allegations contained in Accusation No. 800-2016-024117, is as follows:

> Respondent committed negligence by failing to document a proper examination of Patient A for his back pain and by failing to order an MRI for Patient A, as more particularly alleged in Accusation No. 800-2016-024117.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have discussed it with my attorney, Peter R. Osinoff, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 113112. 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: 7/15/20

ANTHONY T. NASSER, M.D.
Respondent

I have read and fully discussed with Respondent Anthony T. Nasser, 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: 7/17/20

PETER R. OSINOFF, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

DATED: July 20, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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Doc.No. 82384443

Exhibit A

Accusation No. 800-2016-024117

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 10 2019
BY Silvia Fagion ANALYST

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

In the Matter of the Accusation Against: **ANTHONY T. NASSER, M.D.** **355 Placentia Avenue, Suite 205** **Newport Beach, CA 92663-3302** **Physician's and Surgeon's Certificate No. A113112,** Respondent.	Case No. 800-2016-024117 **ACCUSATION**

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 July 2, 2010, the Medical Board issued Physician's and Surgeon's Certificate No. A113112 to Anthony T. Nasser, M.D. (Respondent). Physician's and Surgeon's Certificate No. A113112 was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2019, 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 (Code) unless otherwise indicated.

4. Section 2227 of the Code states, in pertinent part:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"..."

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.

"...

"(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.

"..."

FIRST CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

6. Respondent has subjected his Physician's and Surgeon's Certificate No. A113112 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,[1] as more particularly alleged hereafter:

7. On or about November 16, 2013, Patient A, then a forty-five-year-old male, voluntarily admitted himself to S.D.P.H. for depression and suicidal ideations. S.D.P.H. provided inpatient adult emergency and psychiatric services. At the time, Respondent, who was an employee of S.D.P.H., would act as an internal medicine consultant for patients who also needed non-psychiatric medical attention.

8. On or about November 16, 2013, S.K., M.D., a psychiatrist working at S.D.P.H., did a psychiatric assessment of Patient A. Patient A, who was homeless, reported a history of bipolar

[1] To protect the privacy of the patient, the patient's name has been omitted from this pleading. Respondent is aware of Patient A's identity.

disorder, paranoid schizophrenia, substance abuse disorder, and chronic back pain. Patient A had been experiencing suicidal thoughts with ongoing depressive symptoms. Patient A was admitted to S.D.P.H.'s Emergency Psychiatric Unit for safety, further observation, and psychiatric treatment. To address his chronic back pain, Patient A was prescribed ibuprofen.

9. On or about November 17, 2013, R.F., M.D., another staff physician at S.D.P.H., did a history and physical assessment of Patient A. R.F. noted that Patient A was "tired of living in pain, being homeless and [was] feeling very depressed." R.F. also observed that Patient A was "moaning and groaning" due to back pain, and used a walker to slowly walk to the exam room. Patient A told R.F. that his back problems started 20 years prior when he fell three stories while working as a carpenter. Patient A said that approximately five weeks prior, he tripped and fell at the park, and that he had severe back spasms ever since. Patient A also told R.F. that he had gone to other local hospitals three times prior for his back pain and was given pain medications, but that no x-rays had ever been ordered.

10. R.F. performed a physical exam on Patient A. He noted that Patient A was stiff in his mid-back, and that he had a great deal of difficulty sitting up, bending over, and straightening up. Patient A reported his pain level was "10/10" and that he had spasms up and down his mid- to lower-back. R.F. noted that Patient A's reflexes were absent at the knees and ankles, but that he did not have numbness or shooting pain in his legs. R.F.'s impressions included subacute severe mid-back pain superimposed upon a history of chronic mid-back pain from an old fall injury. He ordered x-rays of the thoracic and lumbar spines and prescribed Patient A Flexeril[2] and Vicodin[3] for severe back pain.

11. On or about November 18, 2013, x-rays of Patient A's spine were taken, and corresponding reports from the radiologist were sent to S.D.P.H. The impressions documented in the radiology reports included marked osteopenia,[4] wedge shaped compression deformities

[2] Flexeril, brand name for cyclobenzaprine, is a muscle relaxant.

[3] Vicodin, brand name for hydrocodone and acetaminophen, is an opiate narcotic used to treat severe pain.

[4] Osteopenia is a condition in which bone density is below normal.

involving the inferior T10 and superior T11[5] endplates, and a subtle dextroscoliosis[6] of the lower dorsal spine. The radiologist recommended a follow up CT (computerized tomography) scan of the thoracic spine for further evaluation, and for Patient A's treating providers to consider a thoracic spine MRI (magnetic resonance imaging) as a follow up study.

12. On or about November 18, 2013, Respondent saw Patient A for a follow up visit. Respondent had reviewed the prior history and physical assessment done by R.F. as well the radiology reports. Respondent noted that Patient A was complaining of back pain, and that his pain level was "10/10." He noted Patient A's current medications, Flexeril and Vicodin, and that Patient A was using a walker. He also referenced the x-rays and the fact that no compression fractures were noted. Respondent reviewed Patient A's vital signs and performed a physical exam. He documented that Patient A was not in acute stress, and that his back had paraspinal tenderness. He wrote that Patient A had full range of motion, full motor strength, and normal reflexes.

13. In a subsequent interview with Board investigators, Respondent said that he had talked to Patient A about titrating off Vicodin during this visit because Patient A wanted to go to a shelter that prohibited the use of narcotics. Respondent told Board investigators that Patient A agreed to discontinue the Vicodin. This discussion was not documented in Respondent's progress note.

14. Respondent's assessment of Patient A was that he had back pain and spasms with no fracture. He prescribed acetaminophen, ibuprofen, and a topical analgesic cream for pain as needed. He showed Patient A back exercises he could try to relieve the pain.

15. Patient A remained at S.D.P.H. until on or about November 21, 2013. S.D.P.H. records show that from the time of Respondent's examination to the time Patient A left, Patient A complained that he could not get out of bed due to his back pain, told nurses he was in severe pain, and repeatedly asked for stronger pain medication.

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[5] T10 and T11 are two of twelve vertebrae that make up the central section of the vertebral column.

[6] Dextroscoliosis is a right-leaning curvature of the spine.

16. On or about November 21, 2013, Patient A requested to be discharged and left S.D.P.H.

17. On or about November 25, 2013, Patient A was emergently admitted to a hospital for worsening chronic back pain, numbness in his left leg, generalized weakness, and urinary retention. An MRI revealed that Patient A had a T10-T11 disk space infection with an epidural abscess resulting in spinal cord compression. Patient A underwent a laminectomy with drainage of the epidural abscess, but was unable to regain much function in his lower extremities.

18. Respondent committed repeated negligent acts in his care and treatment of Patient A which includes, but is not limited to, the following:

a. Respondent failed to do and/or document a proper examination of Patient A for his back pain, which would include testing the strength of the major muscle groups of the lower extremities, sensation to light touch of the lower extremities, ankle and patellar reflexes, straight leg raising, and gait evaluation; and

b. Respondent failed to order an MRI for Patient A.

SECOND CAUSE FOR DISCIPLINE
(Violation of the Medical Practice Act)

19. Respondent has further subjected his Physician's and Surgeon's Certificate No. A113112 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he violated the Medical Practice Act in his care and treatment of Patient A, as more particularly alleged in paragraphs 7 through 18, above, which are hereby re-alleged and incorporated by reference 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 No. A113112, issued to Respondent Anthony T. Nasser, M.D.;

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2. Revoking, suspending or denying approval of Respondent Anthony T. Nasser, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Anthony T. Nasser, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: June 20, 2019

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

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