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

In the Matter of the Petition to Revoke Probation Against: Brooks Carlton Michaels, M.D. Physician's and Surgeon's Certificate No. G 60910 Respondent.	Case No. 800-2020-063537

DECISION

The attached Stipulated Surrender of License and 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 October 1, 2020.

IT IS SO ORDERED September 24, 2020.

MEDICAL BOARD OF CALIFORNIA

By: _____
William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
LATRICE R. HEMPHILL
Deputy Attorney General
State Bar No. 285973
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6198
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against: **BROOKS CARLTON MICHAELS, M.D.** **2045 Royal Avenue, #234** **Simi Valley, CA 93065** **Physician's and Surgeon's Certificate No. G 60910,** Respondent.	Case No. 800-2020-063537 OAH No. 2020040800 **STIPULATED SURRENDER OF LICENSE AND 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). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Latrice R. Hemphill, Deputy Attorney General.

2. Brooks Carlton Michaels, M.D. (Respondent) is represented in this proceeding by attorney Thomas R. Bradford, Esq., whose address is: 100 North First Street, Suite 300 Burbank, CA 91502-1845.

3. On or about August 3, 1987, the Board issued Physician's and Surgeon's Certificate No. G 60910 to Brooks Carlton Michaels, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 800-2020-063537 and will expire on November 30, 2020, unless renewed.

JURISDICTION

4. Petition to Revoke Probation No. 800-2020-063537 was filed before the Board, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on April 9, 2020. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. 800-2020-063537 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Petition to Revoke Probation No. 800-2020-063537. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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 Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in the Petition to Revoke Probation No. 800-2020-063537. However, Respondent did not intentionally or willfully violate the conditions of his probation. Respondent submitted mitigating evidence that details

Respondent's physical disability, which caused Respondent to cease practice. As a result of Respondent's disability, Respondent surrenders his Physician's and Surgeon's Certificate No. G 60910 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

RESERVATION

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender 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.

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

13. 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 Order:

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 60910, issued to Respondent BROOKS CARLTON MICHAELS, M.D., is surrendered and accepted by the Board.

1. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

2. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

3. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Petition to Revoke Probation No. 800-2020-063537 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Thomas R. Bradford, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 6-22-2020

Brooks Carlton Michaels MD

BROOKS CARLTON MICHAELS, M.D.
Respondent

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I have read and fully discussed with Respondent Brooks Carlton Michaels, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: June 21, 2020

THOMAS R. BRADFORD, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

LATRICE R. HEMPHILL
Deputy Attorney General
Attorneys for Complainant

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I have read and fully discussed with Respondent Brooks Carlton Michaels, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____

THOMAS R. BRADFORD, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: June 23, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

LATRICE R. HEMPHILL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Petition to Revoke Probation No. 800-2020-063537

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
LATRICE R. HEMPHILL
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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 Petition to Revoke Probation Against: **BROOKS CARLTON MICHAELS, M.D.** **P.O. Box 2677** **Pflugerville, TX 78691-2677** **Physician's and Surgeon's Certificate No. G 60910,** Respondent.	Case No. 800-2020-063537 PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Christine J. Lally (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

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2. On or about August 3, 1987, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 60910 to BROOKS CARLTON MICHAELS, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on November 30, 2020, unless renewed.

3. In a disciplinary action titled "*In the Matter of the Accusation Against Brooks Carlton Michaels, M.D.,*" Case No. 800-2014-007252, the Medical Board of California, issued a decision, effective August 25, 2017, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of four years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. 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.
>
> (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.

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(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.

FIRST CAUSE TO REVOKE PROBATION

(Non-Practice While on Probation)

6. At all times after the effective date of Respondent's probation, Condition 12, Non-Practice While on Probation, states in pertinent part:

> Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board...
>
> In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program...
>
> 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.

7. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 12, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about December 8, 2017, Respondent submitted a Statutory Declaration and a Request for Surrender of License While on Probation, which advised the Board that as of January 1, 2018, Respondent would no longer be practicing medicine in the State of California due to a medical disability.

B. Respondent failed to complete the license surrender process.

C. According to the Quarterly Declarations Respondent submitted to the Board as required by his probation, Respondent failed to practice from on or about September 19, 2017 through January 6, 2020, a period of non-practice in excess of two years.

D. As a result of Respondent's period of non-practice exceeding two years, he is in violation of Condition 12 of Respondent's Probation which was effective August 25, 2017.

SECOND CAUSE TO REVOKE PROBATION

(Violation of Probation)

8. At all times after the effective date of Respondent's probation, Condition 14, Violation of Probation, stated:

> 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.

9. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 14, referenced above. The facts and circumstances regarding this violation are as follows:

A. Paragraphs 6 through 7, inclusive, above are incorporated herein by reference.

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 the probation that was granted by the Medical Board of California in Case No. 800-2014-007252 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. G 60910 issued to Brooks Carlton Michaels, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. G 60910, issued to Brooks Carlton Michaels, M.D.;

3. Revoking, suspending or denying approval of Brooks Carlton Michaels, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

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4. Ordering Brooks Carlton Michaels, M.D. to pay the Medical Board of California if placed on probation, the costs of probation monitoring; and

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

DATED: APR 09 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 800-2014-007252

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

In the Matter of the Accusation Against:	)	
BROOKS CARLTON MICHAELS, M.D.	)	Case No. 800-2014-007252
Physician's and Surgeon's Certificate No. G60910	)	
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 August 25, 2017.

IT IS SO ORDERED: July 27, 2017.

MEDICAL BOARD OF CALIFORNIA

Michelle Anne Bholat, M.D., Chair
Panel B

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.
S. Woods
Signature
for Custodian of Records
Title
1/9/2020
Date

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
RICHARD D. MARINO
Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **BROOKS C. MICHAELS, M.D.** **2045 Royal Avenue, #234** **Simi Valley, CA 93065** **Physician's and Surgeon's Certificate No. G60910,** Respondent.	Case No. 800-2014-007252 OAH No. 2016090831 **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. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Richard D. Marino, Deputy Attorney General.

2. Brooks C. Michaels, M.D. (Respondent) is represented in this proceeding by attorney Thomas R. Bradford, Peterson, Bradford, Burkwitz, 100 North First Street, Suite 300, Burbank, CA 91502.

3. On or about August 3, 1987, the Board issued Physician's and Surgeon's Certificate No. G60910 to BROOKS C. MICHAELS, 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. 800-2014-007252, and will expire on November 30, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2014-007252 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 August 17, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2014-007252 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. 800-2014-007252. 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 be represented by counsel at his own expense; 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. 800-2014-007252, 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 probationary terms 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 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 attorney. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G60910 issued to Respondent BROOKS C. MICHAELS, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any Schedule II controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

If Respondent forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. CONTROLLED SUBSTANCES- MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any

recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

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

4. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

5. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

6. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 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.

Within 60 days after Respondent has successfully completed the clinical competence assessment program, Respondent shall participate in a professional enhancement program approved in advance by the Board or its designee, which shall include 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, or until the Board or its designee determines that further participation is no longer necessary. If Respondent fails to enroll in a professional enhancement program within 60 calendar days of the completion of the clinical competence assessment program , 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 he enrolled in the professional enhancement program.

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

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

8. 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.

9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly

declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

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

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

11. 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.

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

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

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and, if applicable, 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.

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

14. 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.

15. 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.

16. 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 read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Thomas R. Bradford, 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.

DATED: June 13, 2017

BROOKS MICHAELS, M.D.
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: June 13, 2017

THOMAS R. BRADFORD, 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:

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

RICHARD D. MARINO
Deputy Attorney General

Attorneys for Complainant

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Exhibit A

Accusation No. 800-2014-007252

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.
S. Woods
Signature
for Custodian of Records
Title
FILED 1/9/2020
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 17, 2016
BY ANALYST

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

In the Matter of the Accusation Against: **Brooks C. Michaels, M.D.** **2045 Royal Avenue, #234** **Simi Valley, CA 93065** **Physician's and Surgeon's Certificate No. G60910,** **Respondent.**	Case No. 800-2014-007252 **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 August 3, 1987, the Medical Board issued Physician's and Surgeon's Certificate Number G60910 to Brooks C. Michaels, 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 November 30, 2016, 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 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.

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

"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.

". . .

"(c) 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.

"...."

6. Section 2238 of the Code provides:

"(a) A violation of any federal regulation or any of the statutes regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

7. Section 2242 of the Code, in pertinent part, provides:

"(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:

". . .

"(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 provides:

AThe 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 725 of the Code provides:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a

physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

10. Health and Safety Code section 11152 provides:

"No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division."

11. Health and Safety Code section 11153, in pertinent part, provides

"(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

"...."

12. Health and Safety Code section 11190, in pertinent part, provides:

"(a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

"(1) The name and address of the patient.

"(2) The date.

"(3) The character, including the name and strength, and quantity of controlled substances involved.

"(b) The prescriber's record shall show the pathology and purpose for which the controlled substance was administered or prescribed.

"(c) (1) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance that is dispensed by a prescriber pursuant to Section 4170 of the Business and Professions Code, the prescriber shall record and maintain the following information:

"(A) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the patient.

"(B) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

"(C) NDC (National Drug Code) number of the controlled substance dispensed.

"(D) Quantity of the controlled substance dispensed.

"(E) ICD-9 (diagnosis code), if available.

"(F) Number of refills ordered.

"(G) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

"(H) Date of origin of the prescription.

"(2) (A) Each prescriber that dispenses controlled substances shall provide the Department of Justice the information required by this subdivision on a weekly basis in a format set by the Department of Justice pursuant to regulation.

"(B) The reporting requirement in this section shall not apply to the direct administration of a controlled substance to the body of an ultimate user.

"(d) This section shall become operative on January 1, 2005.

"(e) The reporting requirement in this section for Schedule IV controlled substances shall not apply to any of the following:

"(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

"(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005.

"(f) Notwithstanding paragraph (2) of subdivision (c), the reporting requirement of the information required by this section for a Schedule II or Schedule III controlled substance, in a format set by the Department of Justice pursuant to regulation, shall be on a monthly basis for all of the following:

//

"(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

"(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005."

FIRST CAUSE FOR DISCIPLINE

(Excessive Prescribing)

13. Respondent Brooks C. Michaels, M.D. is subject to disciplinary action under Business and Professions Code section 725 in that he excessively prescribed dangerous drugs and controlled substances for Patients J.B., S.B., J.M., G.R., J.R., and R.Y.,[1] as follows:

A. On August 4, 2014 the Medical Board of California - Central Complaint Unit (MBC-CCU) received an anonymous compliant from an individual claiming to Respondent's patient. The anonymous complainant alleged that Respondent was writing opioid prescriptions for his patients in order to get them addicted to the medications. The MBC-CCU requested a CURES report for Respondent's prescribing practices for the previous three years. That report showed unusual or excessive prescribing for Patients J.B., S.B., J.M., G.R., J.R., and R.Y., among others.

[1] All patient references in this accusation are by initials only. The true names are known to Respondent and, in any event, will be disclosed to Respondent upon his timely request for discovery.

B. The aforementioned CURES report showed that J.B. received 102 prescriptions; that S.B. received 132 prescriptions; that J.M. received 112 prescriptions; that G.R. received 24 prescriptions; that J.R. received 69 prescriptions; and, that R.Y. received 44 prescriptions.

C. An investigation was opened by the Health Quality Investigation Unit during which medical and related records were obtained for Patients J.B., S.B., J.M., G.R., J.R., and R.Y. On February 25, 2016, Respondent discussed his care, treatment and management of these patients with representatives of the Medical Board of California.

PATIENT J.B.

D. Patient J.B. was described by Respondent as a 49-year-old male with a history of surgery, chronic staph infection, complex medical history including lumbar spinal surgeries and MRSA super infection of the skin. Patient J.B. saw Respondent on 18 occasions between August 15, 2011, and July 22, 2015.

E. Patient J.B. was on multiple narcotic analgesics prior to seeing Respondent because of pain. At the time his care was transferred to Respondent he was on Suboxone. Suboxone has low ability to manage pain and it primarily is used to remove dependence of other narcotics and replace them due to the partial agonis antagonist properties of this medicine.

F. Patient J.B. presented on September 26, 2011, with a chief complaint of sinus pressure. Patient J.B., who had taken Xanax in the past, was switched to Ativan by Respondent. He also placed the patient on Levaquin, an antibiotic for sinus infection. Laboratory testing was ordered for testosterone. The patient's medical records were requested.

G. Patient J.B. presented on January 18, 2012, for a follow-up on anxiety and recurrent sinusitis. He was given another course of Levaquin. Respondent switched the patient from Ativan to Klonopin, a longer acting benzodiazepine.[2] Respondent's records do

[2] At the time, Patient J.B. was also taking Suboxone and Soma.

not show if Respondent examined the patient's sinuses.

H. Patient J.B. presented on May 22, 2013, with a chief complaint of anxiety and chronic low back pain, and opioid dependency. Respondent did not perform a complete physical examination given the patient's complaints or, in the alternative, did not document that he had done so. Medications being taken by Patient J.B., at the time, included Klonopin, Lexapro, Soma, and Suboxone.

I. Patient J.B. next presented on July 22, 2015, at which time, Respondent reported that he brought up the idea of decreasing the Soma use dependency as the patient was stable on Suboxone and had no aberrant behaviors. Patient J.B. was receptive to this idea. The patient, supposedly, was given one last refill of soma to be used twice daily, with the intention not to refill it further. Respondent stated that the patient could achieve other muscle relaxation from heat, ice, physical therapy, etc. Respondent, however, did not document this information in the patient's medical records.

PATIENT S.B.

J. Patient S.B. had fibromyalgia, multiple somatic and depressive complaints, hypothyroidism, hypercholesterolemia, and adjustment disorder generally related to her mood. This patient had been on disability for one or two years when Respondent first saw her. Patient S.B. presented to Respondent on approximately 18 occasions between January 11, 2011, and October 16, 2014.

K. In addition, Patient S.B. had pain in the cervical spine and lumbar area. He added that a lumbar spine MRI showed discogenic disease and that the fibromyalgia was generalized and had exacerbations periodically.

L. Patient S.B. presented on March 10, 2011, at which time, Respondent formulated the following treatment plan: treatment for constipation including Miralax; ordering laboratory panels; refilling the patient's MS Contin, Ativan, and Restoril prescriptions. At that visit, Respondent advised the patient to return in two months and sooner if she wanted to have mole on her left shoulder checked or if she wanted to discuss her chronic fibromyalgia pain.

M. Respondent stated that Miralax was ordered for constipation which, most likely, was due to her opioid use.

N. According to Respondent, Patient S.B. was taking MS Contin 100 mg three times a day. The morphine equivalent dosing per day was 300 mg per day. By the time Patient S.B. left his practice she was down to 200 mg per day. She, also, was taking Ativan 2 mg, one half pill twice daily as well as Restoril 30 mg one or two tablets before bedtime.

O. Although Respondent knew that the potential side effects of the combined medication Patient S.B. was taking, including MS Contin, Ativan, and Restoril, could cause respiratory arrest, Respondent could not recall having discussed the side effects with the patient and did not document that he did so. However, a review of the medical records for S.B., prepared and maintained by Respondent, reads "full discussion of lab panels inappropriate consistent use of pain medication stressed."

P. Patient S.B. again presented on February 6, 2012. She was taking MS Contin 100 mg three times a day and Norco for breakthrough pain, one tablet three times a day. Patient S.B. had been on Adderall previously.

Q. Respondent had an oral discussion with Patient S.B. about a compliance contract and use of opioids, pain management for fibromyalgia, rheumatologic evaluation for chronic pain, and discuss her psychiatrist. Respondent obtained a CURES report regarding the patient's prescriptions.

R. Over time, Respondent decreased Patient S.B.'s use of MS Contin from three times per day to twice a day.

S. On June 13, 2012, Respondent referred Patient S.B. to pain management as he wanted to get an opinion as whether her pain was just a neurosurgical problem.

T. Patient S.B. next presented on August 13, 2012, at which time, she was prescribed MS Contin three times a day. Respondent advised her to decrease it and reported that the patient was open to this idea. Respondent advised her that she needed chronic pain management and a psychiatric evaluation and follow-up as well. Three is no

progress note in the patient's records showing that he documented that he recommended her reducing her MS Contin to twice daily.

U. Patient S.B. next presented to Respondent on March 13, 2014, again for pain management. The patient had been seeing a Dr. G but stopped. The patient, at that time, was taking Naprosyn, an anti-inflammatory medication, which she was using in combination with MS Contin twice daily.

V. Respondent last saw Patient S.B. on October 2014. Respondent, was watching for signs and symptoms of opioid withdrawal and again advised her to seek pain management and psychiatric evaluation for additional follow-up.

W. At the last visit, Respondent discussed the likelihood of going forward with opioid detoxification with Patient S.B. He felt her opioid use was in excess and together they came to an agreement of decreasing her opioid use as the amount was out of line with her pain levels and pain management. Respondent was working with her and suggested Suboxone and even inpatient management.

X. During the final visit, Patient S.B. admitted that she was not regularly seeking pain management. The patient's compliance with morphine was poor and Respondent requested that she come back to see him in the emergency room if there were any withdrawal symptoms.

Y. Subsequently, Respondent wrote the patient a letter stating "because you're noncompliant with psychiatry, with pain management, and physical therapy, that we had to release you from the...." Thereafter, the patient's sister telephoned Respondent's office to complain. For that reason, Respondent authorized an allowance of non-scheduled medications for 30 days and advised the patient to go to pain management or the emergency room for any C-II or C-III medications.

PATIENT J.M.

Z. Patient J.B. presented to Respondent on approximately 24 occasions between January 17, 2001, and July 20, 2015. Patient J.M. is a 60-year-old man who is on Social Security disability. His primary problems are cervical spine and lumbar spine degenerative

disc disease, proven by multiple MRIs. The patient has cervical neuropathy and spasticity. He has had multiple prior epidural injections and is a non-surgical candidate. Respondent reported that he inherited this patient from another physician who retired.

AA. Patient J.M. presented to Respondent on October 20, 2009. The patient was stable and was there for analgesia.

BB. Patient J.M. again presented on March 14, 2011, complaining of chronic pain—namely, persistent cervical neuropathy and lumbar neuropathy. The patient also complained of pain in the upper extremity. The patient had right olecranon pain and lesions on his wrist. Patient J.M. requested a medication refill.

CC. Respondent's records showed a past medical history of lumbar sacral severe degenerative joint disease (DJD). The patient had radiculopathy. Respondent's records did not reflect this condition.

DD. Respondent did not document the patient's pain level at this visit.

EE. Respondent also did not document the red flags of cervical radiculitis, including muscle strength loss, loss of function, and loss of dexterity. He also did not document asking the patient about bowel or bladder function.

FF. Patient J.M. next presented on June 26, 2012, complaining of hypothyroidism and radiculopathy in addition to chronic depression. At that time, the patient was not seeing a psychiatrist but, instead, was receiving counseling sessions from his pastor.

GG. At that time, Respondent was prescribing Klonopin and Cytomel for thyroid, and MS Contin and morphine sulfate immediate release (MSIR) for pain.

HH. Respondent stated that the patient was responding well to his pain management. Respondent was running CURES, and was being co-managed by pain management. The patient was not ready for more epidural injections and so was not being weaned off or down on the medication.

II. Respondent did not have a pain management contract with Patient J.B.; rather, he had oral agreements. Respondent saw the patient frequently, every one to three months. Respondent reviewed CURES reports periodically.

JJ. Respondent watched compliance, refill dates, and whether there was anything suspicious on CURES.

KK. Patient J.M. next presented to Respondent on February 24, 2015. The patient wanted a medication refill and a cervical spine referral to his HMO network for pain management. His pain levels were stabilized at a 2 to 3 out of 10 pain level. No prescriptions were written on that date except for Klonopin to be taken three times per day.

PATIENT G.R.

LL. Patient G.R. presented to Respondent on approximately 12 occasions. At the time of the subject interview, Respondent had an independent recollection of this patient. According to Respondent, Patient G.R. was in his early 60s. Respondent had not seen the patient for about one year. Patient G.R. initially presented with hypertension and chronic low back pain. After one or two year, it was discovered that the patient had active chronic Hepatitis C and ended up in liver failure.

MM. Patient G.R. first presented on September 6, 2011, with complaints of chronic pain. At the time, the patient was still receiving care at the Ventura County Medical Center for hepatitis C. The hepatitis was causing ascites and severe lymphedema. The patient had chronic low back pain but also pain in the legs from the massive amounts of edema.

NN. Respondent was aware that the patient was taking methadone for chronic low back pain, approximately eight doses daily. Respondent prescribed methadone because it is one of the safest longer acting medications, especially in kidney disease. Respondent reported that Patient G.R. was very close to having hepato-renal syndrome.

OO. Patient G.R. was treated by Respondent for his hypertension and chronic pain. Respondent prescribed methadone, between 60 mg and 80 mg per day.

PP. Patient G.R. next presented on May 9, 2013. Respondent's diagnoses for the patient included benign essential hypertension, metabolic encephalopathy, liver, acute hepatitis C, and testicular hypofunction. The prescribing of benzodiazepine could cause worsening of the patient's encephalopathy. Respondent considered using Suboxone but

wanted to wait until the patient was improved regarding his back pain before instituting this.

QQ. Respondent wanted to give the patient testosterone to get him an energy level boost. He felt if the patient could be more active, he would be able to mobilize more of the fluid in the legs.

RR. Patient G.R. next presented on September 11, 2014. His medications, at that time, included furosemide, methadone, potassium, Spironolactone, and Xifaxan.

SS. Patient G.R., apparently has not been seen since May 2015.

PATIENT J.R.

TT. Patient J.R., was a 60-year-old female and the spouse of Patient G.R. Respondent initially saw this patient in 2005. Between March 15, 2011, and June 12, 2014, she presented to Respondent on approximately 13 occasions.

UU. Patent J.R. had extremely severe degenerative joint disease with bone on bone severe arthritis and was interested in having a knee replacement. She was a moderate risk due to coronary artery disease, hypertension that was well-controlled, mild hyperlipidemia and thyroid that was well-controlled. She went on to have a small inch for your wall myocardial infarction and a single vessel stent placed in 2014.

VV. Patient J.R., primarily, saw Respondent for pain management of persevere arthritis which was primarily in her knees.

WW. On November 10, 2012, Patient J.R. presented to Respondent as she wanted the following medications: aspirin, Coreg, Lipitor, hydrocodone, Lisinopril, Plavix, Synthroid, Vesicare, and methadone.

XX. On March 15, 2014, Patient J.R. presented with the following chief complaint: chronic pain due to arthritis. She had been given a prescription for an anti-inflammatory medication. Respondent had prescribed Voltaren gel, methadone and Norco for breakthrough pain, and Flector and Lidoderm patches. Respondent prescribed 60 to 80 mg per day for pain management, not for treatment for addiction.

YY. Respondent did not have a written pain management contract with Patient J.R. Instead, he had an oral agreement. Respondent added that he followed this patient and others by using CURES report and discussed chronic pain management with her.

ZZ. On June 12, 2014, Patient J.R. again presented to Respondent. At that time, the patient was still taking Norco and methadone.

PATIENT R.Y.

AAA. Patient R.Y. presented to Respondent on approximately 14 occasions between July 13, 2011, and August 8, 2015. Patient R.Y. had chronic restless leg syndrome, lower extremity neuropathy related to restless leg syndrome, and impaired fasting glucose and controlled hypertension.

BBB. Patient R.Y. was taking Norco 10/325 mg one per day in addition to Lyrica.

CCC. Patient R.Y. presented on August 6, 2013, with complaints of plantar fibromatosis, foot pain, and chronic left knee pain. At that time, the patient was taking only one hydrocodone tablet daily.

DDD. Patient R.Y. again presented to Respondent on January 27, 2014. She was still taking Norco once a day. Respondent prescribed the patient 90 tablets.

EEE. Patient R.Y. presented again on August 6, 2015. The chief complaint was restless leg syndrome.

SECOND CAUSE FOR DISCIPLINE

(Prescribing Without Appropriate Examination and Indication)

14. Respondent Brooks C. Michaels, M.D., is subject to disciplinary action under Business and Professions Code section 2242 in that Respondent prescribed controlled substances and other dangerous drugs for Patients J.B., S.B., J.M., G.R., J.R., and R.Y. without an appropriate prior examination and a medical indication , as follows:

A. Complainant refers to and, by this reference, incorporates paragraph 13, above, as though fully set forth.

//

THIRD CAUSE FOR DISCIPLINE

(Violation of Drug Statutes)

15. Respondent Brooks C. Michaels, M.D., is subject to disciplinary action under Business and Professions Code section 2238, in conjunction with Business and Professions Code sections 725 and 2242 and Health and Safety Code sections 11152, 11153 and 11190, for violating drug statutes , as follows:

A. Complainant refers to and, by this reference, incorporates paragraph 13, above, as though fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

16. Respondent Brooks C. Michaels, M.D., is subject to disciplinary action under Business and Professions Code section 2234 for committing gross negligence during his care, treatment and maintenance of Patients J.B., S.B., J.M., G.R., J.R., and R.Y., as follows:

A. Complainant refers to and, by this reference, incorporates paragraph 13, above, as though fully set forth.

B. As to all patients, the prescribing of controlled substances without an adequate treatment plan, discussion of treatment goals, and a functional assessment and ongoing monitoring constitutes an extreme departure from the standard of care.

C. As to all patients, the following acts and omissions, considered collectively constitute an extreme departure from the standard of care:

1) At no time was an adequate and sufficient history obtained.

2) Respondent did not ask or, in the alternative, did not document specific clarifying information about the medical problems being treated by the controlled substance medications.

3) Respondent's medical records contain no specific information about the patient's neck and low back problems on a regular (or even a rare occasion) in spite of treating the patient with opioids for nearly four (4) years.

4) Respondent did not obtain or, the alternative, did not document specific information the patient's opioid dependency history.

5) Respondent's manner of history taking and physical examination for all patients constituted an extreme departure from the standard of care in that:

a) There was no information regarding past medications, evaluations, treatments, non-medication treatments, or consultations

b) There was no current or prior pain history recorded.

c) There was no listing of current medications, chronic diseases, if any or mental health concerns or issues.

d) There was no detailed mental health history or exploration of current and past drug and alcohol issues.

e) There was no current pain and functional levels or descriptions

f) There was no documentation of concerning the patient's pain, anxiety, and depression

g) Respondent's progress notes, which were generated by the Electronic Medical Record, are often copied information from prior visits, with very brief additional information and, accordingly, of little value in understanding the reason for the visit, why medications were given or changed, the current and past diagnoses, including pain diagnoses, none include justifiable reasoning for the controlled substances and other dangerous drugs prescribed by Respondent.

h) Respondent failed to perform or, in the alternative, failed to document a physical examination appropriate to the prescribing of controlled substances. As one example, Respondent did not document an examination of the patient's back and very rarely of the neck even those were chronic areas of pain reportedly necessitating opioids.

i) Respondent failed to perform an mental health history and evaluation despite prescribing benzodiazepines over nearly a four year period in

spite of chronic anxiety and depression in which he prescribed benzodiazepines over nearly a four, an extreme departure from the standard of care.

j) Respondent's evaluation of Patient J.B. was insufficient to justify prescribing controlled substances.

k) Respondent did not discuss or, in alternative, did not document having discussed the benefits of the his prescribing regime.

l) Respondent did not discuss or, in alternative, did not document an never discussed treatment goals or functional assessment as required, an extreme departure from the standard of care.

m) Respondent failed to document the monitoring necessary for the prescribing of controlled substances and other dangerous drugs including, but not limited to, using urine drug screens to ensure that the patient was not using additional illegal drugs (THC, cocaine, etc.); or, using a CURES report to ensure the patient was not getting additional controlled substances from other providers and, too, to ensure that the patient was actually taking the medications prescribed.

n) Respondent did not consider or, in the alternative, failed to document a physical therapy referral or any other related referral.

o) Respondent failed to discuss the major potential risks of the controlled substances in spite of prescribing many high dose dangerous medications, including a potential combination of opioid and benzodiazepine medications constitutes an extreme departure from the standard of care.

D. As to Patient G.R., Respondent' failed to integrate the advance liver disease in his management goals, recognizing that the pain management could potentially adversely affect the patient's liver and vice versa.

E. As to Patient G.R., Respondent failed to document working with the gastroenterology / liver specialists in overall management of the patient.

F. As to Patient G.R., Respondent's prescription for high dose opioids placed the patient at a very high risk for overdose and death in that the Morphine Equivalent Dosing in

this patient was approximately 960 mg/day for long periods of time. This high dose puts the patient at much higher risk for overdose and overdose death. These mandate every more attention to treatment plans, goals, monitoring, etc. All of this was missing or inadequate.

G. As to Patients G.R. and J.R., Respondent's failure to perform and document an adequate and appropriate history and physical exam prior to prescribing or refilling controlled substances constitutes an extreme departure from the standard of care.

H. As to Patient J.R., Respondent's failure to discuss the major potential risks of the controlled substances in spite of prescribing many high dose dangerous medications constitutes an extreme departure from the standard of care.

FIFTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

17. Respondent Brooks C. Michaels, M.D., is subject to disciplinary action under Business and Professions Code section 2234, subdivision (c) in that Respondent committed repeated negligent acts during his care, treatment and maintenance of Patients J.B., S.B., J.M., G.R., J.R., and R.Y., as follows:

A. Complainant refers to and, by this reference, incorporates paragraphs 13 and 16, above, as though fully set forth.

SIXTH CAUSE FOR DISCIPLINE

(Incompetence)

18. Respondent Brooks C. Michaels, M.D., is subject to disciplinary action under Business and Professions Code section 2234, subdivision (d), in that Respondent failed to demonstrate the necessary knowledge, training and ability to treat Patients J.B., S.B., J.M., G.R., J.R., and R.Y., as follows:

A. Complainant refers to and, by this reference, incorporates paragraphs 13, 16 and 17, above, as though fully set forth.

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SEVENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

19. Respondent Brooks C. Michaels, M.D., is subject to disciplinary action under Business and Professions Code section 2266, in that Respondent failed to maintain adequate and accurate records relating to the provision of his medical services to Patients J.B., S.B., J.M., G.R., J.R., and R.Y., as follows:

A. Complainant refers to and, by this reference, incorporates paragraph 13, above, as though fully set forth.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

20. Respondent Brooks C. Michaels, M.D., is subject to disciplinary action under Business and Professions Code section 2234 in that Respondent committed unprofessional conduct, generally, during his care, treatment and management of Patients J.B., S.B., J.M., G.R., J.R., and R.Y., as follows:

A. Complainant refers to and, by this reference, incorporates paragraphs 13, 16 and 17, above, as though fully set forth.

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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 G60910, issued to Brooks C. Michaels, M.D.;

2. Revoking, suspending or denying approval of Brooks C. Michaels, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Brooks C. Michaels, 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: August 17, 2016

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

Complainant

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