

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

**In the Matter of the First Amended
Accusation Against:**

Neil K. Hersh, M.D.

**Physician's and Surgeon's
Certificate No. G 58484**

Case No.: 800-2018-041402

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 December 30, 2021.

IT IS SO ORDERED: November 30, 2021.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D., Chair
Panel A**

1 ROB BONTA
Attorney General of California
2 MATTHEW M. DAVIS
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the First Amended Accusation
14 Against:

15 **NEIL K. HERSH, M.D.**
24881 Alicia Parkway E-333
Laguna Hills, CA 92653-4617

16 Physician's and Surgeon's Certificate No. G
17 58484,

18 Respondent.

Case No. 800-2018-041402

OAH No. 2021050196

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
24 California (Board). He brought this action solely in his official capacity and is represented in this
25 matter by Rob Bonta, Attorney General of the State of California, by LeAnna E. Shields, Deputy
26 Attorney General.

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2. Respondent Neil K. Hersh, M.D. (Respondent) is represented in this proceeding by attorneys Jack R. Reinholtz, Esq., and Douglas deHeras, Esq., whose address is: 310 Golden Shore, Fourth Floor, Long Beach, CA 90802.

3. On or about September 2, 1986, the Board issued Physician's and Surgeon's Certificate No. G 58484 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in the First Amended Accusation No. 800-2018-041402, and will expire on December 31, 2021, unless renewed.

JURISDICTION

4. On or about August 2, 2021, the First Amended Accusation No. 800-2018-041402 was filed before the Board, and is currently pending against Respondent. On or about August 2, 2021, a true and correct copy of the First Amended Accusation No. 800-2018-041402 and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of the First Amended Accusation No. 800-2018-041402 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in the First Amended Accusation No. 800-2018-041402. Respondent has also carefully read, fully 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 in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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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 does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in the First Amended Accusation No. 800-2018-041402 and that he has thereby subjected his license to disciplinary action.

9. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in the First Amended Accusation No. 800-2018-041402 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 58484 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

11. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or

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

11 **ADDITIONAL PROVISIONS**

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

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

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

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 58484 issued
23 to Respondent NEIL K. HERSH, M.D., is hereby revoked. However, the revocation is stayed and
24 Respondent is placed on probation for three (3) years on the following terms and conditions:

25 1. **COMMUNITY SERVICE - FREE SERVICES.** Within 60 calendar days of the
26 effective date of this Decision, Respondent shall submit to the Board or its designee for prior
27 approval a community service plan in which Respondent shall, within the first 2 years of
28 probation, provide 40 hours of free services (i.e., medical services permitted) to a community or

1 non-profit organization. If the term of probation is designated for 2 years or less, the community
2 service hours must be completed not later than 6 months prior to the completion of probation.

3 Prior to engaging in any community service, Respondent shall provide a true copy of the
4 Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief
5 executive officer at every community or non-profit organization where Respondent provides
6 community service and shall submit proof of compliance to the Board or its designee within 15
7 calendar days. This condition shall also apply to any change(s) in community service.

8 Community service performed prior to the effective date of the Decision shall not be
9 accepted in fulfillment of this condition.

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

20 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
21 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
22 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
23 Respondent shall participate in and successfully complete that program. Respondent shall
24 provide any information and documents that the program may deem pertinent. Respondent shall
25 successfully complete the classroom component of the program not later than six (6) months after
26 Respondent's initial enrollment, and the longitudinal component of the program not later than the
27 time specified by the program, but no later than one (1) year after attending the classroom

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1 component. The professionalism program shall be at Respondent's expense and shall be in
2 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

3 A professionalism program taken after the acts that gave rise to the charges in the First
4 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
5 the Board or its designee, be accepted towards the fulfillment of this condition if the program
6 would have been approved by the Board or its designee had the program been taken after the
7 effective date of this Decision.

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

11 4. WRITTEN EXAMINATION. Within 60 calendar days of the effective date of this
12 Decision, Respondent shall take and pass the Special Purpose Examination (SPEX) or an
13 equivalent examination as determined by the Board or its designee.

14 Failure to pass the required written examination within 180 calendar days after the
15 effective date of this Decision is a violation of probation. Respondent shall pay the costs of all
16 examinations.

17 If Respondent fails to pass the written examination, Respondent shall receive a
18 notification from the Board or its designee to cease the practice of medicine within three (3)
19 calendar days after being so notified. Respondent shall not practice medicine until Respondent
20 successfully passes the examination, as evidenced by written notice to Respondent from the
21 Board or its designee.

22 5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
23 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
24 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
25 licenses are valid and in good standing, and who are preferably American Board of Medical
26 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
27 relationship with Respondent, or other relationship that could reasonably be expected to
28 compromise the ability of the monitor to render fair and unbiased reports to the Board, including

1 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
2 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

3 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
4 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
5 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
6 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
7 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
8 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
9 signed statement for approval by the Board or its designee.

10 Within 60 calendar days of the effective date of this Decision, and continuing throughout
11 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
12 make all records available for immediate inspection and copying on the premises by the monitor
13 at all times during business hours and shall retain the records for the entire term of probation.

14 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
15 date of this Decision, Respondent shall receive a notification from the Board or its designee to
16 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
17 shall cease the practice of medicine until a monitor is approved to provide monitoring
18 responsibility.

19 The monitor(s) shall submit a quarterly written report to the Board or its designee which
20 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
21 are within the standards of practice of medicine, and whether Respondent is practicing medicine
22 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
23 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
24 preceding quarter.

25 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
26 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
27 name and qualifications of a replacement monitor who will be assuming that responsibility within
28 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60

1 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
2 notification from the Board or its designee to cease the practice of medicine within three (3)
3 calendar days after being so notified. Respondent shall cease the practice of medicine until a
4 replacement monitor is approved and assumes monitoring responsibility.

5 In lieu of a monitor, Respondent may participate in a professional enhancement program
6 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
7 review, semi-annual practice assessment, and semi-annual review of professional growth and
8 education. Respondent shall participate in the professional enhancement program at Respondent's
9 expense during the term of probation.

10 This requirement to maintain a practice monitor shall cease upon written notification by the
11 Board or its designee that Respondent has passed the Written Examination (SPEX).

12 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
13 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
14 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
15 extended to Respondent, at any other facility where Respondent engages in the practice of
16 medicine, including all physician and locum tenens registries or other similar agencies, and to the
17 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
18 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
19 15 calendar days.

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

21 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
22 governing the practice of medicine in California and remain in full compliance with any court
23 ordered criminal probation, payments, and other orders.

24 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
25 under penalty of perjury on forms provided by the Board, stating whether there has been
26 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
27 not later than 10 calendar days after the end of the preceding quarter.

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1 9. GENERAL PROBATION REQUIREMENTS.

2 Compliance with Probation Unit

3 Respondent shall comply with the Board's probation unit.

4 Address Changes

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

10 Place of Practice

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

14 License Renewal

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

17 Travel or Residence Outside California

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

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

24 10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
25 available in person upon request for interviews either at Respondent's place of business or at the
26 probation unit office, with or without prior notice throughout the term of probation.

27 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
28 its designee in writing within 15 calendar days of any periods of non-practice lasting more than

1 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
2 defined as any period of time Respondent is not practicing medicine as defined in Business and
3 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
4 patient care, clinical activity or teaching, or other activity as approved by the Board. If
5 Respondent resides in California and is considered to be in non-practice, Respondent shall
6 comply with all terms and conditions of probation. All time spent in an intensive training
7 program which has been approved by the Board or its designee shall not be considered non-
8 practice and does not relieve Respondent from complying with all the terms and conditions of
9 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
10 on probation with the medical licensing authority of that state or jurisdiction shall not be
11 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
12 period of non-practice.

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

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

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

20 Periods of non-practice for a Respondent residing outside of California will relieve
21 Respondent of the responsibility to comply with the probationary terms and conditions with the
22 exception of this condition and the following terms and conditions of probation: Obey All Laws;
23 General Probation Requirements; Quarterly Declarations.

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

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1 13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
2 of probation is a violation of probation. If Respondent violates probation in any respect, the
3 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
4 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
5 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
6 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
7 the matter is final.

8 14. LICENSE SURRENDER. Following the effective date of this Decision, if
9 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
10 the terms and conditions of probation, Respondent may request to surrender his or her license.
11 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
12 determining whether or not to grant the request, or to take any other action deemed appropriate
13 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
14 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
15 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
16 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
17 application shall be treated as a petition for reinstatement of a revoked certificate.

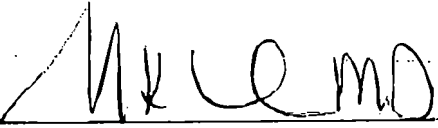
18 15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
19 with probation monitoring each and every year of probation, as designated by the Board, which
20 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
21 California and delivered to the Board or its designee no later than January 31 of each calendar
22 year.

23 16. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
24 a new license or certification, or petition for reinstatement of a license, by any other health care
25 licensing action agency in the State of California, all of the charges and allegations contained in
26 the First Amended Accusation No. 800-2018-041402 shall be deemed to be true, correct, and
27 fully admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
28 seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Jack R. Reinholtz, Esq., and Douglas deHeras, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 58484. 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: 9/2/21


NEIL K. HERSH, M.D.
Respondent

I have read and fully discussed with Respondent Neil K. Hersh, 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: 9/2/2021


JACK R. REINHOLTZ, ESQ.
DOUGLAS DEHERAS, ESQ.
Attorneys for Respondent

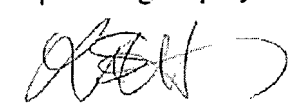
ENDORSEMENT

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

DATED: 9/3/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-041402

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2 MATTHEW M. DAVIS
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8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the First Amended Accusation
14 Against:

Case No. 800-2018-041402

FIRST AMENDED ACCUSATION

15 **NEIL K. HERSH, M.D.**
24881 Alicia Parkway E-333
16 Laguna Hills, CA 92653-4617

[Cal. Gov. Code, § 11507.]

17 Physician's and Surgeon's Certificate
18 No. G 58484,

Respondent.

20
21 Complainant alleges:

22 **PARTIES**

23 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
24 official capacity as the Executive Director of the Medical Board of California, Department of
25 Consumer Affairs (Board).

26 2. On or about September 2, 1986, the Medical Board issued Physician's and Surgeon's
27 Certificate No. G 58484 to Neil K. Hersh, M.D. (Respondent). The Physician's and Surgeon's

28 ///

1 Certificate No. G 58484 was in full force and effect at all times relevant to the charges brought
2 herein and will expire on December 31, 2021, unless renewed.

3 **JURISDICTION**

4 3. This First Amended Accusation, which supersedes Accusation No. 800-2018-041402,
5 filed on January 7, 2021, in the above-entitled matter, is brought before the Board, under the
6 authority of the following laws. All section references are to the Business and Professions Code
7 (Code) unless otherwise indicated.

8 4. Section 2227 of the Code states:

9 (a) A licensee whose matter has been heard by an administrative law judge of
10 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
11 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:

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

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

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

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

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

20 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
21 medical review or advisory conferences, professional competency examinations,
22 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.

23 5. Section 2234 of the Code, states:

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

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

28 (b) Gross negligence.

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

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

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

13 (d) Incompetence.

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

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

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

21 FIRST CAUSE FOR DISCIPLINE

22 (Gross Negligence)

23 6. Respondent has subjected his Physician's and Surgeon's Certificate No. G 58484 to
24 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
25 the Code, in that he, as the medical director of Next Advanced Medicine, committed gross
26 negligence in the care and treatment of Patients A, B, and C,¹ as more particularly alleged
27 hereinafter.

28 Patient A

7. In or around 2017, Patient A, a then 66-year-old male, received information about a
Diabetes Reversal Seminar by Next Advanced Medicine (NAM). Patient A had a history of

¹ To protect the privacy of all patients involved, patient names have not been included in this
pleading. Respondent is aware of the identity of the patients referred to herein.

1 diabetes since in or around 2000. Patient A was already under the care of a physician and was
2 prescribed metformin and glipizide to control his diabetes. In addition to medications, Patient A
3 had already made changes to his diet and was able to bring his A1C² levels from 9% to 6.7%.³

4 8. According to their website and advertisements, Respondent was the only physician at
5 NAM and was identified as the medical director of NAM. NAM claimed their program had
6 successfully reversed Type II Diabetes in patients in a short amount of time, including, but not
7 limited to, reducing and/or eliminating the need to take oral diabetic medications, reducing and/or
8 eliminating the risk factors for diabetic complications and early death, and reducing and/or
9 eliminating the need for insulin injections. NAM offered a free live event on how to reverse
10 diabetes and "become non-diabetic."

11 9. On or about August 5, 2017, Patient A attended the NAM seminar where they
12 claimed all but one of their patients had successfully "cured" their diabetes, and the sole
13 outstanding patient was able to reduce their medications.

14 10. The NAM diabetes program included 14 clinic visits, patient education, a grocery
15 store tour, weekly meal plans, nutritional supplements, and various tests, including, but not
16 limited to, blood, stool sample, hormones, and food sensitivity.

17 11. On or about August 16, 2017, after a consultation appointment with NAM, Patient A
18 enrolled in NAM's diabetes program. According to NAM records, Patient A's weight was noted
19 to be 175 pounds and laboratory tests on this date revealed Patient A's A1C level to be 6.7%.

20 12. From on or about August 16, 2017, through on or about January 29, 2018, Patient A
21 participated in the NAM diabetes program, attending scheduled visits, undergoing numerous
22 tests, and purchasing the recommended supplements sold by NAM.

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26 ² A1C, also referred to as Hemoglobin A1C (HA1C), is a blood test that measures a person's
blood sugar levels over the past three months and is commonly used to diagnose prediabetes or diabetes.

27 ³ According to the Centers for Disease Control and Prevention, a normal A1C result is below
28 5.7%. Results between 5.7% and 6.4% percent is indicative of prediabetes. Results 6.5% or above is
indicative of diabetes. (<https://www.cdc.gov/diabetes/managing/managing-blood-sugar/a1c.html>)

1 13. From on or about August 16, 2017, through on or about January 29, 2018, as part of
2 the NAM diabetes program, Patient A met with a NAM nutritionist during his office visits and
3 met with Respondent at one office visit for a medical exam.

4 14. From on or about August 16, 2017, through on or about January 29, 2018, as part of
5 the NAM diabetes program, Patient A purchased several dietary supplements⁴ from NAM
6 directly, including, but not limited to, Apex H-PLR, ProbioMax DF, Diaxinol, BioG-Max C,
7 Berberine-500, Super G Antioxidant, Bile-Aid, RepairVite-SE, Gastro-ULC, Ortho Biotic,
8 Methyl CpG, Enzymix Pro, Reacted Magnesium, Effecsulin, ADEK-Pro, Biogenetix MDS,
9 Metaboclear-CH, Hepato-CL, GI-Synergy, and Mitocore.

10 15. From on or about August 16, 2017, through on or about January 29, 2018, as part of
11 the NAM diabetes program, Patient A underwent numerous tests, including, but not limited to,
12 blood tests, a food sensitivity test, a hormone stress test, and a comprehensive metabolic panel
13 test. The tests evaluated Patient A's DHEA,⁵ FSH,⁶ LH,⁷ estradiol, testosterone, and cortisol
14 levels. The tests also evaluated Patient A's lipids and HS CRP⁸ and homocysteine⁹ levels.

15 16. From on or about August 16, 2017, through on or about January 29, 2018, as part of
16 the NAM diabetes program, Patient A provided two stool samples for comprehensive analysis,

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20 ⁴ The supplements sold by NAM were non-prescription dietary supplements that contained various
21 blends of vitamins, minerals, amino acids, and enzymes.

22 ⁵ DHEA, dehydroepiandrosterone, is a steroid hormone produced mainly in the adrenal glands.

23 ⁶ FSH, follicle-stimulating hormone, regulates the development, growth and reproductive
24 processes of the body. FSH and luteinizing hormone (LH) work together in the reproductive system.

25 ⁷ LH, luteinizing hormone, is a hormone produced in the anterior pituitary gland, it stimulates the
26 cells production of testosterone.

27 ⁸ HS CRP, high sensitivity C-reactive protein, is a protein found in blood plasma and is a marker
28 for measuring one's risk of developing coronary artery disease.

29 ⁹ Homocysteine is a non-proteinogenic amino acid and is a marker for measuring one's risk of
developing coronary artery disease.

1 which included, but was not limited to, testing for helicobacter pylori,¹⁰ elastase,¹¹ candida,¹² ova
2 and parasites.¹³

3 17. On or about January 29, 2018, Patient A's final visit with NAM, Patient A's
4 laboratory results indicated Patient A's A1C level to be 6.1% and Patient A's weight was noted to
5 be 170 pounds.

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

8 A. Paragraphs 7 through 17, above, are hereby incorporated by reference and
9 realleged as if fully set forth herein;

10 B. Respondent failed to use, and/or direct NAM staff to use, evidence-based
11 medicine supported by medical literature in the care and treatment of Patient A's
12 well-controlled diabetes, in that Respondent, and/or NAM staff, claimed they could
13 reverse diabetes and then directly sold nutritional supplements to Patient A which
14 have no evidence in medical literature for reversing or curing diabetes, and

15 C. Respondent failed to order, and/or direct NAM staff to order, only relevant
16 testing that would assist in diagnosis and/or help in providing direction in the care and
17 treatment of Patient A's diabetes, in that Respondent, and/or NAM staff, ordered
18 multiple tests that had no relevance to Patient A's diagnosis of diabetes or the reversal
19 of diabetes, nor was indicated by a medical history or physical exam, including but
20 not limited to, testing for H. pylori, hormone testing of DHEA, FSH, LH, estradiol,
21 cortisol, and testosterone, and stool testing for elastase, candida, ova and parasites.

22 ¹⁰ Helicobacter pylori, commonly referred to as H. pylori, is a microaerophilic bacteria which
23 grows primarily in the human digestive track. Research indicates a correlation exists between the presence
24 of H. pylori and those suffering from chronic gastritis as well as gastric and duodenal ulcers.

25 ¹¹ Elastase is a pancreatic enzyme that digests proteins. Low elastase levels is an indicator of
26 pancreatic exocrine insufficiency.

27 ¹² Candida is a type of yeast commonly located on mucosal surfaces and mainly in the
28 gastrointestinal tract. Candida can cause fungal infections with abnormally high growth.

¹³ Ova and parasite exam is a test to examine a stool sample for parasites and/or parasite eggs.

1 **Patient B**

2 19. In or around 2018, Patient B, a then 50-year-old female, with a history of Grave's
3 disease,¹⁴ received information about a comprehensive thyroid program by NAM that claimed to
4 treat thyroid conditions. Patient B was already under the care of a physician for treatment of her
5 hyperthyroidism.

6 20. According to their website and advertisements, Respondent was the only physician at
7 NAM and was identified as the medical director of NAM.

8 21. In or around 2018, Patient B attended the NAM seminar where they claimed their
9 program could help reduce patients' thyroid medication and improve symptoms caused by thyroid
10 conditions.

11 22. The NAM comprehensive thyroid program included 14 clinic visits, patient
12 education, a grocery store tour, weekly meal plans, nutritional supplements, and various tests,
13 including, but not limited to, blood, stool sample, hormones, and food sensitivity.

14 23. On or about April 23, 2018, after a consultation appointment with NAM, Patient B
15 enrolled in NAM's comprehensive thyroid program.

16 24. From on or about April 23, 2018, through on or about September 17, 2018, Patient B
17 participated in the NAM comprehensive thyroid program, attending scheduled visits, undergoing
18 numerous tests, and purchasing the recommended supplements sold by NAM.

19 25. From on or about April 23, 2018, through on or about September 17, 2018, as part of
20 the NAM comprehensive thyroid program, Patient B met with a NAM nutritionist during office
21 visits and met with Respondent at one office visit for a medical exam.

22 26. From on or about April 23, 2018, through on or about September 17, 2018, as part of
23 the NAM comprehensive thyroid program, Patient B purchased several dietary supplements from
24 NAM directly, including, but not limited to, Methyl CpG, ADEK-Pro, Ortho Biotic, Thyro CNV,
25 Mito Chore, GTA Forte, Phenotropic, Iron Hemevite, Metaboclear, HyPex Bal, Omega 3,
26 Grapefruit Seed Extract, iodine, and vitamin D.

27
28 ¹⁴ Grave's disease is an autoimmune disorder that affects the thyroid gland, typically resulting in
the overproduction of thyroid hormones, also known as hyperthyroidism.

1 27. From on or about April 23, 2018, through on or about September 17, 2018, as part of
2 the NAM comprehensive thyroid program, Patient B underwent numerous tests, including, but
3 not limited to, blood tests, a food sensitivity test, a hormone stress test, and a comprehensive
4 metabolic panel test. The tests evaluated Patient B's cholesterol, iron, iodine, vitamin D and
5 homocysteine levels. The tests also included a thyroid panel, lipid panel, and a metabolic
6 hormone test measuring Patient B's estradiol, testosterone and progesterone levels.

7 28. From on or about April 23, 2018, through on or about September 17, 2018, as part of
8 the NAM comprehensive thyroid program, Patient B provided a stool sample for comprehensive
9 analysis, which included, but was not limited to, testing for helicobacter pylori, elastase, candida,
10 ova and parasites.

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

13 A. Paragraphs 19 through 28, above, are hereby incorporated by reference and
14 realleged as if fully set forth herein;

15 B. Respondent failed to use, and/or direct NAM staff to use, evidence-based
16 medicine supported by medical literature in the care and treatment of Patient B's
17 thyroid disorder, in that Respondent, and/or NAM staff, claimed they could minimize
18 or eliminate her symptoms from thyroid disease and then directly sold nutritional
19 supplements to Patient B which have no evidence in medical literature for reducing
20 the symptoms of thyroid disease, and

21 C. Respondent failed to order, and/or direct NAM staff to order, only relevant
22 testing that would assist in diagnosis and/or help in providing direction in the care and
23 treatment of Patient B's thyroid disease, in that Respondent, and/or NAM staff,
24 ordered multiple tests that had no relevance to Patient B's diagnosis of thyroid
25 disease or the reduction of symptoms of thyroid disease, nor was indicated by a
26 medical history or physical exam, including but not limited to, testing for H. pylori
27 and stool testing for elastase, candida, ova and parasites.

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1 **Patient C**

2 30. In or around 2019, Patient C, a then 67-year-old female, received information about a
3 Diabetes Reversal Seminar by NAM. Patient C had a history of diabetes since in or around 1993.
4 Patient C was already under the care of a physician and was receiving insulin to treat her diabetes.

5 31. In or around 2019, Patient C attended the NAM seminar where she learned about
6 NAM's diabetes program. After the NAM presentation, Patient C met with a NAM
7 representative who scheduled her for a consultation.

8 32. On or about January 16, 2019, Patient C completed a new patient application, in
9 which she reported her most recent A1C level as 6% and her current weight to be 164 pounds.

10 33. On or about February 4, 2019, pursuant to NAM's diabetes program, Patient C
11 submitted a blood sample and stool sample for testing.

12 34. On or about February 6, 2019, attended a consultation appointment with C.B., a
13 chiropractor with NAM.

14 35. On or about April 10, 2019, as part of the NAM diabetes program, Respondent
15 performed an "initial medical exam" of Patient C.

16 36. From on or about February 4, 2019, through on or about August 22, 2019, as part of
17 the NAM diabetes program, Patient C met with C.B. during office visits and attended a grocery
18 store tour with NAM staff.

19 37. From on or about February 4, 2019, through on or about August 22, 2019, as part of
20 the NAM diabetes program, Patient C purchased several dietary supplements from NAM directly,
21 including, but not limited to, AdrenaCalm, Effecsulin, Enterovite, Fibromin, Glucostatic Balance,
22 Hypaax Balance, Omega Co3, Magnesium, Restore, vitamin D, Max GABA, Max GSH,
23 Women's Probiotic, Diaxinol, Berberine-500, and PS Support.¹⁵

24 38. From on or about February 4, 2019, through on or about August 22, 2019, as part of
25 the NAM diabetes program, Patient C underwent numerous tests, including, but not limited to,
26 blood tests, food sensitivity test, a hormone stress test, and a comprehensive metabolic panel test.

27
28 ¹⁵ See footnote 4.

1 The tests evaluated Patient C's DHEA, FSH, LH, HS CRP, homocysteine, insulin antibodies,
2 vitamin D, islet cell antibody, glucose, and creatinine levels.

3 39. On or about February 4, 2019, as part of the NAM diabetes program, Patient C
4 provided a stool sample for comprehensive analysis, which included, but was not limited to,
5 testing for helicobacter pylori, elastase, flora, secretory immunoglobulin A, ova and parasites.

6 40. On or about August 22, 2019, Patient C's final visit with NAM, Patient C's
7 laboratory results indicated Patient C's A1C level to be 6.5% and Patient C's weight was noted to
8 be 163 pounds.

9 41. Respondent committed gross negligence in the care and treatment of Patient C, which
10 included, but was not limited to, the following:

11 A. Paragraphs 30 through 40, above, are hereby incorporated by reference and
12 realleged as if fully set forth herein;

13 B. Respondent failed to use, and/or direct NAM staff to use, evidence-based
14 medicine supported by medical literature in the care and treatment of Patient C's
15 diabetes, in that Respondent, and/or NAM staff, claimed they could reverse diabetes
16 and then directly sold nutritional supplements to Patient C which have no evidence in
17 medical literature for reversing or curing diabetes, and

18 C. Respondent failed to order, and/or direct NAM staff to order, only relevant
19 testing that would assist in diagnosis and/or help in providing direction in the care and
20 treatment of Patient C's diabetes, in that Respondent, and/or NAM staff, ordered
21 multiple tests that had no relevance to Patient C's diagnosis of diabetes or the reversal
22 of diabetes, nor was indicated by a medical history or physical exam, including but
23 not limited to, testing for H. pylori, hormone testing of DHEA, FSH, LH, estradiol,
24 cortisol, and testosterone, and stool testing for elastase, ova and parasites.

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