

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

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

Larry A. Epstein, M.D.

**Physician's & Surgeon's
Certificate No. C 24787**

Case No. 800-2018-045250

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 January 12, 2022.

IT IS SO ORDERED December 13, 2021.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 ANA GONZALEZ
Deputy Attorney General
4 State Bar No. 190263
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2018-045250

13 **LARRY A. EPSTEIN, M.D.**
14 **2500 Hospital Dr.**
Bldg. 11 Suite E
15 **Mountain View CA 94040-4106**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **Physician's and Surgeon's Certificate No. C**
17 **24787**

18 Respondent.

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

23 **PARTIES**

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

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2. Respondent Larry A. Epstein, M.D. (Respondent) is represented in this proceeding by attorney Barry C. Marsh, whose address is: 12901 Saratoga Avenue Saratoga, CA 95070-9998.

3. On December 19, 1963, the Board issued Physician's and Surgeon's Certificate No. C 24787 to Larry A. Epstein, 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. 800-2018-045250, and will expire on November 30, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-045250 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 9, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-045250 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. 800-2018-045250. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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1 **CULPABILITY**

2 9. Respondent agrees that, at a hearing, Complainant could establish a prima facie case
3 or factual basis for the charges in the Accusation, and that Respondent hereby gives up his right
4 to contest those charges.

5 10. Respondent does not contest that, at an administrative hearing, Complainant could
6 establish a prima facie case with respect to the charges and allegations in Accusation No. 800-
7 2018-045250, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. C
8 24787 to disciplinary action.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
10 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
11 Disciplinary Order below.

12 **ADDITIONAL CIRCUMSTANCES**

13 12. After the filing of the Accusation, Respondent produced over two hundred pages of
14 additional medical records, that were not previously provided as part of the certified records
15 Respondent produced during the investigation. Those additional records established that
16 Respondent had in fact been in regular contact with his patient while prescribing controlled
17 substances for pain management.

18 **CONTINGENCY**

19 13. This stipulation shall be subject to approval by the Medical Board of California.
20 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
21 Board of California may communicate directly with the Board regarding this stipulation and
22 settlement, without notice to or participation by Respondent or his counsel. By signing the
23 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
24 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
25 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
26 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
27 action between the parties, and the Board shall not be disqualified from further action by having
28 considered this matter.

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

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 24787 issued
9 to Respondent LARRY A. EPSTEIN, M.D., shall be and is hereby Publicly Reprimanded
10 pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This
11 Public Reprimand is issued in connection with Respondent's care and treatment of a patient as set
12 forth in Accusation No. 800-2018-045250, specifically Respondent's failure to obtain a narcotic
13 contract and conduct annual urine toxicology tests while prescribing controlled substances for
14 pain management. Respondent also failed to take appropriate steps to ensure the accuracy and
15 completeness of the medical records he produced during the Board's investigation.

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

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

1 this Decision.

2 Respondent shall submit a certification of successful completion to the Board or its
3 designee not later than 15 calendar days after successfully completing the course, or not later than
4 15 calendar days after the effective date of the Decision, whichever is later.

5 Respondent understands and agrees that failure to successfully complete the course in the
6 stated time shall constitute unprofessional conduct and grounds for further discipline.

7 2. WRITTEN PROTOCOL FOR RESPONDING TO RECORD REQUESTS. Within
8 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board for
9 its prior approval, a written protocol for responding to any and all requests for medical records.
10 The protocol shall include a description of the process to be followed when responding to a
11 request for records, a description of the training to be provided to all office staff who are
12 delegated the responsibility to produce records, and the procedure by which Respondent will
13 ensure the accurate and completeness of records production. Respondent understands and agrees
14 that failure to comply with this requirement shall constitute unprofessional conduct and grounds
15 for further discipline.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Barry C. Marsh. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

10/1/21

Larry A. Epstein, M.D.

LARRY A. EPSTEIN, M.D.

Respondent

I have read and fully discussed with Respondent Larry A. Epstein, 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:

10/1/2021

Barry C. Marsh

BARRY C. MARSH

Attorney for Respondent

ENDORSEMENT

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

DATED: October 10, 2021

Respectfully submitted,

ROB BONTA

Attorney General of California

JANE ZACK SIMON

Supervising Deputy Attorney General

Ana Gonzalez

ANA GONZALEZ

Deputy Attorney General

Attorneys for Complainant

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Exhibit A

Accusation No. 800-2018-045250

1 ROB BONTA
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2 JANE ZACK SIMON
Supervising Deputy Attorney General
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13 **Larry A. Epstein, M.D.**
14 **2500 Hospital Dr.**
Bldg. 11 Suite E
15 **Mountain View, CA 94040-4106**

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. C 24787,**

18 Respondent.

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21 **PARTIES**

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

25 2. On or about December 19, 1963, the Medical Board issued Physician's and Surgeon's
26 Certificate Number C 24787 to Larry A. Epstein, M.D. (Respondent). The Physician's and
27
28

1 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
2 herein and will expire on November 30, 2022, unless renewed.

3 JURISDICTION

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

7 4. Section 2004 of the Code states:

8 The board shall have the responsibility for the following:

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

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

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

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

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

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

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

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

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

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

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

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

28 (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.

...

7. Section 2242 of the Code states:

(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of the patient's practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

8. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

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10. Dilaudid is a trade name for hydromorphone hydrochloride. It is a dangerous drug as defined in section 4022 and a schedule II controlled substance as defined by section 11055, subdivision (d) of the Health and Safety Code. Its principal therapeutic use is relief of pain. Psychic dependence, physical dependence, and tolerance may develop upon repeated administration of narcotics; therefore, Dilaudid should be prescribed and administered with caution. Physical dependence, the condition in which continued administration of the drug is required to prevent the appearance of a withdrawal syndrome, usually assumes clinically significant proportions after several weeks of continued use.

11. Norco is a trade name for hydrocodone bitartrate with acetaminophen. Hydrocodone bitartrate is a semisynthetic narcotic analgesic and a dangerous drug as defined in section 4022 of the Business and Professions Code. Norco is a schedule II controlled substance and narcotic as defined by section 11055, subdivision (e) of the Health and Safety Code. Repeated administration of hydrocodone over a course of several weeks may result in psychic and physical dependence.

(Unprofessional Conduct: Gross Negligence, Repeated Negligent Acts; Prescribing Without Appropriate Medical Examination/Medical Indication and/or Inadequate Records)

12. Respondent Larry A. Epstein, M.D. is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or 2242 and/or 2266 in connection with his prescribing of controlled substances. The circumstances are as follows:

1 13. Respondent has practiced internal medicine since 1969. Respondent started seeing
2 Patient 1¹ in 1994. Respondent's medical records for Patient 1 show that in 2008 he started
3 prescribing this patient Norco for chronic pain. Beginning around 2010, through at least June
4 2020, the medical records and CURES² report show that Respondent prescribed this patient
5 Schedule II controlled substances including Dilaudid, Norco, and Adderall. Dilaudid and Norco
6 were prescribed to manage Patient 1's chronic pain; Adderall was prescribed to treat the patient's
7 attention deficit hyperactivity disorder (ADHD).

8 14. While Respondent conducted appropriate evaluation and ongoing assessment of
9 Patient 1's complaints of pain and ADHD, he failed to document necessary informed consent and
10 monitoring over time. Patient 1's medical records do not contain a narcotic contract or any urine
11 toxicology test during the years Respondent was prescribing Patient 1 with Schedule II controlled
12 substances for pain management and ADHD, thereby demonstrating that the patient was not
13 provided with the requisite consent for treatment with multiple controlled substances, and that
14 Respondent did not take the steps necessary to ensure proper usage of the prescribed medications.
15 The medical records do not document any visits between Respondent and Patient 1 between
16 September 8, 2014 and February 21, 2018, while Respondent continued to prescribe Dilaudid,
17 Norco, and Adderall.

18 15. Respondent is guilty of unprofessional conduct and Respondent's certificate is subject
19 to disciplinary action based on gross negligence, repeated negligent acts and/or prescribing
20 without a narcotic contract, urine toxicology testing, or an appropriate examination and/or
21 medical record of the examination, including, but not limited to the following:

22 A. Respondent prescribed controlled substances, including opiates for pain management
23 and Adderall for ADHD, without any narcotic contract.

24 B. Respondent prescribed controlled substances for pain management without any urine
25 toxicology tests during the prescribing period.

26 _____
27 ¹ Names redacted to protect privacy interests.

28 ² CURES (Controlled Substance Utilization Review and Evaluation System) is a database
of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the
public health, regulatory oversight agencies and law enforcement.

1 C. Respondent prescribed controlled substances for pain management without any medical
2 examination and/or documentation of a medical examination for over three years.

3 **DISCIPLINARY CONSIDERATIONS**

4 16. To determine the degree of discipline, if any, to be imposed on Respondent Larry A.
5 Epstein, M.D., Complainant alleges that on or about May 2, 2012, in a prior disciplinary action
6 titled *In the Matter of the Accusation Against Larry A. Epstein, M.D.* before the Medical Board of
7 California, in Case Number 03-2009-199044, Respondent's license was publicly reprimanded and
8 he was ordered to complete courses in prescribing practices, medical record keeping, and
9 clinician-patient communications, issued for failing to provide adequate documentation as to the
10 reasons for prescribing antibiotics for a patient from 2005 through 2009.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Medical Board of California issue a decision:

- 14 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 24787,
15 issued to Larry A. Epstein, M.D.;
- 16 2. Revoking, suspending or denying approval of Larry A. Epstein, M.D.'s authority to
17 supervise physician assistants and advanced practice nurses;
- 18 3. Ordering Larry A. Epstein, M.D., if placed on probation, to pay the Board the costs of
19 probation monitoring; and
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: JUN 09 2021

23 
24 WILLIAM PRASIFKA
25 Executive Director
26 Medical Board of California
27 Department of Consumer Affairs
28 State of California
Complainant

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