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

In the Matter of the Second Amended Accusation Against:	)	
VAN HUY VU, M.D.	)	Case No. 04-2011-213288
Physician's and Surgeon's Certificate No. G 71968	)	
Respondent.	)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on June 12, 2015.

IT IS SO ORDERED May 15, 2015.

MEDICAL BOARD OF CALIFORNIA

By: Dev Gnanadev MD
Dev Gnanadev, M.D., Chair
Panel B

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising 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 Second Amended Accusation Against: VAN HUY VU, M.D. 17822 Beach Blvd., #100 Huntington Beach, CA 92647 Physician's and Surgeon's Certificate No. G 71968 Respondent.	Case No. 04-2011-213288 OAH No. 2013030704 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Trina L. Saunders, Deputy Attorney General.

2. Respondent Van Huy Vu, M.D. ("Respondent") is represented in this proceeding by attorneys Raymond J. McMahon, Esq., and Henry Lewin, Esq., whose respective addresses are: Doyle, Schafer & McMahon, LLP, 8105 Irvine Center Drive, Ste. 520, Irvine, CA 92618 and

Law Offices of Lewin and Levin, 11377 Olympic Boulevard, Fifth Floor, Los Angeles, CA 90064.

3. On or about July 17, 1991, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 71968 to Van Hu Vu, 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 Second Amended Accusation No. 04-2011-213288 and will expire on October 31, 2016, unless renewed.

JURISDICTION

4. Second Amended Accusation No. 04-2011-213288 was filed before the Medical Board of California (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on February 6, 2015. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation.

5. A copy of Second Amended Accusation No. 04-2011-213288 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 Second Amended Accusation No. 04-2011-213288. 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 Second Amended 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 Second Amended Accusation No. 04-2011-213288, 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 Second Amended 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 further 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 Accusation No. 04-2011-213288 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding.

12. 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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 71968 issued to Respondent Van Huy Vu, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program 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 first.

3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of the Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program 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 b 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.

4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

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

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall

make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, 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 a monitor is approved to provide monitoring responsibility.

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

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

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, 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.

5. 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.

6. 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.

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

7. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is prohibited from supervising physician assistants.

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 and all terms and conditions of this Decision.

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 in California 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. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. 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 a clinical training 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 will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

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 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.

ACCEPTANCE

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

DATED: _____ _____

2/18/15

VAN HUY VU, M.D.
Respondent

I have read and fully discussed with Respondent Van Huy Vu, 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: February 19, 2015

RAYMOND J. McMAHON, Esq.
Doyle Schaffer McMahon, LLP
Attorney for Respondent

I have read and fully discussed with Respondent Van Huy Vu, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve as form and content.

DATED:

HENRY LEWIN, Esq.
Law Offices of Lewin & Lewin
Attorney for Respondent

ENDORSEMENT

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

VAN HUY VU, M.D.
Respondent

I have read and fully discussed with Respondent Van Huy Vu, 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: _____

RAYMOND J. McMAHON, Esq.
Doyle Schaffer McMahon, LLP
Attorney for Respondent

I have read and fully discussed with Respondent Van Huy Vu, 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: 02/17/15

HENRY LEWIN, Esq.
Law Offices of Lewin & Levin
Attorney for Respondent

ENDORSEMENT

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

Dated: February 20, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

TRINA L. SAUNDERS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 04-2011-213288

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 6, 2013
BY: J KELCHAK ANALYST

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

In the Matter of the Second Amended Accusation Against: VAN HUY VU, M.D. 9475 Heil Avenue, Suite D Fountain Valley, CA 92708-2258 Physician's and Surgeon's Certificate G 71968, Respondent.	Case No. 04-2011-213288 OAH Case No. 2013030704 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about July 17, 1991, the Board issued Physician's and Surgeon's Certificate number G 71968 to Van Huy Vu, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2016, unless renewed.

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JURISDICTION

3. This Second Amended 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 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.

"(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."

5. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

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

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6. Section 2264 of the Code states:

"The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct."

7. Section 2266 of the Code states: 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."

FIRST CAUSE FOR DISCIPLINE
(Gross Negligence)

8. Respondent is subject to disciplinary action under Code section 2234(b), in that Respondent performed a spinal cord stimulator implantation in patient H.O.[1] using unlicensed and inappropriate personnel and placed the patient's health and safety at risk. The facts and circumstances are as follows:

9. On or about February 17, 2011, Respondent percutaneously[2] implanted temporary spinal cord stimulator leads ("leads") in H.O.'s epidural[3] space. The temporary leads were implanted for a trial period to assess whether stimulation would relieve H.O.'s intractable back, hip and lower extremity pain.

10. The leads themselves were supplied by William ("Bill") Trujillo, a terminated employee of Boston Scientific who had stolen them from that company. Respondent knew that Mr. Trujillo had been terminated and that the leads came from Boston Scientific. Respondent nonetheless purchased the leads (as well as numerous other items) directly from Mr. Trujillo, and not through Boston Scientific, for a sum which was a small fraction of their usual cost.

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[1] The patient's name is abbreviated to protect her privacy.

[2] "Percutaneous" means administered, removed, or absorbed by way of the skin.

[3] "Epidural" means situated on or outside the dura mater, the tough, fibrous membrane forming the outermost of the three coverings of the brain and spinal cord.

Respondent never confirmed with Boston Scientific whether the leads were legitimately in the possession of Mr. Trujillo., and in fact, told a Boston Scientific representative, Jeff Christensen that he was using another company's products in H.O.'s implantation procedure.

11. Respondent then allowed Mr. Trujillo, who had no medical license, to assist him in H.O.'s procedure, but misrepresented his identity in his operative notes, calling him "John Simpson." Respondent also used leads that had expired two years before, and allowed Kevin Ly -- a licensed massage therapist who had no other medical certification or license -- to position the C-Arm Fluoroscope[4] during the procedure. He also allowed Stanley Anthony Agbulos, a licensed Physician Assistant, to administer the anesthetic (which was propofol, a potent narcotic) to H.O. Respondent did not sign the anesthesia record indicating that he was the supervising physician.

12. The following day, Jeff Christenson called officers from the Huntington Beach Police Department to go to Respondent's office to recover medical equipment and supplies worth approximately $143,980. Mr. Christensen had been informed that these were in Respondent's possession by Jennifer Bahu, one of Respondent's employees. Respondent initially refused to allow the officers access to his premises, but relented when the officers indicated they would obtain a search warrant if Respondent did not voluntarily allow them to proceed.

13. Respondent first told the investigating officers that he had no Boston Scientific items; however, the officers observed Boston Scientific labeled products in Respondent's office. Respondent then said he had lied to the officers because he was nervous and didn't know his rights. The items were removed and ultimately returned to Boston Scientific.

14. Allowing Mr. Trujillo, a terminated Boston Scientific employee with no medical license, to assist in the implantation, and implanting expired leads in H.O., is an extreme departure from the applicable standard of care, and placed H.O.'s health and safety at risk.

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[4] A C-Arm Fluoroscope is a machine used for examination of deep body structures. A "C-Arm" device, shaped like the letter "C," positions the fluoroscope above and under the patient for this process.

SECOND CAUSE FOR DISCIPLINE
(Dishonest and Corrupt Acts)

15. Respondent is subject to disciplinary action for dishonest and corrupt acts under code section 2234(c), in that (1) he purchased and used materials and equipment which Respondent knew or should have known were stolen; (2) he lied to police officers; and (3) he utilized a terminated employee of Boston Scientific in the procedure on H.O. who Respondent knew or should have known had stolen the very items being used. Each such act constitutes a dishonest and corrupt act that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

THIRD CAUSE FOR DISCIPLINE
(Gross Negligence)

16. Respondent is subject to disciplinary action under code section 2234(b), in that he was grossly negligent in the care rendered to Patient K.F. and caused the patient's death. The facts and circumstances are as follows.

17. K.F. was a 44-year-old male who was evaluated by Respondent for the first time on December 6, 2006. He was referred by a spine surgeon and presented with chronic low back pain as well as upper buttock pain with left leg radiation. The patient had a 15 year history of lower back pain.

18. K.F. underwent procedures by Respondent, including caudal catheter placement, and continued on a medical regimen that included hydrocodone, Soma, and Restoril.

19. On February 3, 2007, twelve days after his previous office visit and five days after Respondent performed a procedure, K.F. returned, indicating he lost his medication and needed a replacement.

20. In March 2007, K.F. indicated that he had been taking a larger amount of medication than prescribed and required an early refill of his medication. K.F was warned not to self-increase his medications.

21. On May 3, 2007, K.F. indicated that he was hospitalized for presenting a suicide risk. He denied current suicidal ideation. Despite this knowledge, there is no indication that Respondent gave K.F. a contract for safety at the time prescriptions were refilled.

22. On June 29, 2007, notes indicate that the patient's medications were refilled without any documentation of the actual medications that were prescribed. On the same date, K.F. died. The cause of death was indicated as combined effects of hydrocodone, fentanyl, carisoprodol, chlordiazepoxide, demoxepam, and quetiapine metabolite.

23. The Coroner's report demonstrated ten pills of carisoprodol prescribed by Respondent, had been used since the prescription was issued that day. In addition, the patient had been receiving medications from other providers, which had also been used.

24. Forty-four tablets of lorazepam 2 mg. were absent from the prescription provided by another doctor two weeks before.

25. When K.F. died there were ten carisoprodol pills missing from the bottle that was prescribed to him on the date of his death. The patient's death occurred in a setting where he had been prescribed two opioids in the form of fentanyl and hydrocodone. In addition, the patient was receiving controlled substances from multiple providers. Despite self-increasing his medications, being warned against doing so, and subsequently reporting that he lost his medications, Respondent did not alter his prescribing practices. It is essential for patient safety that when a health care team notes a patient self-increasing dosages of controlled substances that greater vigilance be exercised and procedures be put in place to prevent the patient from being able to self increase and put themselves at risk for overdose.

26. The patient had been hospitalized for suicide risk and there was no contracting for the patient's safety and no change in the prescribing routine to this patient. Potential suicide risk is an extremely important issue that mandates vigilance on the part of the health care team and requires contracting for safety if potentially lethal medications are prescribed. There was no investigation made at any time to the California Prescription Monitoring Program regarding K.F. The standard of care for prescribing controlled substances requires vigilance when a patient violates the agreement with the prescribing physician, such as either increasing or claiming to have lost medications.

27. Respondent committed the following extreme departures in violation of Code section 2234(b) in his care and treatment of K.F.

28. It is an extreme departure from the standard of care for a physician to fail to contract with a patient for safety, when it is known that the patient presents or may present a suicidal risk. Such a contract must be present in the patient chart when prescribing substances which provide an easy means for suicide.

29. It is an extreme departure from the standard of care for a physician to fail to contract with a patient for safety when it is known that the patient may be at risk for suicide in the face of prescribing medications with a synergistic potential to cause death by respiratory depression. Respondent carelessly did so, and prescribed to K.F. who had violated his opioid agreement twice, and in the wake of K.F. being recently hospitalized for suicidal ideation.

30. It is an extreme departure from the standard of care for Respondent to fail to change the way in which medications were prescribed to K.F. following two violations of the agreement. Vigilant care mandated that Respondent write small prescriptions and conduct frequent follow ups with K.F. Instead, Respondent's change in prescribing included introducing a stronger opioid, fentanyl into patient K.F.'s regimen.

FOURTH CAUSE FOR DISCIPLINE
(Gross Negligence)

31. Respondent is subject to disciplinary action under code section 2234(b), in that multiple incidents of gross negligence in the care rendered to Patient J.T. caused the patient's death. The facts and circumstances are as follows.

32. Respondent began seeing J.T. on March 26, 2007. At the time, she was a 21 year-old female recently diagnosed with cervical cancer. In addition, she had abdominal pain and lower back pain stemming from a motor vehicle accident three years before. On April 23, 2007, a physician assistant under the supervision of Respondent prescribed methadone 10 mg. p.o.t.i.d .[5], as well as MSIR 15 mg. b.i.d.[6] Notes from that date indicate the patient is taking methadone three times a day and doing very well with no side effects.

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[5] Three times per day, by mouth

[6] Two times per day

33. On May 21, 2007, the patient was seen by the same physician assistant, and the notes were cosigned by Respondent. The patient had been admitted for abdominal pain and vomiting for six days. The patient complained of abdominal discomfort. There was no indication in the notes that the patient was sedated.

34. J.T. died on May 23, 2007, two days after this visit. Notable was the fact that there were 96 methadone pills remaining of the 120 that had been prescribed two days before, indicating that 24 methadone pills were absent from the bottle. The Certificate of Death indicated acute polypharmacy intoxication. The autopsy report detected methadone 0.52 mg./ml. in the peripheral blood. Diazepam and fentanyl were also detected in the patient's blood. Prescriptions found indicated two additional physicians had prescribed to the patient. Prescriptions were found for Hydromorphone, oxycodone, tramadol, as well as other non-controlled substances.

35. J.T. died from an overdose of a combination of medications, including opiates (specifically methadone) prescribed by Respondent two days prior to the patient's death. This occurred in a setting where multiple prescribers provided medications, including controlled substances to this patient.

36. There is no documentation in the medical records demonstrating that Respondent discussed the risks of methadone.

37. Respondent committed the following extreme departures in violation of Code section 2234(b) in his care and treatment of J.T.

38. Respondent departed from the standard of care by escalating J.T.'s methadone dosage, by providing 10 mg. tablets at the time of the initial prescription. Two hundred and forty (240) mg. of Methadone over a two-day period alone could represent the cause of death of J.T. Methadone must be titrated slowly and carefully to avoid the problem which occurred here.

39. Respondent departed from the standard of care when responding to J.T.'s presentation with abdominal pain by escalating her opioid dosage with medications being delivered parenterally[7]. Prescribing increased opioids in the setting of abdominal pain can mask the

[7] "Parenterally" means taken into the body or administered in a manner other than through the digestive tract, as by intravenous or intramuscular injection.

presenting problem, putting the patient at risk for serious difficulties relating to delay of appropriate intervention.

FIFTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

40. Respondent is subject to disciplinary action under code section 2234(c), in that he committed repeated negligent acts in the care and treatment of patients H.O., K.F., and J.T. The circumstances are as follows:

41. Paragraphs 8 through 39, are incorporated by reference as though fully set forth herein.

42. In addition to what is described above, Respondent departed from the standard of care in his treatment of patient H.O. by: (1) misrepresenting the name of Mr. Trujillo in the operative notes; (2) supervising an unlicensed and unqualified person and allowing him to operate the C-Arm Fluoroscope during H.O.'s implantation procedure; (3) allowing an unlicensed and unqualified person to administer anesthetic to H.O.; and (4) failing to sign the anesthesia record from H.O.'s procedure as the supervising physician.

43. In addition to what is described above, Respondent departed from the standard of care in his treatment of patient K.F. by: (1) failing to request a CURES report detailing K.F's prescriptions upon learning of his hospitalization for presenting a suicide risk; (2) failing to request a CURES report detailing K.F.'s prescriptions following K.F.'s display of suspicious drug seeking behavior.

44. Each act constitutes a departure from the standard of care and together any and all of these actions constitute repeated negligent acts.

SIXTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

45. Respondent is subject to disciplinary action under code section 2266 for failing to maintain adequate and accurate records due to among other things, his failure: (1) to properly identify the individuals participating in H.O.'s medical procedure in the operative notes; (2) to sign the anesthesia record in H.O.'s medical chart; (3) to properly document K.F.'s treatment; (4) to

address K.F's drug abuse in the medical records; (5) to properly document J.T.'s treatment; and (6) to address J.T.'s drug abuse in the medical records.

SEVENTH CAUSE FOR DISCIPLINE
(Incompetence)

46. Respondent is subject to disciplinary action under code section 2234(d), in that the acts and omissions set forth above demonstrate a lack of professional knowledge and competence such that patients K.F., and J.T.'s health and safety were placed at risk.

PRAYER

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

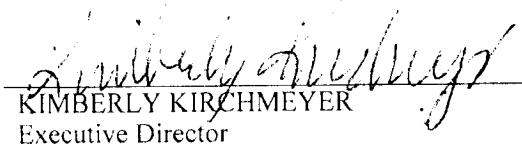
1. Revoking or suspending Physician's and Surgeon's Certificate Number G 71968, issued to Van Huy Vu, M.D.; and

2. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code; and

3. Ordering him, if placed on probation, to pay the costs of probation monitoring; and

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

DATED: February 6, 2015



KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California

Complainant