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

In the Matter of the Accusation Against:	)	
Nicholas John Capos, Jr., M.D.	)	**Case No. 02-2010-209278**
Physician's and Surgeon's Certificate No. G 41457	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 5, 2016.

IT IS SO ORDERED April 28, 2016.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Kimberly Kirchmeyer,
Executive Director

KAMALA D. HARRIS
Attorney General of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **NICHOLAS JOHN CAPOS, JR., M.D.** 1044 Live Oak Blvd. Yuba City, CA 95991 Physician's and Surgeon's Certificate No. G 41457, Respondent.	Case No. 02-2010-209278 OAH No. 2013110553 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

1. 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 John S. Gatschet, Deputy Attorney General.

2. Nicholas John Capos, Jr., M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

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3. On or about January 28, 1980, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 41457 to Nicholas John Capos, Jr., 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. 02-2010-209278 and will expire on July 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 02-2010-209278 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 22, 2013. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 02-2010-209278 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 02-2010-209278. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the 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.

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

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 02-2010-209278, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

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

CONTINGENCY

11. 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 surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 41457, issued to Respondent Nicholas John Capos, Jr., M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Medical Board of California.

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 02-2010-209278 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 02-2010-209278 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

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

DATED: March 4 2016

Nicholas John Capos Jr.
NICHOLAS JOHN CAPOS, JR., M.D.
Respondent

ENDORSEMENT

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

Dated: 3/4/2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

JOHN S. GATSCHET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 02-2010-209278

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 22 2013
BY: L. MONTALBANO ANALYST

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

In the Matter of the Accusation Against: **NICHOLAS JOHN CAPOS, JR., M.D.** 1044 Live Oak Blvd. Yuba City, CA 95991 Physician's and Surgeon's Certificate No. G 41457 Respondent.	Case No. 02-2010-209278 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Officer of the Medical Board of California, Department of Consumer Affairs.

2. On or about January 28, 1980, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 41457 to Nicholas John Capos, Jr., M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless renewed.

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JURISDICTION

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

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

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."

6. 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.

"(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 his or her 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."

7. 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.

8. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

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

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

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

DRUGS

9. Hydrocodone with acetaminophen – Generic name for the drugs Vicodin, Norco and others. Hydrocodone with acetaminophen is classified as an analgesic opiate agonist combination product used to treat moderate to moderately severe pain. Hydrocodone with acetaminophen is a

Schedule III Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.13(e). Hydrocodone with acetaminophen is a Dangerous Drug pursuant to California Business and Professions Code section 4022 and a Schedule III Controlled Substance pursuant to California Health and Safety Code section 11056(e).

10. Oxycodone – Generic name for the drugs Oxycontin, Roxicodone and others. Oxycodone is an opiate agonist used to treat moderate to severe pain. Oxycodone is a Schedule II Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.12(b). Oxycodone is a Dangerous Drug pursuant to California Business and Professions Code section 4022 and a Schedule II Controlled Substance pursuant to California Health and Safety Code section 11055(b).

11. Oxycodone with acetaminophen – Generic name for the drugs Endocet, Percocet and others. Oxycodone with acetaminophen is classified as an analgesic opiate agonist combination product used to treat moderate to moderately severe pain. Oxycodone with acetaminophen is a Schedule II Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.12(b). Oxycodone with acetaminophen is a Dangerous Drug as defined by California Business and Professions Code section 4022 and a Schedule II Controlled Substance pursuant to California Health and Safety Code section 11055(b).

12. Oxymorphone – Generic name for the drug Opana and others. Oxymorphone is an opiate agonist used to treat moderate to severe pain. Oxymorphone is a Schedule II Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.12(b). Oxymorphone is a Dangerous Drug as defined by California Business and Professions Code section 4022 and a Schedule II Controlled Substance pursuant to California Health and Safety Code section 11055(b).

13. Promethazine with codeine syrup – Generic for the drug Phenergan with Codeine and others. Promethazine with codeine syrup is an antihistamine and antitussive agent used to temporarily relieve cough and upper respiratory symptoms associated with allergy or the common cold. Promethazine with codeine syrup is a Schedule V Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.15(c). Promethazine with codeine syrup is a

Dangerous Drug as defined by California Business and Professions Code section 4022 and a Schedule V Controlled Substance pursuant to California Health and Safety Code section 11058(c).

14. Zolpidem tartrate – Generic name for Ambien and others. Zolpidem tartrate is classified as a psychotropic agent used for the short-term treatment of insomnia. Zolpidem tartrate is a Schedule IV Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.14(c). Zolpidem tartrate is a Dangerous Drug as defined by California Business and Professions Code section 4022 and a Schedule IV Controlled Substance pursuant to California Health and Safety Code section 11057(d).

15. Methadone – Generic name for the drugs Methadose and others. Methadone is an opiate agonist used to treat chronic severe pain, as well as opiate withdrawal and dependence. Methadone is a Schedule II Controlled Substance pursuant to Code of Federal Regulations Title 21 Section 1308.12(c). Methadone is a Dangerous Drug pursuant to California Business and Professions Code section 4022 and a Schedule II Controlled Substance pursuant to California Health and Safety Code section 11055(b).

FIRST CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient N.B.

16. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient N.B. The circumstances are as follows:

17. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient N.B. was a 29-year-old patient initially seen by Respondent on May 21, 2008 for palpitations and chest pain. He had a history of non-obstructive hypertrophy, systemic arterial hypertension, prior auto crash with trauma to abdomen, prior mugging with head trauma with recurrent headaches, and erectile

dysfunction. It was noted that the patient was visiting a pain specialist who did perform lumbar and cervical epidurals.

18. The patient had been prescribed heavily for pain medication. However, the patient's medical records did not document any assessment of the patient's level of pain or periodic re-evaluation, no treatment plans for pain management, no discussion of risks and benefit of long term usage, and obtain additional evaluation from pain specialists.

19. Examination was normal. Respondent's assessment reported post trauma; however, Respondent did not note any level of pain, abnormal examination, or tenderness. Patient N.B. returned to see Respondent multiple times between June 24, 2008 and July 13, 2010. Respondent noted normal physical examinations but pain medication was prescribed or refilled on each visit.

20. On October 12, 2010, Respondent recorded the patient's symptoms as severe lumbar spine column arthralgias, diarrhea, and erectile dysfunction. Examination was reported as normal. Respondent renewed N.B.'s pain medications even though his examination was normal with no complaint of pain.

21. On April 2, 2012, N.B. was seen for ingrown toenail polyarthritic pain. Respondent did not indicate the level of pain or any abnormal findings in the physical examination, but he renewed the pain medications. The patient's prescription in this month peaked to about 10 times the dose the patient had been receiving 3 years previously.

22. Respondent last saw the patient on October 30, 2012. In only 2 of the patient's 35 visits did Respondent document present pain problems and there was no assessment of the level of pain, no treatment plan, and no discussion of the risks and benefits of opioid treatment. During other follow up visits, Respondent prescribed excessive multiple pain medications without documented symptoms of medical indication.

23. In August 2009, the patient was receiving prescriptions from various providers, including APAP/Hydrocodone 325mg (240 tablets), Oxycontin 80mg (240 tablets) for a total of 480 tables per month. By April 2012, Respondent prescribed for the patient APAP/Hydrocodone

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325mg (1,500 tablets), Oxycontin 30mg (1,600 tablets), Methadone 10mg (1,200 tablets), and Opana ER 40mg (300 tablets). This represented a total of 4,600 tablets per month, which was 10 times more medication than the patient was receiving in 2009.

24. Respondent's care and treatment of N.B. was grossly negligent in the following respects:

1. Respondent increased the patient's pain medication prescription without assessment of the patient's pain and physical status.

2. Respondent failed to document any discussion with the patient regarding the risks of long term opioid usage.

3. Respondent did not document a treatment plan or treatment objectives for long term pain management.

4. Respondent did not refer the patient to a pain specialist for consultation.

25. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

SECOND CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

26. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient N.B. prior to prescribing controlled substances and dangerous drugs.

27. Paragraphs 17 through 24 are repeated here as more fully set forth above.

28. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of N.B. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

THIRD CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

29. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to N.B.

30. Paragraphs 17 through 24 are repeated here as more fully set forth above.

31. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of N.B. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

FOURTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

32. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient N.B. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

33. Paragraphs 17 through 24 are repeated here as more fully set forth above.

34. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of N.B. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

FIFTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient A.S.

35. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient A.S. The circumstances are as follows:

36. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient was an 85-year-old male who first saw Respondent on January 3, 2012 and whose last visit was on October 16, 2012. Respondent had 13 documented visits with this patient.

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37. The reason patient A.S. began treatment with Respondent is clearly identified in the patient's chart. Respondent noted that the patient had a history of chronic pain, degenerative disc disease, and knee and hip pain. The evaluation and treatment plan for the first visit is not legible.

38. Medical records for August 1, 2012 documented that patient had a history of chronic atrial fibrillation, embolic CVA, systemic arterial hypertension, atherosclerosis, prostate cancer (pelvic radiation), spondylitis, and chronic pain.

39. Respondent made minimal notes for each visit. It appears that a physical exam was performed each time but without detail. Respondent makes no note of lab reports, EKG, Echocardiogram report, heart failure evaluation, level of pain evaluation, assessment of chronic pain syndrome and degenerative joint disease, or referral for additional evaluation.

40. The patient's atrial fibrillation was managed by Respondent while anticoagulation was managed by Kaiser or Sutter. There is no documentation in the patient's chart that Respondent performed any work up for atrial fibrillation or adequate rate control. The patient did not have a 2-D echo, or a blood test, or assessment for heart failure. He did have a Holter monitor performed with no further work up by Respondent. In addition, Respondent noted that the patient had peripheral vascular disease, but there was no documentation as to symptoms or any evaluation of that condition by Doppler or ankle-brachial indices.

41. The patient was also prescribed medications for essential hypertension with no evaluation of renal functions and no evaluation of cholesterol lipids or any side effects from statins or liver function. During physical exams on office visits, Respondent performed cardiovascular examinations but there were essentially no follow up lab work or even a basic routine electrocardiogram performed. The patient's medical records failed to demonstrate the patient was under adequate cardiac care for his condition.

42. Respondent failed to document the level of the patient's pain or note a detailed musculoskeletal examination, the level of joint involvement, or level of ambulation. There was no workup of any sort performed including x-rays or blood workup to assess the patient's chronic

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pain syndrome and degenerative joint disease. Furthermore, there was no treatment plan, no discussion of the risks or benefits of high opioid treatment, and no documentation of referral to specialist consultation for pain management.

43. During the 10 months Respondent treated A.S., Respondent prescribed Atorvastatin 10mg; metoclopramide, 5mg along with other medication prescribed by other providers.

44. A review of pharmacy records and CURES history reveals that the patient was on multiple controlled substances. The doses of which were tripled in the three months Respondent treated A.S.

45. In January 2012, Respondent prescribed the following medications for A.S.: APAP/Hydrocodone 325mg (240 tablets); Oxycodone 30mg (480 tablets); Methadone 10mg (240 tablets); and Opana ER 40mg (240 tablets) for a total of 1,200 tablets per month.

46. Three months later in April, 2012, Respondent prescribed the following medications to A.S.: APAP/Hydrocodone 325mg (600 tablets); Oxycontin 80mg (120 tablets); Oxycodone 30mg (900 tablets); Methadone 10mg (900 tablets); and Opana ER 40mg (240 tablets), for a total of 2,760 tables per month.

47. Respondent's care and treatment of A.S. was grossly negligent in the following respects:

1. Respondent failed to properly and adequately evaluate the cardiac care of the patient including his atrial fibrillation.
2. Respondent did not document a treatment plan or treatment objectives for long term pain management.
3. Respondent increased the patient's pain medication prescription without assessment of the patient's pain and physical status.
4. Respondent failed to document any discussion with the patient regarding the risks of long term opioid usage.
5. Respondent did not refer the patient to a pain specialist for consultation.

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48. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

SIXTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

49. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient A.S. prior to prescribing controlled substances and dangerous drugs.

50. Paragraphs 36 through 47 are repeated here as more fully set forth above.

51. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of A.S. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

SEVENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

52. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to A.S.

53. Paragraphs 36 through 47 are repeated here as more fully set forth above.

54. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of A.S. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

EIGHTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

55. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient A.S. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

56. Paragraphs 36 through 47 are repeated here as more fully set forth above.

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57. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of A.S. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

NINTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient B.C.

58. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient B.C. The circumstances are as follows:

59. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient B.C. was a 31-year-old male seen by Respondent from November 11, 2011, until October 17, 2012. Respondent treated B.C. for 15 documented visits during this period.

60. B.C. was first seen for hypertension. Patient gave a history of chest pain, nonexertional, and a history of a ruptured left Achilles tendon. Respondent diagnosed benign hypertension without heart failure; Family history of ischemic heart diseases; Lumbago; and, ruptured Achilles tendon. Respondent did not assess the patient level of pain or indications of pain. Respondent prescribed pain pills and antihypertensives.

61. The patient's medical records documented that he had a history of questionable mild CVA while in jail, old trauma from ankle fracture; and gun shot wound to his left thigh. He stated he was trying to cope with moderate to severe pain. It was noted that he was seeking an orthopedic surgical consultation but no record indicated that this had been done.

62. The patient gave a history of pleurisy but Respondent did not note the patient's level of pain and he did not do a workup for pleurisy. The patient's blood pressure was uncontrolled but Respondent made no change in blood pressure medications.

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63. The patient's medical records documented medical indications for pain management. However, Respondent makes no note of any discussions with the patient regarding risks and benefits of high opioid treatment; the patient's history of pain management; any evaluation or workup of the patient's pain; no re-assessment of recurring symptoms; no treatment plan; and no referral to a pain specialist.

64. The pharmacy records and CURES history for B.C. show that he was on multiple controlled substances. The highest volume during this period was a total of 2,940 tablets in May 2012, including APAP/Hydrocodone 325mg (1,500 tablets); Oxycodone 30mg (840 tablets); Methadone 10mg (600 tablets).

65. Respondent's care and treatment of B.C. was grossly negligent in the following respects:

1. Respondent failed to properly assess the patient's pain or determine its etiology.
2. Respondent failed to discuss with the patient the risks and benefits of opioid treatment and the patient's own history of pain management.
3. Respondent failed to re-assess the patient's recurring symptoms.
4. Respondent failed to make a treatment plan for the patient or refer the patient to a pain specialist.

66. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

TENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

67. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient B.C. prior to prescribing controlled substances and dangerous drugs.

68. Paragraphs 59 through 65 are repeated here as more fully set forth above.

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69. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of B.C. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

ELEVENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

70. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to B.C.

71. Paragraphs 59 through 65 are repeated here as more fully set forth above.

72. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of B.C. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

TWELFTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

73. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient B.C. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

74. Paragraphs 59 through 65 are repeated here as more fully set forth above.

75. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of B.C. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

THIRTEENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient J.S.

76. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient J.S. The circumstances are as follows:

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77. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient J.S. was 26-year-old male treated by Respondent from January 13, 2012 through October 16, 2012. During the 10 month period, Respondent documented 9 visits.

78. For the initial visit, Respondent did not document why the patient was seen. From the minimal notes, it appeared initial visit diagnoses were possible relapsing pleurisy and possibly virus chest cold. The patient also was a victim of stabbing 6 years before the initial visit with Respondent, and two months prior, the patient had been in a car accident. No tests or evaluation was documented, including EKG, chest x-ray, or blood tests. No assessment or re-assessment of patient's level of pain, physical and psychological status, history of pain management, or history of drug abuse. The patient was prescribed several narcotics including methadone and was told to return in a month.

79. The patient returned on February 7, 2012. It was noted that pleurisies had improved. Respondent conducted a physical examination and reported as normal including a full cardiovascular examination. The patient's ambulation appeared to be normal. However, even with no significant medical indications, Respondent renewed the patient's narcotic prescriptions.

80. During the next seven visits, the medical records do not document any new symptoms, evaluation of pain, lab work, or any test reports. However, the patient's narcotics were renewed.

81. On November 20, 2012, the patient had his narcotics prescriptions refilled; however, no records were found documenting that Respondent examined the patient. Throughout Respondent's treatment of J.S., his physical examinations were reported as normal without approved medical indications. However, the patient was given narcotics routinely and filled each month. During his treatment of the patient, Respondent prescribed ever increasing high dosages of controlled substances and dangerous drugs including: Opana, Acetaminophen, Hydrocone, and Methadone.

82. Respondent's care and treatment of J.S. was grossly negligent in the following respects:

1. Respondent prescribed narcotics without significant medical indications, assessment of patient's level of pain, physical and psychological status, history of pain management, or history of drug abuse.

2. Respondent failed to perform any work-up or lab tests for the patient.

3. Respondent did not discuss with the patient the risks of long term narcotic usage.

4. Respondent did not develop a treatment plan or objective for the patient's long term pain management.

5. Respondent did not refer the patient to a pain specialist for consultation.

83. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

FOURTEENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

84. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient J.S. prior to prescribing controlled substances and dangerous drugs.

85. Paragraphs 77 through 82 are repeated here as more fully set forth above.

86. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of J.S. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

FIFTEENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

87. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to J.S.

88. Paragraphs 77 through 82 are repeated here as more fully set forth above.

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89. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of J.S. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

SIXTEENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

90. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient J.S. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

91. Paragraphs 77 through 82 are repeated here as more fully set forth above.

92. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of J.S. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

SEVENTEENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient M.B.

93. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient M.B. The circumstances are as follows:

94. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient was a 22-year-old male treated by Respondent from October 12, 2011 through October 29, 2012. M.B. had 24 visits with Respondent in that year.

95. Respondent did not clearly document the reason for the patient initial visit on October 12, 2011. The patient gave a history of fracture of his hip from a car accident. The duration of the pain and severity of the fracture were not noted. The patient also had a history of

multiple gunshot wounds, eye wounds, and history of smoking marijuana for pain. In addition, the patient gave a family history of congestive heart failure and ischemic heart disease.

96. During this initial visit, Respondent conducted a thorough physical examination. No labs or EKGs were done. Respondent did not document any assessment of the patient's level of pain, current psychological status, or treatment plan. The patient was told to return in three weeks. Respondent prescribed narcotics with the following diagnosis: Hip Joint Replacement, which was written on a West Coast Pharmacy prescription verification fax sheet.

97. The patient returned on November 10, 2011 for a follow-up appointment. Respondent prepared a brief note listing narcotics to be prescribed along with four diagnoses: shortness of breath; simple chronic bronchitis; one eye near normal; and family history of ischemic heart diseases. However, Respondent did not document any symptoms of pain or level, or any assessment of the patient's shortness of breath even though he was on multiple inhalers. Respondent did not order any lab work or other tests.

98. During the remainder of the patient's multiple routine bi-weekly follow up visits with Respondent, the medical records documented that the patient had physical examinations most of the time, which were normal. On June 15, 2012, the patient had an EKG done, which was eight months after his initial complaint for shortness of breath. The result was normal.

99. During his treatment of the patient, Respondent prescribed ever increasing high dosages of controlled substances and dangerous drugs including: Acetaminophen and Hydrocone. At each of these visits, Respondent prescribed controlled substances with refills. However, Respondent did not document any re-evaluation of the patient's pain level; did not re-evaluate treatment plan; and did not refer the patient for specialist consultation.

100. Respondent's care and treatment of M.B. was grossly negligent in the following respects:

1. Respondent prescribed narcotics without significant medical indications, assessment of patient's level of pain, physical and psychological status, history of pain management, or history of drug abuse.

2. Respondent failed to perform necessary work-up or lab tests for the patient.

3. Respondent did not discuss with the patient the risks of long term narcotic usage, or discuss the issues of the patient use of marijuana for pain management.

4. Respondent did not develop a treatment plan or objective for the patient's long term pain management.

5. Respondent did not refer the patient to a pain specialist for consultation.

101. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

EIGHTEENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

102. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient M.B. prior to prescribing controlled substances and dangerous drugs.

103. Paragraphs 94 through 100 are repeated here as more fully set forth above.

104. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of M.B. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

NINTEENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

105. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to M.B.

106. Paragraphs 94 through 100 are repeated here as more fully set forth above.

107. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of M.B., and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

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TWENTIETH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

108. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient M.B. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

109. Paragraphs 94 through 100 are repeated here as more fully set forth above.

110. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of M.B. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

TWENTY-FIRST CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient T.W.

111. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient T.W. The circumstances are as follows:

112. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient T.W. was a 21-year-old, female who suffered a traffic accident in 1998. She suffered a spinous fracture without displacement and with no cervical instability. A full neurological examination was normal. The patient was put on a short course of Vicodin and was told she could return to work within a few weeks. The patient was later seen again in the hospital with dizziness but signed out against medical advice. The patient was later admitted to hospital with cocaine overdose, had a history of alcohol abuse, and was discharged without any complications.

113. T.W. was first seen by Respondent on September 8, 2005. Respondent's examination of T.W. was recorded as normal with no severe distress and no critical illness.

114. On September 19, 2008, Respondent documented that the patient had history of recurrent pleurisy since the accident. However, the patient records do not show any further work-up or assessment. On April 1, 2009, there is a referral fax to another physician for a chest pain evaluation in the patient chart. However, there is no report documenting the completion date and findings from the evaluation.

115. Starting from the initial visit, Respondent saw the patient multiple times. The majority of her physical examinations appeared normal, except a diagnosis of possible polyarticular arthritis. In an individual so young, Respondent conducted no work-up as to the etiology of the arthritis, which could have been cause by a variety of factors.

116. There was no documentation that Respondent ever re-evaluated her history of pain or referred her to a pain specialist for further evaluation. Respondent did not refer her to a substance abuse counselor for treatment, although Respondent knew this patient had a history of alcohol and street drug abuse. However, Respondent did continue the patient on oral narcotic medication. During his treatment of the patient, Respondent proscribed ever increasing high dosages of controlled substances and dangerous drugs including: Norco, Vicodin, Oxycontin, Soma, Oxycodone, Methadone, and Percocet.

117. The patient's chart recorded where patient had her prescription filled. There were notes indicating that local pharmacies and pharmacies in Sacramento were refusing to fill her prescriptions due to concerns about Respondent's diagnosis and the excessive amount of narcotics prescribed.

118. Respondent's care and treatment of T.W. was grossly negligent in the following respects:

1. Respondent's excessive prescribing of narcotics without current medical indications in a patient with a history of drug abuse and noncompliance.
2. No work-up or lab test on patient's given symptoms.
3. No documented discussion with patient regarding risks of long term usage.
4. No documented treatment plans or objectives for long term pain management.
5. No further referrals to pain specialist for consultation.

6. No referrals to substance abuse counseling.

119. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

TWENTY-SECOND CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

120. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient T.W. prior to prescribing controlled substances and dangerous drugs.

121. Paragraphs 112 through 118 are repeated here as more fully set forth above.

122. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of T.W. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

TWENTY-THIRD CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

123. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to T.W.

124. Paragraphs 112 through 118 are repeated here as more fully set forth above.

125. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of T.W. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

TWENTY-FOURTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

126. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient T.W. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

127. Paragraphs 112 through 118 are repeated here as more fully set forth above.

128. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of T.W. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

TWENTY-FIFTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient C.W.

129. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient C.W. The circumstances are as follows:

130. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. C.W. was a 26-year-old female treated by Respondent from January 5, 2012 through October 24, 2012. During that 10 month period, Respondent documented thirteen visits.

131. The reasons the patient made her initial appointment with Respondent are not clearly documented. The patient's history was that she had been admitted to the hospital with an initial diagnosis of possible congestive heart failure (CHF) which was ruled out. Patient was diagnosed to have polyarthritic arthritis and possible bicuspid pulmonic valve. Respondent noted that the patient had earlier been in a car accident; however, the details were not clear. There is a note in the patient's chart of a release from the patient for Mercy General Hospital to release the patient's EKG, Echo, chest X-ray, and discharge summary. However, no such records were found in the chart. Respondent did not document that the patient's bicuspid pulmonic valve was ever evaluated by any cardiac testing and the level of stenosis was not clear.

132. During his treatment, Respondent put C.W. on heavy doses of narcotics for polyarthritic disease, which was a very aggressive diagnosis for such a young patient. Respondent had performed no specific workup including blood work or x-rays. Respondent

continued the patient on multiple narcotics with no re-assessment, no level of pain evaluation, no level of improvement, or any change of medications based on her symptoms. During his treatment of the patient, Respondent prescribed ever increasing high dosages of controlled substances and dangerous drugs including: Acetaminophen, Oxycodone, Hydrocodone, and Hydromorphone. Respondent's follow up notes for the patient appear to be logs of when and where the patient had her narcotics filled at various pharmacies.

133. During this time frame, the patient did not have any blood tests though she was on multiple pain medications. It was noted on September 26, 2012 that the patient had "good pain relief"; however, prescription records do not show any correlation that Respondent decreased her medications with her improvement in pain.

134. No records document that Respondent considered referring C.W. to a pain specialist or a rheumatologist or an orthopedic surgeon for further workup, or that he discussed the side effects of long term usage.

135. Respondent's care and treatment of C.W. was grossly negligent in the following respects:

1. Respondent prescribed excessive narcotics for polyarthritis in a young female without adequate and necessary testing.
2. Respondent's work-up in a young individual with multiple complaints and minimal physical findings were inadequate.
3. Respondent did not re-evaluate or order lab tests on the patient's symptoms of shortness of breath with symptoms suggestive of possible bronchospastic lung disease.
4. Respondent did not evaluate the patient's level of pain, psychological status and function.
5. Respondent did not discuss with the patient the risks of long term narcotic usage.
6. Respondent made no treatment plans or objectives for the patient's long term pain management.
7. Respondent did not refer the patient to a pain specialist for consultation.

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136. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

TWENTY-SIXTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

137. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct and appropriate prior examination of patient C.W. prior to prescribing controlled substances and dangerous drugs.

138. Paragraphs 130 through 135 are repeated here as more fully set forth above.

139. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of C.W. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

140. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to C.W.

141. Paragraphs 130 through 135 are repeated here as more fully set forth above.

142. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of C.W. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

143. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient C.W. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

144. Paragraphs 130 through 135 are repeated here as more fully set forth above.

145. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of C.W. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

TWENTY-NINTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient R.W.

146. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient R.W. The circumstances are as follows:

147. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient R.W. was a 26-year-old male seen for treatment by Respondent from March 8, 2012 until October 26, 2012. During that seven-and-a-half months, Respondent documented ten visits.

148. R.W.'s initial visit was related to syncope and chest pain. Respondent documented that the patient had a history of trauma in the past with gunshot wound to the left leg, the left arm, and a stab wound in the left hand. He also had systemic arthritis. R.W. had a past history of alcohol, cocaine, and amphetamine abuse.

149. His physical examination was unremarkable. No limitations in musculoskeletal examination were noted, nor was the level of the patient's pain. Respondent noted no specific diagnoses, except for suspicion for hepatitis C, lung abscess, and possible scoliosis. However, Respondent did not order any lab tests to further evaluate the patient's syncope and chest discomfort including radiological workup. Not until November 8, 2012, seven months after the initial complaint, did Respondent order an EKG. The report was normal. Still, at the initial visit, Respondent prescribed narcotics for the patient.

150. During treatment with Respondent, the patient was seen 10 times and Respondent renewed his narcotics prescriptions on each visit. However, Respondent never noted the level of

pain or improvement of symptoms. Respondent did not document any completed workup or any planned workup and no referral for specialist evaluation or consultation. During his treatment of the patient, Respondent prescribed ever increasing high dosages of controlled substances and dangerous drugs including: Oxycodone, Codeine Syrup, Norco, and Methadone.

151. Respondent's care and treatment of R.W. was grossly negligent in the following respects:

1. Respondent continued narcotic prescriptions for his patient with no evaluation of pain, current medical indications, or any workup.

2. Respondent performed no re-evaluation nor did he order lab tests for his patient given the patient's symptoms of syncope and chest discomfort.

3. Respondent performed no evaluation of patient's level of pain, psychological status and function with marijuana use.

4. Respondent did not discuss with his patient the risks of long term narcotics usage.

5. Respondent did not document treatment plans or objectives for long term pain management for his patient.

6. Respondent did not refer his patient to a pain specialist for consultation.

152. Respondent's conduct as described above is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

THIRTIETH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

153. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient R.W. prior to prescribing controlled substances and dangerous drugs.

154. Paragraphs 147 through 151 are repeated here as more fully set forth above.

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155. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of R.W. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

THIRTY-FIRST CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

156. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to R.W.

157. Paragraphs 147 through 151 are repeated here as more fully set forth above.

158. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of R.W. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

THIRTY-SECOND CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

159. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient R.W. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

160. Paragraphs 147 through 151 are repeated here as more fully set forth above.

161. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of R.W. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

THIRTY-THIRD CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(b)]
(Gross Negligence)
Patient M.C.

162. Respondent is subject to disciplinary action under section 2234(b) of the Code in that he committed acts of gross negligence and unprofessional conduct during the care and treatment of patient M.C. The circumstances are as follows:

163. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Patient M.C. was a 36-year-old female, who made an appointment to see Respondent as an undercover operative to investigate Respondent for prescribing controlled substances without medical indication.

164. M.C. had four appointments with Respondent from March 27, 2012 to July 17, 2012.

165. The initial visit was for cardiovascular examination. Patient M.C. reported to Respondent that she had been referred from an urgent care center because she had an abnormal cardiac auscultation. Patient M.C. told Respondent that she had originally gone to the urgent care center for a knee injury which had resolved.

166. Respondent performed a full physical examination including a thorough cardiovascular examination. Cardiac examination was reported to be totally normal and this was conveyed to the patient. At the end of visit, the patient requested pain pills. Even though M.C. told Respondent that she could not remember where the pain was, he performed no evaluation or assessment of the reported pain and did not discuss the side effects of the medication with the patient. Instead, he called in a prescription for Vicodin to the CVS pharmacy. The patient was advised to follow up on September 18, 2012.

167. Patient M.C. was again seen on May 29, 2012. The patient told Respondent that the Vicodin made her nauseated. During this office visit, there was no documentation of any indication for her narcotic use. The patient did not report any new symptoms except she wanted something nicer and stronger than the Vicodin. Respondent agreed to change prescription but he did not have the proper prescription pad. Respondent told the patient to return on the following Tuesday.

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168. During this period, Respondent prescribed and refilled narcotics requested by the patient with no medical indications including: Vicodin, Ambien, Percocet, Oxycodone, and Promethazine with Codeine. Respondent did no evaluation of the patient's pain or level of pain, any assessment of her psychological status and function, or any discussion with her of the risks of narcotics.

169. Respondent's conduct of prescribing narcotics without any medical indication for pain or any physical findings that would warrant narcotics, as described above, is gross negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(b) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

THIRTY-FOURTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2242]
(Prescribing without appropriate prior exam)

170. Respondent is subject to disciplinary action under section 2242 of the Code in that he failed to conduct an appropriate prior examination of patient M.C. prior to prescribing controlled substances and dangerous drugs.

171. Paragraphs 163 through 169 are repeated here as more fully set forth above.

172. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of M.C. in violation of section 2242 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

THIRTY-FIFTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 725]
(Excessive Prescribing)

173. Respondent is subject to disciplinary action under section 725 of the Code in that he prescribed excess quantities of controlled substances and dangerous drugs to M.C.

174. Paragraphs 163 through 169 are repeated here as more fully set forth above.

175. Respondent's conduct as described above constitutes excessive prescribing of controlled substances and dangerous drugs in the care and treatment of M.C. and is unprofessional conduct and grounds for discipline against Respondent's physician's and surgeon's certificate.

THIRTY-SIXTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2266]
(Inaccurate Medical Records)

176. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for patient M.C. Specifically, Respondent failed to adequately record histories, physicals, accurate assessments of the patient's pain, medications prescribed, and treatment notes.

177. Paragraphs 163 through 169 are repeated here as more fully set forth above.

178. Respondent's conduct as described above constitutes unprofessional conduct in the care and treatment of M.C. in violation of section 2266 of the Code, and provides cause for discipline against his physician's and surgeon's certificate.

THIRTY-SEVENTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(c)]
(Repeated Negligence)
Patient R.B.

179. Respondent is subject to disciplinary action under section 2234(c) of the Code in that he committed acts of repeated negligence and unprofessional conduct during the care and treatment of patient R.B. The circumstances are as follows:

180. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Respondent first saw patient R.B. on February 7, 2001. He continued treating this patient until the patient's death in 2012.

181. Patient R.B. had documented coronary artery disease, post myocardial infarction, post stenting, and had significant three-vessel coronary disease, peripheral vascular disease, cardiac arrhythmias, and congestive heart failure. His risk factors included diabetes, hypertension, nicotine abuse, heavy alcohol use, and a history of noncompliance.

182. During this time period, the patient was adequately followed for his multiple cardiac problems. The patient was seen multiple times with adequate care documented.

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183. Respondent referred the patient for pain management and he underwent spinal anesthesia with limited benefit. During his follow up, Respondent noted that the patient did have an addictive personality and a history of non-substantiated complaints which did not appear to be genuine to obtain pain pills. Respondent noted the patient's severe lumbar sacral arthritis and he was referred for further treatment to a pain specialist.

184. Indications for narcotics appear to be genuine; however, the doses appear to be excessive in view of the patient's recorded symptoms. Respondent did not advise R.B. about the risks for long term use of narcotics, especially in a patient with addictive personality.

185. Respondent's conduct of prescribing narcotics for a patient who had sought narcotics prescriptions without indication and who had an addictive personality without advising the patient of the long-term risks of narcotics use, as described above, is negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(c) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(c)]
(Repeated Negligence)
Patient T.C.

186. Respondent is subject to disciplinary action under section 2234(c) of the Code in that he committed acts of repeated negligence and unprofessional conduct during the care and treatment of patient T.C. The circumstances are as follows:

187. Respondent is board certified in internal medicine with a subspecialty in cardiovascular disease. He is not certified in pain management or addiction medicine. He has medical offices in Yuba City and Grass Valley, California. The patients mentioned in this accusation were treated at one or both of Respondent's offices. Respondent treated patient T.C. from November 5, 2010 until July 9, 2012. The patient died on June 29, 2012 of sickle cell anemia with severe complications. He had amputation ischemic ulceration bone infarctions and pulmonary emboli. T.C. had a history of amputation and multiple admissions to the emergency room, finally resulting in death from his severe sickle cell anemia.

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188. T.C. had been treated at UC Davis Medical Center and had been prescribed controlled substances for pain by a previous specialist starting in March 2010. This pain management was continued by Respondent when he assumed care of the patient in November 2010.

189. During treatment with Respondent, T.C.'s medical records documented multiple visits. Respondent's examinations appeared to be appropriate and there were medical indications justifying narcotic pain medication for T.C. However, Respondent did not note any discussion with the patient regarding the risks from long term narcotics use.

190. Respondent's conduct of prescribing high dose narcotics for a patient without advising the patient of the long-term risks of narcotics use, as described above, is negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(c) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

THIRTY-NINTH CAUSE FOR DISCIPLINE
[Bus. & Prof. Code § 2234(c)]
(Repeated Negligence)

191 Respondent is subject to disciplinary action under section 2234(c) of the Code in that he committed acts of repeated negligence and unprofessional conduct during the care and treatment of the patients named above. The circumstances are as follows:

192. Paragraphs 16 through 190 above are repeated here as if fully set forth.

193. Respondent's conduct , as described above, is repeated negligence in the practice of medicine and constitutes unprofessional conduct in violation of section 2234(c) of the Code, and thereby provides cause for discipline to Respondent's physician's and surgeon's certificate.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 41457, issued to Nicholas John Capos, Jr., M.D.;

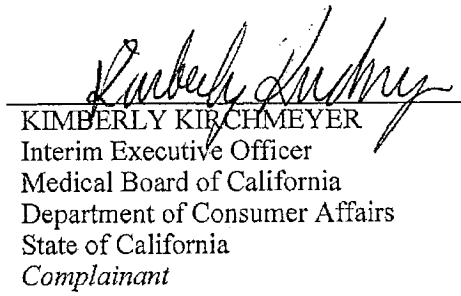
2. Revoking, suspending or denying approval of Nicholas John Capos, Jr., M.D.'s

authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Nicholas John Capos, Jr., M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring;

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

DATED: August 22, 2013



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

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