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

In the Matter of the First Amended Accusation Against:	)	
David Todd Asher, M.D.	)	**Case No. 800-2015-010882**
Physician's and Surgeon's Certificate No. A 67110	)	
Respondent	)	

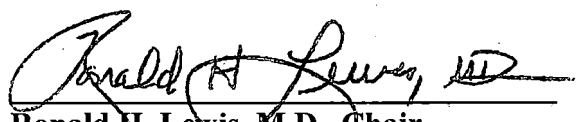
DECISION

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

This Decision shall become effective at 5:00 p.m. on March 22, 2019.

IT IS SO ORDERED: February 21, 2019.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

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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 First Amended Accusation Against: **DAVID TODD ASHER, M.D.** **947 S. Anaheim Boulevard, Suite 270** **Anaheim, California 92805** **Physician's and Surgeon's Certificate No. A67110,** Respondent.	Case No. 800-2015-010882 OAH No. 2018-030503 **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 (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, and by Joseph F. McKenna III, Deputy Attorney General.

2. Respondent David Todd Asher, M.D., (Respondent) is represented in this proceeding by attorney Kevin D. Cauley, Esq., whose address is: 624 South Grand Avenue, 22nd Floor, Los Angeles, California, 90017.

3. On or about June 20, 1997, the Board issued Physician's and Surgeon's Certificate No. A62823 to Respondent. The Physician's and Surgeon's Certificate No. A62823 was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2015-010882, and will expire on October 31, 2020, unless renewed.

JURISDICTION

4. On December 28, 2017, Accusation No. 800-2015-010882 was filed against Respondent before the Board. A true and correct copy of Accusation No. 800-2015-010882 and all other statutorily required documents were properly served on Respondent on December 28, 2017. Respondent timely filed his Notice of Defense contesting the Accusation.

5. On August 1, 2018, First Amended Accusation No. 800-2015-010882 was filed before the Board, and is currently pending against Respondent. A true and correct copy of First Amended Accusation No. 800-2015-010882 and all other statutorily required documents were properly served on Respondent on August 1, 2018. A true and correct copy of First Amended Accusation No. 800-2015-010882 is attached hereto as Exhibit A and hereby incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with his counsel, and fully understands the charges and allegations in First Amended Accusation No. 800-2015-010882. Respondent also has carefully read, fully discussed with his counsel, and fully 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 First Amended Accusation No. 800-2015-010882; 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, having been fully advised of same by his attorney of record, Kevin D. Cauley, Esq.

8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in First Amended Accusation No. 800-2015-010882 and that he has thereby subjected his Physician's and Surgeon's Certificate No. A67110 to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in First Amended Accusation No. 800-2015-010882 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding, or any other licensing proceeding involving Respondent in the State of California.

RESERVATION

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

CONTINGENCY

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

13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and

agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for any reason, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

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

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

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A67110 issued to Respondent David Todd Asher, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years from the effective date of the Decision on the following terms and conditions:

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

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

A prescribing practices course taken after the acts that gave rise to the charges in First Amended Accusation No. 800-2015-010882, 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

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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 fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

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

A medical record keeping course taken after the acts that gave rise to the charges in First Amended Accusation No. 800-2015-010882, 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 fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (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 1358.1. 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 First Amended Accusation No. 800-2015-010882, 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 fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

5. MONITORING – PRACTICE. Within thirty (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, 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 and First Amended Accusation No. 800-2015-010882, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of copies of the Decision and First Amended Accusation No. 800-2015-010882, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and First Amended Accusation No. 800-2015-010882, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring

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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 sixty (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 sixty (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 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. 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 ten (10) calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five (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 fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor within sixty (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 approved in advance by the Board or its designee 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.

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide true copies of this Decision and First Amended Accusation No. 800-2015-010882 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 fifteen (15) calendar days.

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

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

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

9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

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

10. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing thirty (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 fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-

practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

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

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

14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,

the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

15. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within fifteen (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 attorney, Kevin D. Cauley, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A67110. 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: 1/15/19

DAVID TODD ASHER, M.D.
Respondent

I have read and fully discussed with Respondent David Todd Asher, 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: 1/15/19

KEVIN D. CAULEY, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: JANUARY 16, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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Doc.No.71714030

Exhibit A

First Amended Accusation No. 800-2015-010882

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 1 2018
BY K. Vong ANALYST

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

In the Matter of the First Amended Accusation Against: **David Todd Asher, M.D.** **947 S. Anaheim Blvd., Ste. 270** **Anaheim, California 92805** **Physician's and Surgeon's Certificate No. A 67110,** Respondent.	Case No. 800-2015-010882 OAH No. 2018030503 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about December 11, 1998, the Medical Board issued Physician's and Surgeon's Certificate No. A67110 to David Todd Asher, 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 October 31, 2018, unless renewed.

JURISDICTION

3. This First Amended 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 (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, be publicly reprimanded which may include a requirement that the licensee complete relevant educational courses, or have such other action taken in relation to discipline as the Board deems proper.

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

> "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:
>
> "...
>
> "(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.
>
> "..."

6. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.).

7. Section 2242 of the Code states:

> "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(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."

8. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

9. Section 4022 of the Code states:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

10. Respondent has subjected his Physician's and Surgeon's Certificate No. A67110 to disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of Patient A[1]:

11. On or about April 14, 2016, Patient A admitted himself to Reflections Recovery Center (Reflections) located in Costa Mesa, California, for alcohol detoxification treatment. Reflections' intake form included scant information regarding Patient A's current and past use of alcohol, history of binge drinking, blackouts, and tremors.

12. At the time of admission to Reflections, Patient A had an extremely elevated Blood Alcohol Concentration (BAC) of 0.37 percent, a markedly elevated blood pressure and pulse, and his Clinical Institute Withdrawal Assessment for Alcohol (CIWA) was thirteen (13).[2]

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[1] Letters A, B, C, D, and E are used for the purposes of maintaining patient confidentiality.

[2] CIWA is a ten item scale used in the assessment and management of alcohol withdrawal. Each item on the scale is scored independently, and the summation of the scores yields an aggregate value that correlates to the severity of alcohol withdrawal, with ranges of scores designed to prompt specific management decisions such as the administration of benzodiazepines. The maximum score is 67; mild alcohol withdrawal is defined with a score less than 15, moderate with scores of 16 to 20, and severe with any score greater than 20.

13. Respondent was the medical director of Reflections when Patient A was admitted to the facility.

14. On or about April 15, 2016, Respondent saw Patient A and charted a brief history and physical examination of Patient A, but did not document important information including, but not limited to, a comprehensive drug and alcohol use history or history of psychiatric illness and/or treatment. Respondent noted a CIWA score of sixteen (16) and that Patient A's last drink of alcohol was thirty-six (36) hours prior to admission to Reflections. Notwithstanding CIWA scores of nineteen (19) and twenty (20) recorded that same morning, and elevated pulse and blood pressure readings, Respondent only started Patient A on a tapering regime of Ativan and other medications.

15. On or about April 17, 2016, Respondent again saw Patient A and charted a very brief progress report of his current condition, including a notation for elevated blood pressure and that he had the "shakes" and was "anxious." Notwithstanding a CIWA score of sixteen (16), elevated pulse and blood pressure readings, and other secondary signs of alcohol withdrawal, Respondent continued Patient A on a tapering regime of Ativan and other medications. Patient A was transferred to Hoag Hospital that same day after staff observed him displaying signs consistent with Delirium Tremens (DTs).[3] Patient A was later discharged and returned to Reflections.

16. After Patient A returned to Reflections' facility, Respondent continued to prescribe him a tapering regime of Ativan, notwithstanding Patient A having displayed significant signs and symptoms consistent with DTs leading to his admission to Hoag Hospital; and Respondent also never followed up with Patient A at his medical office or Reflections upon the patient's return to the facility.

17. On or about April 18, 2016, Patient A returned to Hoag Hospital after Reflections' staff observed him displaying signs and symptoms of DTs. Respondent, despite being notified by Reflections' staff about Patient A's re-admittance to Hoag Hospital, did not contact the physician

[3] Delirium tremens (DTs) is the most severe form of ethanol withdrawal manifested by altered mental status (global confusion) and sympathetic overdrive (autonomic hyperactivity), which can progress to cardiovascular collapse. DTs is a medical emergency with a high mortality rate, making early recognition and treatment essential.

treating Patient A at the hospital to follow up on his condition or medical treatment. That same day, Patient A was discharged from Hoag Hospital and transported to a hospital located at the University of California Los Angeles.

18. Respondent committed gross negligence in his care and treatment of Patient A including, but not limited to, the following:

(a) Respondent failed to provide appropriate and adequate treatment for Patient A's alcohol withdrawal.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

19. Respondent has further subjected his Physician's and Surgeon's Certificate No. A67110 to disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patients A, B, C, D, and E, as more particularly alleged hereinafter:

20. **Patient A**

(a) Paragraphs 10 through 18, above, are hereby incorporated by reference and realleged as if fully set forth herein.

21. **Patient B**

(a) Between in or around January 2014, and in or around February 2016, Respondent and/or his nurse practitioner, whom Respondent supervised, treated Patient B for numerous medical conditions including, but not limited to, dysmenorrhea, abdominal pain, insomnia, backache, anxiety, and migraines. During this same timeframe, Respondent and/or his nurse practitioner documented approximately twenty-two (22) visits with this patient.

(b) On or about May 16, 2014, Patient B handed Respondent a prescription for his signature at his office. Prior to handing the prescription to Respondent, the prescription had already been completed by Patient B and specific drug selections had already been made on the prescription form by this patient. The prescription was for a compounded topical pain medication containing multiple drugs including,

but not limited to, Tramadol, Flurbiprofen, Cyclobenzaprine, and Baclofen. On this same date, Respondent approved a one (1) year supply of this prescription for Patient B. Significantly, Respondent did not examine Patient B or document any discussion with the patient in the patient's chart on this date or at any point afterwards, regarding anything about prescribing a compounded topical pain medication.

22. Respondent committed repeated negligent acts in his care and treatment of Patient B including, but not limited to, the following:

(a) Respondent issued a one (1) year prescription for compounded pain medications to Patient B without documenting a history for this patient;

(b) Respondent issued a one (1) year prescription for compounded pain medications to Patient B without performing a physical examination of this patient; and

(c) Respondent issued a prescription for compounded pain medications to Patient B without any planned follow-up to document the safety and effectiveness of the medication for this patient.

23. **Patient C**

(a) Between in or around January 2014, and in or around April 2016, Respondent and/or his nurse practitioner, whom Respondent supervised, treated Patient C for numerous medical conditions including, but not limited to, gastroenteritis, vertigo, back pain, insomnia, depression, hyperlipidemia, asthma, abdominal pain, and pain in neck. During this same timeframe, Respondent and/or his nurse practitioner documented approximately twenty-two (22) visits with this patient.

(b) On or about May 16, 2014, Patient C's spouse, Patient B, handed Respondent a prescription for his signature at his office. Prior to handing the prescription to Respondent, the prescription had already been completed by Patient B and specific drug selections had already been made on the prescription form by

Patient B. The prescription was for a compounded topical pain medication containing multiple drugs including, but not limited to, Tramadol, Flurbiprofen, Cyclobenzaprine, and Baclofen, and was meant for use by Patient C. On this same date, Respondent approved a one (1) year supply of this prescription without seeing Patient C. Significantly, Respondent did not examine Patient C or document any discussion with the patient in the patient's chart on this date or at any point afterwards, regarding anything about prescribing a compounded topical pain medication.

24. Respondent committed repeated negligent acts in his care and treatment of Patient C including, but not limited to, the following:

(a) Respondent issued a one (1) year prescription for compounded pain medications to Patient C without documenting a history for this patient;

(b) Respondent issued a one (1) year prescription for compounded pain medications to Patient C without performing a physical examination of this patient; and

(c) Respondent issued a prescription for compounded pain medications to Patient C without any planned follow-up to document the safety and effectiveness of the medication for this patient.

25. **Patient D**

(a) Between in or around April 2014, and in or around June 2015, Respondent and/or his nurse practitioner, whom Respondent supervised, treated Patient D for numerous medical conditions including, but not limited to, allergic rhinitis, backache, and infection of the skin. During this same timeframe, Respondent and/or his nurse practitioner documented approximately six (6) visits with this patient.

(b) On or about May 16, 2014, Patient D's parent, Patient B, handed Respondent a prescription for his signature at his office. Prior to handing the prescription to Respondent, the prescription had already been completed by Patient

B and specific drug selections had already been made on the prescription form by Patient B. The prescription was for a compounded topical pain medication containing multiple drugs including, but not limited to, Tramadol, Flurbiprofen, Cyclobenzaprine, and Baclofen, and was meant for use by Patient D. On this same date, Respondent approved a one (1) year supply of this prescription without seeing Patient D. Significantly, Respondent did not examine Patient D or document any discussion with the patient in the patient's chart on this date or at any point afterwards, regarding anything about prescribing a compounded topical pain medication.

26. Respondent committed repeated negligent acts in his care and treatment of Patient D including, but not limited to, the following:

(a) Respondent issued a one (1) year prescription for compounded pain medications to Patient D without documenting a history for this patient;

(b) Respondent issued a one (1) year prescription for compounded pain medications to Patient D without performing a physical examination of this patient; and

(c) Respondent issued a prescription for compounded pain medications to Patient D without any planned follow-up to document the safety and effectiveness of the medication for this patient.

27. **Patient E**

(a) Between in or around February 2014, and in or around November 2015, Respondent and/or his nurse practitioner, whom Respondent supervised, treated Patient E for numerous medical conditions including, but not limited to, depression, anxiety, dysuria, dysmenorrhea, backache, neck pain, sinusitis, bronchitis, and scoliosis. During this same timeframe, Respondent and/or his nurse practitioner documented approximately twelve (12) visits with this patient.

(b) On or about May 16, 2014, Patient E's parent, Patient B, handed Respondent a prescription for his signature at his office. Prior to handing the

prescription to Respondent, the prescription had already been completed by Patient B and specific drug selections had already been made on the prescription form by Patient B. The prescription was for a compounded topical pain medication containing multiple drugs including, but not limited to, Tramadol, Flurbiprofen, Cyclobenzaprine, and Baclofen, and was meant for use by Patient E. On this same date, Respondent approved a one (1) year supply of this prescription without seeing Patient E. Significantly, Respondent did not examine Patient E or document any discussion with the patient in the patient's chart on this date or at any point afterwards, regarding anything about prescribing a compounded topical pain medication.

28. Respondent committed repeated negligent acts in his care and treatment of Patient E including, but not limited to, the following:

(a) Respondent issued a one (1) year prescription for compounded pain medications to Patient E without documenting a history for this patient;

(b) Respondent issued a one (1) year prescription for compounded pain medications to Patient E without performing a physical examination of this patient; and

(c) Respondent issued a prescription for compounded pain medications to Patient E without any planned follow-up to document the safety and effectiveness of the medication for this patient.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Dangerous Drugs Without an Appropriate Prior Examination and/or Medical Indication)

29. Respondent has further subjected his Physician's and Surgeon's Certificate No. A67110 to disciplinary action under sections 2227 and 2234, as defined in sections 2242 and 4022, of the Code, in that Respondent prescribed, dispensed, or furnished dangerous drugs without an appropriate prior examination and/or medical indication to Patients B, C, D, and E, as more particularly alleged hereinafter:

30. **Patient B**

(a) Paragraphs 21 and 22, above, are hereby incorporated by reference and realleged as if fully set forth herein.

31. **Patient C**

(a) Paragraphs 23 and 24, above, are hereby incorporated by reference and realleged as if fully set forth herein.

32. **Patient D**

(a) Paragraphs 25 and 26, above, are hereby incorporated by reference and realleged as if fully set forth herein.

33. **Patient E**

(a) Paragraphs 27 and 28, above, are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

34. Respondent has further subjected his Physician's and Surgeon's Certificate No. A67110 to disciplinary action under sections 2227 and 2234, as defined in section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records in connection with his care and treatment of Patients A, B, C, D, and E, as more particularly alleged hereinafter:

35. **Patient A**

(a) Paragraphs 10 through 18, above, are hereby incorporated by reference and realleged as if fully set forth herein.

36. **Patient B**

(a) Paragraphs 21 and 22, above, are hereby incorporated by reference and realleged as if fully set forth herein.

37. **Patient C**

(a) Paragraphs 23 and 24, above, are hereby incorporated by reference and realleged as if fully set forth herein.

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38. **Patient D**

(a) Paragraphs 25 and 26, above, are hereby incorporated by reference and realleged as if fully set forth herein.

39. **Patient E**

(a) Paragraphs 27 and 28, above, are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

40. Respondent has further subjected his Physician's and Surgeon's Certificate No. A67110 to disciplinary action under sections 2227 and 2234 of the Code, in that Respondent has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 10 through 39, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

41. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 6, 2010, in a prior disciplinary action entitled "In the Matter of the Accusation Against David Todd Asher, M.D.," Case Number 04-2007-181656, the Board adopted as its Decision and Order, a Stipulated Settlement and Disciplinary Order revoking Respondent's Physician's and Surgeon's Certificate No. A67110, and placing him on probation for five (5) years with standard terms and conditions, based on findings that Respondent was convicted in federal court of a crime substantially related to the practice of medicine, engaged in dishonest and corrupt acts, and engaged in general unprofessional conduct. That decision is now final and is incorporated by reference as if fully set forth herein. On or about May 30, 2014, "In the Matter of the Petition for Reduction of Penalty Against: David Todd Asher, M.D.," Case No. 26-2013-233488, the Board adopted the Proposed Decision of the administrative law judge who heard Respondent's petition request, and granted early termination of probation for Respondent.

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 No. A67110, issued to Respondent David Todd Asher, M.D.;

2. Revoking, suspending or denying approval of Respondent David Todd Asher, M.D.'s, authority to supervise physician assistants pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent David Todd Asher, M.D., to pay the Medical Board the costs of probation monitoring, if placed on probation; and

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

DATED: August 1, 2018

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

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