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

In the Matter of the Accusation Against:	)	
RODOLFO GARCIA, M.D.	)	**Case No. 800-2015-019290**
Physician's and Surgeon's Certificate No. A39112	)	
Respondent	)	

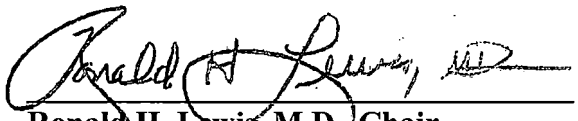
DECISION

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 May 10, 2019.

IT IS SO ORDERED: April 10, 2019.

MEDICAL BOARD OF CALIFORNIA



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

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ALEXANDRA M. ALVAREZ
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ROSEMARY F. LUZON
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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: **RODOLFO M. GARCIA, M.D.** **808 Iowa Avenue** **Los Banos, CA 93635** **Physician's and Surgeon's Certificate No. A 39112** Respondent.	Case No. 800-2015-019290 OAH No. 2018090314 **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, by Rosemary F. Luzon, Deputy Attorney General.

2. Respondent Rodolfo M. Garcia, M.D. (Respondent) is represented in this proceeding by attorney James J. Zenere, Esq., whose address is: 1033 Willow Street, San Jose, CA 95125.

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JURISDICTION

3. On or about September 20, 1982, the Board issued Physician's and Surgeon's Certificate No. A 39112 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-019290, and will expire on September 30, 2020, unless renewed.

4. On or about July 20, 2018, Accusation No. 800-2015-019290 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on or about July 20, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2015-019290 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-019290. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2015-019290, a copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate No. A 39112 to disciplinary action.

9. Respondent agrees that if he ever petitions for early termination or modification of this Stipulated Settlement and Disciplinary Order, 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 Accusation No. 800-2015-019290 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. A 39112 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

13. 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.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 39112 issued to Respondent Rodolfo M. Garcia, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years from the effective date of the Decision on the following terms and conditions.

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule IV and Schedule V of the Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

Respondent shall immediately surrender Respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this Decision, Respondent shall submit proof that Respondent has surrendered Respondent's DEA permit to the Drug Enforcement Administration for cancellation and re-issuance. Within 15 calendar days after the effective date of issuance of a new DEA permit, Respondent shall submit a true copy of the permit to the Board or its designee.

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2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. EDUCATION COURSE. Within 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 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 the 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 65 hours of CME of which 40 hours were in satisfaction of this condition.

4. PRESCRIBING PRACTICES COURSE. Within 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 the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

5. MEDICAL RECORD KEEPING COURSE. Within 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 the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

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

6. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 180 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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. The Respondent shall not resume the practice of medicine

until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

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

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

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

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

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

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program 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.

8. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine,

including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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

10. 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.

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

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

12. 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).

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Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

13. 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.

14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. 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 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's 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; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

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

16. 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.

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17. 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 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.

18. 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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, James J. Zenere, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 39112. 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

RODOLFO M. GARCIA, M.D.
Respondent

I have read and fully discussed with Respondent Rodolfo M. Garcia, 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: 1/21/19

JAMES J. ZENERE, 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: 1/22/19

Respectfully submitted,

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

ROSEMARY F. LUZON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2015-019290

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 20 2018
BY: ANALYST

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

In the Matter of the Accusation Against: **Rodolfo M. Garcia, M.D.** 808 Iowa Avenue Los Banos, CA 93635 Physician's and Surgeon's Certificate No. A 39112, Respondent.	Case No. 800-2015-019290 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 20, 1982, the Medical Board issued Physician's and Surgeon's Certificate Number A 39112 to Rodolfo M. Garcia, M.D. ("Respondent"). That Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, 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 in pertinent part 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 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:

"(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.

"..."

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6. 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."

PERTINENT DRUG INFORMATION

7. Hydrocodone with acetaminophen – Generic name for the drugs Vicodin, Norco, and Lortab. Hydrocodone with acetaminophen is classified as an opioid analgesic combination product used to treat moderate to moderately severe pain. Prior to October 6, 2014, Hydrocodone with acetaminophen was a Schedule III controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.13(e). On October 6, 2014, Hydrocodone combination products were reclassified as Schedule II controlled substances. Federal Register Volume 79, Number 163, Code of Federal Regulations Title 21 section 1308.12. Hydrocodone with acetaminophen is a dangerous drug pursuant to California Business and Professions Code section 4022 and is a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subdivision (b).

8. Carisoprodol – Generic name for Soma. Carisoprodol is a centrally acting skeletal muscle relaxant. On January 11, 2012, Carisoprodol was classified a Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14(c). It is a dangerous drug pursuant to Business and Professions Code section 4022. The maximum recommended dosage of Soma is one 350 mg. tablet, taken three times a day, with a maximum duration of therapy of 2 to 3 weeks.

9. Alprazolam – Generic name for the drug Xanax. Alprazolam is a short-acting benzodiazepine used to treat anxiety. Alprazolam is a Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14. Alprazolam is a dangerous drug pursuant to California Business and Professions Code section 4022 and is a Schedule IV controlled substance pursuant to California Health and Safety Code section 11057(d).

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

10. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), in that he committed gross negligence during the prescribing of controlled substances to Patient A. The circumstances are as follows:

11. On or before November 3, 2008, Respondent began treating Patient A.[1] [2] An x-ray of the lumbar spine taken at that time showed that Patient A had a normal lumbar and "sclerotic right sacroiliac joint." On January 23, 2009, Respondent documented that Patient A had a history of pain in cold weather, and that she declined further work-up. Respondent assessed her with "chronic pain syndrome" and prescribed 90 tablets of Vicodin and 60 tablets of Soma. On or about January 23, 2009, Patient A entered into a pre-printed chronic opioid agreement with Respondent. The document mentioned risks including tolerance, addiction, overdose, and inability to drive motor vehicles. The agreement also stated early refills would not be allowed, all of her prescriptions would be through Respondent, all prescriptions would be filled at a "Walgreens Pharmacy" and random drug testing could be ordered to assess compliance. The document was signed by Respondent and Patient A. The agreement was also initialed on November 21, 2011, by both Patient A and Respondent. Three similar pre-printed chronic pain agreements were signed by Respondent and Patient A on or about March 11, 2013, March 19, 2014, and February 12, 2015. The agreements signed on March 11, 2013, March 19, 2014, and February 12, 2015, stated all prescriptions would be filled at "Romie Lane Pharmacy." All four chronic opioid agreements specifically listed the prescribed medications as Vicodin and Soma and all four of them stated, "(i)f I do not follow these guidelines, I understand that my treatment may be terminated."

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[1] Conduct alleged to have occurred before January 1, 2012, is for informational purposes only. That said, errors or omissions that occurred before January 1, 2012, which led to a continuing course of conduct which resulted in errors and omissions after January 1, 2012, is being alleged as a basis for discipline.

[2] Patient names and information have been removed. All witnesses will be identified in discovery.

12. Between November 3, 2008, and January 1, 2012, Respondent regularly prescribed Vicodin and Soma to Patient A on a monthly basis. On or about January 5, 2010, Respondent ordered and received blood testing on Patient A. The January 5, 2010, Quest Diagnostics lab report showed a CBC ("complete blood count") with a Hemoglobin of 14.1 and an elevated MCV ("mean corpuscular volume") result of 102. The MCV result was noted to be out of range on the lab results. An elevated MCV is commonly known as "macrocytosis" and can be indicative of a possible deficiency of vitamins B12 and B9 ("folic acid"), recent chemotherapy or of alcoholism.[3] A CMP ("comprehensive metabolic panel") was also performed on the same date. The CO2 result ("carbon dioxide lab test or bicarbonate") was abnormally low at 16 and was noted as out of range on the lab results. A low CO2 can be caused by metabolic acidosis which includes examples of lactic acidosis, renal failure, and starvation. A low CO2 can also be caused by chronic diarrhea. On the lab result Respondent circled and initialed the lab results and documented that Patient A had a scheduled appointment upcoming on January 8, 2010.

13. On January 8, 2010, Respondent documented that he saw Patient A for foot pain and prescribed Soma and Vicodin. Respondent did not address the abnormal lab results from January 5, 2010. Respondent continued to see Patient A on a monthly basis until December 17, 2015, and he never repeated the CBC or CMP tests. Between January 1, 2012, and December 17, 2015, there is no documentation in the medical records that Respondent ever ordered additional blood testing, was concerned regarding Patient A's abnormal 2010 lab results, and no evidence that he attempted to investigate the cause of the abnormal 2010 lab results.[4]

14. On March 29, 2018, Respondent was interviewed by the Medical Board regarding his care and treatment of Patient A. Respondent stated that he "would be concerned" by an elevated MCV of 102 and that he "would repeat the test." Respondent was asked what the abbreviation for MCV stood for and he incorrectly stated "microcytic volume". Respondent was asked what the

[3] Microcytic anemia is potentially evident when the MCV result is below 80. A normal MCV in a full blood count result is 80 to 100.

[4] Of note, in Patient A's medical records there are multiple entries by another physician who covered Patient A's care on Respondent's behalf between January 2010 and December 2015 and the covering physician recommended further CBC and CMP testing but Respondent never ordered additional tests.

possible causes of an elevated MCV were and he could not answer the question. Respondent stated "he would be concerned and repeat the test." Respondent was asked what would happen if he repeated the test and received back a result of 102. Respondent responded he would send the patient to a hematologist. Respondent was asked again to name one cause of an elevated MCV and he stated, "anemia." Respondent was then asked what kind of anemia and responded "microcytic anemia." Respondent was then asked what the MCV result for microcytic anemia would be and Respondent stated, "I cannot remember that."

15. Between January 1, 2012, and December 31, 2015, on a regular monthly basis, Respondent prescribed controlled substances to Patient A, in particular hydrocodone with acetaminophen and Soma. During that time, Patient A used two different names, her full name which is identified as Patient A1 in this pleading and an abbreviated first name alias which is identified as Patient A2 in this pleading, to obtain controlled substances.[5] Also, between January 1, 2012, and December 31, 2015, a different physician, Physician B, on a regular monthly basis was prescribing controlled substances to Patient A, in particular hydrocodone with acetaminophen and Soma. This led to Patient A often receiving twice the recommended dosing of hydrocodone with acetaminophen and Soma. Patient A filled her prescriptions at multiple pharmacies between January 1, 2012, and December 31, 2015, including a K-Mart Pharmacy, a Walgreens Pharmacy, Alisal Pharmacy, and Romie Lane Pharmacy.

16. For example, between January 1, 2012, and April 6, 2012, Physician B prescribed 390 pills of 7.5/750 mg. hydrocodone with acetaminophen and 180 pills of 350 mg. Soma to Patient A1. Between January 1, 2012, and April 2, 2012, Respondent prescribed 600 pills of 7.5/750 mg. hydrocodone with acetaminophen and 90 pills of 350 mg. Soma to Patient A2. Assuming these prescriptions were to be taken over 96 days, Patient A would have consumed 10 pills of 7.5/750 mg. hydrocodone with acetaminophen a day which would have resulted in a daily acetaminophen dosage of 7734 mg., nearly twice the recommended safe dosage of acetaminophen.

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[5] Patient A1 refers to her full name. Patient A2 refers to the use of her abbreviated nickname and an alias. Patient A1 and Patient A2 are the same person under two different alias. Both individuals appeared on CURES with the same date of birth.

17. For example, between February 12, 2013, and June 11, 2013, Physician B prescribed 500 pills of 7.5/500 mg. hydrocodone with acetaminophen and 360 pills of 350 mg. Soma to Patient A1. Between February 1, 2013, and June 11, 2013, Respondent prescribed 675 pills of 7.5/750 mg. hydrocodone with acetaminophen and 360 pills of 350 mg. Soma to Patient A2. Assuming these prescriptions were to be taken over 131 days, Patient A would have consumed 9 pills of hydrocodone with acetaminophen and 5 pills of Soma per day. Based on that rate of consumption, Patient A would have taken 5,772 mg. of acetaminophen during each day.

18. For example, between January 2, 2014, to May 20, 2014, Physician B prescribed 100 pills of 7.5/500 mg. hydrocodone with acetaminophen, 400 pills of 7.5/325 mg. hydrocodone with acetaminophen, and 540 pills of 350 mg. Soma to Patient A1. Between January 6, 2014, and May 14, 2014, Respondent prescribed 375 pills of 7.5/750 mg. hydrocodone with acetaminophen and 210 pills of 350 mg. Soma to Patient A2. Assuming these prescriptions were to be taken over 139 days, Patient A would have consumed 6 pills of hydrocodone with acetaminophen and 5 pills of Soma per day.

19. For example, between March 12, 2015, and June 5, 2015, Physician B prescribed 200 pills of 7.5/325 mg. hydrocodone with acetaminophen to Patient A1. Physician B also prescribed 100 pills of 7.5/325 mg. hydrocodone with acetaminophen and 270 tables to 350 mg. Soma to Patient A2, during the same time frame. Between March 12, 2015, and June 5, 2015, Respondent prescribed 450 tablets of 10/325 mg. hydrocodone with acetaminophen and 270 tablets of 350 mg. Soma to Patient A1. Assuming these prescriptions were to be taken over 85 days, Patient A would have consumed approximately 9 pills of hydrocodone with acetaminophen and 6 pills of 350 mg. Soma per day.

20. Finally, by way of example, between November 10, 2015, and December 24, 2015, Respondent prescribed 300 tablets of 10/325 mg. hydrocodone with acetaminophen and 120 tablets of 350 mg. Soma to Patient A1. Between November 10, 2015, and December 24, 2015, Physician B prescribed 150 tablets of 7.5/325 mg. hydrocodone with acetaminophen and 90 tablets of 350 mg. Soma. Assuming these prescriptions were to be taken over 44 days, Patient A

would have consumed 10 tablets of hydrocodone with acetaminophen and 5 tablets of Soma per day.

21. A review of the Respondent's certified medical records kept for Patient A revealed that Respondent incorporated the Controlled Substance Utilization Review and Evaluation database ("CURES")[6] records on Patient A on or about February 11, 2014, and March 2, 2015, into his medical records. The February 11, 2014, CURES printout clearly showed that between February 12, 2013, and January 1, 2014, Physician B had been prescribing hundreds of pills of both hydrocodone with acetaminophen and Soma to Patient A under her full name, Patient A1. The March 2, 2015, CURES printout clearly showed that between October 7, 2014, and February 5, 2015, Physician B had been prescribing hundreds of pills of both hydrocodone with acetaminophen and Soma to Patient A under her full name, Patient A1.[7] During these time periods, Respondent continued to prescribe both hydrocodone with acetaminophen and Soma to Patient A. A review of Respondent's certified medical records for Patient A shows that Respondent never made direct contact with Physician B to discuss Patient A, or that he obtained physical copies of Physician B's medical records in order to see why Physician B was prescribing controlled substances to Patient A. A review of Respondent's certified medical records for Patient A shows that Respondent never took action despite Patient A violating multiple pain control agreements, including termination from his practice, despite the CURES showing that Patient A was obtaining hundreds of pills of controlled substances from Physician B while Respondent was prescribing the same medications.

22. On October 16, 2014, Respondent prescribed 30 pills of .5 mg. alprazolam to Patient A. Respondent was also prescribing hydrocodone with acetaminophen and Soma at the same time he prescribed alprazolam to Patient A. Respondent documented that he prescribed the

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[6] CURES (Controlled Substance Utilization Review and Evaluation System) is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement. CURES is committed to the reduction of prescription drug abuse and diversion without affecting legitimate medical practice or patient care.

[7] The March 20, 2015, CURES also identified additional medical providers who were prescribing hydrocodone with acetaminophen and Soma to Patient A during the time that Physician B and Respondent were prescribing controlled substances.

alprazolam for anxiety. There is no documentation in the medical records that Respondent referred Patient A to a mental health professional. There is no documentation in the medical records that Respondent provided Patient A with additional information regarding the risks of taking alprazolam while also taking hydrocodone with acetaminophen and Soma.

23. On November 7, 2015, Patient A was discharged from the emergency room at Community Hospital of the Monterey Peninsula ("CHOMP") by an emergency room physician for "Opiate/Benzo withdrawal syndrome" and she was instructed to recheck with her primary physician in 2 days. Patient A was also provided with an informational sheet entitled "Addiction: Your Treatment Options." The emergency room physician prescribed 18 pills of clonazepam 1 mg. to Patient A. A copy of the November 7, 2015, discharge information was present in Respondent's medical records that he kept for Patient A. On November 14, 2015, Patient A was discharged from the emergency room at CHOMP by a physician for "Opiate withdrawal", and was provided with information regarding treatment option including the "Opiate Dependency Treatment Pathway." A copy of the November 14, 2015, discharge information was present in Respondent's medical records kept for Patient A.

24. On December 4, 2015, Patient A was discharged from the emergency room at CHOMP by the same emergency room physician from the November 7, 2015, visit for "Opiate withdrawal" and she was instructed to recheck with her primary physician in 3-5 days. A copy of the December 4, 2015, discharge information was present in Respondent's medical records kept for Patient A. On December 13, 2015, Patient A was discharged from the emergency room at CHOMP by a physician for "Acute Norco and Soma Withdrawal." A copy of the December 13, 2015, discharge information was present in Respondent's medical records kept for Patient A.

25. Respondent documented that he saw Patient A in his office for visits on November 20, 2015, and December 17, 2015. The December 17, 2015, visit included a note from Respondent that, "a CURES report was verified to ensure that the patient was only receiving medication from me, the patient's primary care physician." The note went on to say, "(t)his report was reviewed, and there was no suspicious activity noted in the report." The Respondent's medical records kept for Patient A on November 20, 2015, and December 17, 2015, fail to

mention the four emergency room visits at CHOMP, detail that Patient A was suffering from opiate withdrawal, still receiving controlled substances from Physician B, and fail to document any re-evaluation of Patient A's treatment plan for controlled substances. As noted above Respondent prescribed 150 pills of 10/325 mg. hydrocodone with acetaminophen and 60 pills of 350 mg. Soma to Patient A on November 21, 2015, and December 18, 2015.

26. A review of Respondent's medical records kept for Patient A between January 1, 2012, and December 31, 2015, revealed that Respondent used an electronic medical record system to chart Patient A's progress. A review of the electronic medical records kept for Patient A showed extensive duplication of past chart notes through cloning. For example, the September 2, 2013, November 18, 2013, and January 6, 2014, chart notes were the exact same template as the March 23, 2013, and June 11, 2013, chart notes. The only difference between the five notes was different vital signs. Also by way of example, the March 9, 2015, May 7, 2015, June 5, 2015, July 1, 2015, and July 30, 2015, were all the exact same template except for the entry of different vital signs. Finally, the November 20, 2015, chart note contains the exact same history as the August 26, 2015, chart note despite Patient A having been to the emergency department at CHOMP on two separate visits. Additionally, statements from Patient A where she stated that, "her pain is worse in cold weather," would be repeated in chart note after chart note. Finally, Respondent's medical records kept for Patient A failed to document who was assigned as Patient A's primary care physician, and failed to contain and incorporate Physician B's medical records kept for Patient A. At the subject interview with the medical board on March 29, 2018, Respondent stated that he was providing chronic pain treatment to Patient A, but when asked who was providing primary care treatment to Patient A, Respondent stated, "Uh, I am not sure. I think it's another doctor."

27. Respondent has committed gross negligence in his care and treatment of Patient A as follows: (A.) by not taking any action, including termination of Patient A from his medical practice, after learning that Patient A was in violation of multiple chronic pain agreements as she was obtaining controlled substances from other sources and at multiple pharmacies; (B.) by continuing to prescribe hydrocodone to Patient A despite evidence in the CURES reports that she

was receiving hydrocodone prescriptions from other sources which led to excessive opioid prescribing; (C.) by continuing to prescribe Soma to Patient A despite evidence in the CURES reports that she was receiving Soma prescriptions from other sources which led to excessive carisoprodol prescribing; (D.) by prescribing alprazolam to Patient A while also prescribing hydrocodone with acetaminophen and Soma at the same time; and, (E.) by failing to address and/or document addressing Patient A's multiple emergency department visits for opiate withdrawal and continuing to prescribe hydrocodone with acetaminophen and Soma after the emergency department visits.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

28. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), in that he committed repeated negligent acts during the care and treatment of Patient A by failing to properly provide care during the prescription of controlled substances. The circumstances are as follows:

29. Complainant realleges paragraphs 10 through 27, and those paragraphs are incorporated by reference as if fully set forth herein.

30. Respondent committed the following repeated negligent acts during the care of Patient A:

a.) Respondent failed to take any action, including termination of Patient A from his medical practice, after learning that Patient A was in violation of multiple chronic pain agreements as she was obtaining controlled substances from other sources and at multiple pharmacies;

b.) Respondent continued to prescribe hydrocodone to Patient A despite evidence in the CURES reports that she was receiving hydrocodone prescriptions from other sources which led to excessive opioid prescribing;

c.) Respondent continued to prescribe Soma to Patient A despite evidence in the CURES reports that she was receiving Soma prescriptions from other sources which led to excessive Soma prescribing;

d.) Respondent prescribed alprazolam to Patient A while also prescribing hydrocodone with acetaminophen and Soma;

e.) Respondent failed to address and/or document addressing Patient A's multiple emergency department visits for opiate withdrawal and continued to prescribe hydrocodone with acetaminophen and Soma after the emergency department visits;

f.) Respondent failed to obtain medical records from Physician B's office regarding Physician B's care and treatment of Patient A;

g.) Respondent failed to refer Patient A to a mental health specialist for care and treatment of her co-morbid mental health conditions;

h.) Respondent failed to monitor or order testing of Patient A's CMP and CBC between January 1, 2012, and December 31, 2015, while he continued to prescribe multiple drugs, despite receiving out of range test results in 2010;

i.) Respondent used multiple duplication of electronic medical record templates from visit-to-visit without accurately documenting changes in Patient A's history and physical, treatment plan, and status; and,

j.) Respondent failed to identify and document who Patient A's primary care physician was in the electronic medical records kept for Patient A.

THIRD CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Record Keeping)

31. Respondent's license is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records relating to the provision of services to Patient A. The circumstances are as follows:

32. Complainant realleges paragraphs 10 through 27, and those paragraphs are incorporated by reference as if fully set forth herein.

33. As more fully described above, Respondent failed to maintain adequate and accurate medical records related to the provision of services to Patient A.

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FOURTH CAUSE FOR DISCIPLINE

(Incompetence, Lack of Knowledge)

34. Respondent's license is subject to disciplinary action under section 2234, subdivision (d), of the Code in that he displayed incompetence and a lack of knowledge at the subject interview on March 29, 2018. The circumstances are as follows:

35. Complainant realleges paragraphs 12 through 14, and those paragraphs are incorporated by reference as if fully set forth herein.

36. As more fully described above, Respondent failed to properly interpret a simple blood test, specifically the significance of an elevated MCV, and could not provide information regarding common medical knowledge. Respondent's license is subject to discipline for a lack of knowledge and incompetence.

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 A 39112, issued to Rodolfo M. Garcia, M.D.;

2. Revoking, suspending or denying approval of Rodolfo M. Garcia, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Rodolfo M. Garcia, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: July 20, 2018

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

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