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

In the Matter of the Accusation Against:	)	
Moise Tofic Zagha, M.D.	)	**Case No. 800-2015-014414**
Physician's and Surgeon's Certificate No. A 34602	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on January 3, 2020.

IT IS SO ORDERED: December 4, 2019.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: MOISE TOFIC ZAGHA, M.D. 16133 Ventura Blvd., Suite 300 Encino, California 91436 Physician's and Surgeon's Certificate No. A 34602, Respondent.	Case No. 800-2015-014414 OAH No. 2019050836 **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 Claudia Ramirez, Deputy Attorney General.

2. Respondent Moise Tofic Zagha, M.D. ("Respondent") is represented in this proceeding by attorney Peter Osinoff, Esq., whose address is: Bonne Bridges Mueller O'Keefe & Nichols, 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071.

3. On or about October 15, 1979, the Board issued Physician's and Surgeon's Certificate No. A 34602 to Respondent. That Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-014414, and will expire on October 31, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-014414 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 4, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-014414 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-014414. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2015-014414, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges and allegations in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2015-014414 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.

12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

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

Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 34602 issued to Respondent Moise Tofic Zagha, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months on the following terms and conditions.

1. 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.

2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. 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 the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

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

3. 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.

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. 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.

4. 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.

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

6. 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..

7. 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.

8. 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.

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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.

9. 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.

10. 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.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., probation monitoring 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.

12. 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.

13. 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.

14. 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, Peter Osinoff, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 9/20/19

MOISE TOFIC ZAGHA, M.D.
Respondent

I have read and fully discussed with Respondent Moise Tofic Zagha, 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: 9/23/19

PETER OSINOFF, ESQ.
Attorney for Respondent

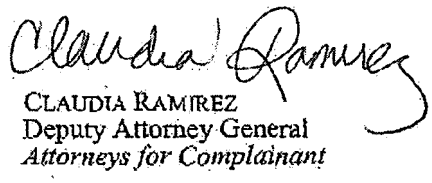
ENDORSEMENT

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

DATED: 9/24/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General



CLAUDIA RAMIREZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2015-014414

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 4 20 18
BY K. Young ANALYST

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

In the Matter of the Accusation Against: MOISE TOFIC ZAGHA, M.D. 16133 Ventura Boulevard, Suite 300 Encino, California 91436 Physician's and Surgeon's Certificate A 34602, Respondent.	Case No. 800-2015-014414 **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 (Board).

2. On October 15, 1979, the Board issued Physician's and Surgeon's Certificate Number A 34602 to Moise Tofic Zagha, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2018, 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 states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Section 2234 of the Code states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

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

6. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

7. Section 2241.5 of the Code states:

"(a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

"(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

"(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

"(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

"(2) Violates Section 2241 regarding treatment of an addict.

"(3) Violates Section 2242 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs.

"(4) Violates Section 2242.1 regarding prescribing on the Internet.

"(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

"(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse

Prevention and Control Act of 1970.

"(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

"(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

"(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5."

8. 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."

9. 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."

10. Section 725 of the Code states:

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

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

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

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

11. Section 11190 of the Health and Safety Code states:

"(a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled

substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

"(1) The name and address of the patient.

"(2) The date.

"(3) The character, including the name and strength, and quantity of controlled substances involved.

"(b) The prescriber's record shall show the pathology and purpose for which the controlled substance was administered or prescribed.

"(c) (1) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance that is dispensed by a prescriber pursuant to Section 4170 of the Business and Professions Code, the prescriber shall record and maintain the following information:

"(A) Full name, address, and the telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the patient.

"(B) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

"(C) NDC (National Drug Code) number of the controlled substance dispensed.

"(D) Quantity of the controlled substance dispensed.

"(E) ICD-9 (diagnosis code), if available.

"(F) Number of refills ordered.

"(G) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

"(H) Date of origin of the prescription.

"(2) (A) Each prescriber that dispenses controlled substances shall provide the Department of Justice the information required by this subdivision on a weekly basis in a format set by the Department of Justice pursuant to regulation.

"(B) The reporting requirement in this section shall not apply to the direct administration of a controlled substance to the body of an ultimate user.

"(d) This section shall become operative on January 1, 2005.

"(e) The reporting requirement in this section for Schedule IV controlled substances shall not apply to any of the following:

"(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

"(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005.

"(f) Notwithstanding paragraph (2) of subdivision (c), the reporting requirement of the information required by this section for a Schedule II or Schedule III controlled substance, in a format set by the Department of Justice pursuant to regulation, shall be on a monthly basis for all of the following:

"(1) The dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less.

"(2) The administration or dispensing of a controlled substance in accordance with any other exclusion identified by the United States Health and Human Service Secretary for the National All Schedules Prescription Electronic Reporting Act of 2005."

FACTUAL SUMMARY

12. At all times relevant herein, Respondent worked as a physician in a private family practice located in Encino, California. Patient A,[1] then a 28-year-old female, began treating with Respondent on February 7, 2012, for the management of chronic lower back pain caused by degenerative disc disease and for frequent migraine headaches. She was married and used both her maiden name, A, and her married name, A2.[2]

13. For approximately four years, from February 2012 through March 2016, Respondent treated Patient A for various symptoms, including chronic low back pain, back spasms, migraines,

[1] The patient herein is referred to as Patient A to protect her privacy.

[2] Although Patient A changed her name to A2 after she married, she continued to use both names. Respondent alternated between Patient A's maiden and married names when prescribing controlled substances to her.

anxiety and seizure disorder. During this period, Respondent repeatedly prescribed high quantities of narcotic medications to the patient, often without any medical indication, office visits and/or conducting a physical examination. For example, in April 2015, Patient A obtained at least ten (10) prescriptions for controlled substances from Respondent. However, Respondent only documented one visit and exam:[3]

Date	Prescriptions Filled	Documentation of Office Visit and/or Examination
04/01/15	20 tablets of Norco[4] 10/325	No documentation of visit or exam.
04/03/15	120 tablets of oxycodone[5] 10/325; 60 tablets of Xanax[6] 2.0 mg	No documentation of visit or exam.
04/06/15	55 tablets of oxycodone 10/325	No documentation of visit or exam.
04/09/15	240 tablets of Norco 10/325	No documentation of visit or exam.
04/13/15	30 tablets of Xanax 2 mg; 60 tablets of Norco 10/325	No documentation of visit or exam.
04/21/15	120 tablets of Norco 10/325	No documentation of visit or exam.
04/23/15	100 tablets of Percocet[7] 10/325; 120 tablets of Norco 10/325; 90 tablets of Xanax 2.0 mg	Documented that patient had come in for refills. Did not document signs, symptoms or response to medications. Only documented blood pressure, lung exam, and brief cardiovascular exam. Under musculoskeletal, only documented tender lumbosacral paravertebral. Assessment: Hypertension, chronic low back pain, seizure.
04/27/15	120 tablets of oxycodone 10/325	No documentation of visit or exam.
04/29/15	120 tablets of Norco 10/325	No documentation of visit or exam.
04/30/15	60 tablets of oxycodone 10/325	No documentation of visit or exam.

[3] Respondent's medical records indicate that extremely high quantities of benzodiazepines and opioids were also prescribed to Patient A in January 2014 through June 2014, January and February 2015, and July 2015.

[4] Norco, a trade name for acetaminophen and hydrocodone, is an opioid pain medication. It is a dangerous drug as defined in section 4022 and a Schedule II controlled substance. Norco is used to treat moderate to moderately severe pain.

[5] Oxycodone is an opioid pain medication, which is used to treat moderate to severe pain.

[6] Xanax, a trade name for alprazolam, belongs to a class of drugs known as benzodiazepines. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance. Xanax is used to treat anxiety disorders, panic disorders, and anxiety caused by depression.

[7] Percocet, a trade name for acetaminophen and oxycodone, is an opioid pain medication. It is a dangerous drug as defined in section 4022 and a Schedule II controlled substance. Percocet is used to treat moderate to severe pain.

14. Between May 7, 2014, and November 6, 2014, Respondent wrote prescriptions for controlled medications to Patient A, but did not document any office visit including an interview with the patient, physical examination, or an assessment or plan. Although Patient A's prescription history shows that she filled at least *35 narcotic prescriptions* written by Respondent during this period, the patient chart did not reflect such prescriptions.

15. From 2012 through 2016, Respondent documented an assessment of anxiety and/or migraine for Patient A and prescribed controlled medications for those symptoms, but did not document a neurological or psychiatric exam.

16. In June 2013, March 2014 and November 2014, Respondent documented an assessment of hypertension, but he did not order or perform any blood work to evaluate the patient's liver function, lipid levels, and renal function, and to ensure the narcotic medications he prescribed at extremely high quantities did not damage her liver.

Failure to Refer Patient to Pain Management Specialist and Discuss Risks and Alternatives

17. On August 7, 2014, Dr. H.G.[8] ordered a Magnetic Resonance Imagining (MRI) of Patient A's brain and lumbar spine, with and without contrast. Both MRIs were read by radiologist Dr. S.K.[9] The MRI of Patient A's brain was unremarkable, while the MRI of her lumbar spine showed very minimal rotatory scoliosis convicts, mild inflammatory changes in the subcutaneous fat along the posterior aspect of the mid to lower back, and a 1-mm broad-based posterior disc bulge. No significant spinal canal or neural foraminal narrowing was appreciated. Mild to moderate bilateral facet joint arthropathy was seen, and mild bilateral facet joint osteoarthritic changes were present. The lumbar spine MRI was otherwise unremarkable. The MRI lumbar spine results did not explain severe pain, which would merit the prescribing of high quantities of pain medication.

18. From 2012 through 2016, although Respondent documented his efforts to taper Patient A off of Norco, he continued to prescribe her high quantities of opioid medication. At no

[8] Dr. H.G. is referred to by his initials to protect his privacy.

[9] Dr. S.K. is referred to by his initials to protect his privacy.

time did Respondent suggest alternatives such as methadone[10] or prescribe naloxone,[11] or to refer the patient to a pain management or psychiatric specialist.

19. Respondent's documentation fails to include a discussion with Patient A of the risks associated with taking high quantities of narcotic medication, including dependence, tolerance, respiratory depression, and/or liver damage.

Prescribing Controlled Medications to an Individual Using Cocaine

20. On or about November 3, 2015, Patient A tested positive for cocaine and high quantities of opiates,[12] hydromorphone,[13] oxymorphone,[14] and norhydrocodone[15] during a drug test, but Respondent did not document the test result in his chart notes. In addition, during a follow-up visit on January 4, 2016, Respondent did not document a discussion of the drug screening test results with the patient. Nonetheless, Respondent continued to prescribe high quantities of controlled medications to the patient and did not refer her to a drug addiction treatment center.

Prescribing Controlled Medications to the Same Individual Under Two Different Aliases

21. Respondent repeatedly prescribed controlled medications, including Norco, Xanax and Percocet, to Patient A under two different aliases. He alternated between Patient A's maiden

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[10] Methadone is an opioid medication, which is used as a pain reliever and as part of drug addiction detoxification and maintenance programs. It is a dangerous drug as defined in section 4022 and a Schedule II controlled substance. Methadone reduces withdrawal symptoms in individuals addicted to heroin or other narcotic drugs without causing the "high" associated with the drug addiction.

[11] Naloxone is a nasal spray, which is used to block or reverse the effects of opioid medication, including extreme drowsiness, slowed breathing, or loss of consciousness. It may also be used to treat a narcotic overdose in an emergency situation and to help diagnose whether a person has used an overdose of an opioid.

[12] Opiates are the natural or synthetic drugs that have a morphine-like pharmacological action. Medically, opiates are used primarily for relief of pain. Opiates include morphine and drugs structurally similar to morphine, such as codeine, hydrocodone, hydromorphone, and oxycodone.

[13] Hydromorphone is an opioid medication, which is used to treat moderate to severe pain. It is a dangerous drug as defined in section 4022 and a Schedule II controlled substance.

[14] Oxymorphone is an opioid pain medication, which is used to treat moderate to severe pain. It is a dangerous drug as defined in section 4022 and a Schedule II controlled substance.

[15] Norhydrocodone is the major metabolite of the opioid analgesic hydrocodone.

name and her married name, "A2," when writing his prescriptions, and continued to do so for approximately four years. On numerous occasions, Patient A filled prescriptions for high quantities of narcotics on or about the same day, but under different names. For example, on March 9, 2015, the patient filled 90 tablets of Xanax 2 mg under the name "Patient A2." On the same date, she filled 120 tablets of Norco 7.5/325 and 90 more tablets of Xanax 0.5 mg under the name "Patient A." Both prescriptions were written by Respondent.

Respondent Has No Special Training in Pain Management

22. During an interview with Board investigators on November 9, 2017, Respondent admitted that he has no special training in pain management. Notwithstanding, he repeatedly prescribed high quantities of benzodiazepines and opioids to Patient A for a span of approximately four years.

STANDARD OF CARE

23. The standard of care provides that a general practitioner without any special training in pain management should not prescribe extremely high quantities of benzodiazepines or narcotics to a patient.

24. The standard of care provides that a physician should not prescribe controlled medications to a patient, who is abusing illicit drugs such as cocaine.

25. The standard of care provides that, when treating and prescribing to a patient with chronic pain and anxiety, a physician should discuss and document with the patient the associated risks of taking the prescribed controlled medications. It is also the standard of care for a general practitioner to see and examine a patient prior to prescribing any controlled medications.

26. The standard of care provides that a physician should document a patient's history of present illness, review of systems, physical examination, and assessment and plan which would include a differential diagnosis.

27. The standard of care provides that a physician should not prescribe medications to the same individual under two different aliases within the same time period.

28. The standard of care provides that, when treating a patient with hypertension, a physician should order blood work every 3 to 12 months in order to monitor the patient's

electrolyte levels, lipid levels, etc.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

29. By reason of the facts set forth above in paragraphs 12 through 28, Respondent is subject to disciplinary action under section 2234, subdivision (b) of the Code, in that he was grossly negligent in his care and treatment of Patient A.

30. The following acts and omissions, considered individually and collectively, constitute gross negligence in Respondent's practice as a physician and surgeon:

A. Prescribing high quantities of controlled substances without any formal training.

B. Failing to monitor and account for possible side effects and serious interactions when prescribing high quantities of controlled substances to Patient A.

C. Failing to refer Patient A to a pain management specialist for further evaluation and treatment.

D. Prescribing controlled substances to an individual who is using cocaine.

E. Failing to document Patient A's history of present illness, past medical history, social history, family history, physical examination, and assessment and plan, including a differential diagnosis of the patient's symptoms.

F. Prescribing high quantities of controlled substances to the same individual under two different aliases.

G. Failing to properly manage a patient for hypertension.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

31. By reason of the facts set forth above it paragraphs 12 through 28, Respondent is subject to disciplinary action under section 2234, subdivision (c) of the Code in that he committed repeated negligent acts in his management and treatment of Patient A.

32. The following acts and omissions, considered individually and collectively, constitute repeated negligent acts in Respondent's practice as a physician and surgeon:

A. Prescribing high quantities of controlled substances to Patient A with no clear medical indication, office visit and/or physical examination over a long period of time.

B. Failing to discuss and document with Patient A the risks of taking controlled medications.

THIRD CAUSE FOR DISCIPLINE

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

33. By reason of the facts set forth above in paragraphs 12 through 28, Respondent is subject to disciplinary action under section 2242 of the Code, in that he prescribed drugs to Patient A without appropriate prior examinations and/or medical indications.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Acts of Excessive Prescribing)

34. By reason of the facts set forth above in paragraphs 12 through 28, Respondent is subject to disciplinary action under section 725 of the Code, in that Respondent clearly excessively prescribed narcotic medications to Patient A.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Drug Statute)

35. By reason of the facts set forth above in paragraphs 12 through 28, Respondent is subject to disciplinary action under section 2238 of the Code and section 11190 of the Health and Safety Code, in that Respondent failed to make a record of his prescriptions to Patient A for controlled substances.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

36. By reason of the facts set forth above in paragraphs 12 through 28, Respondent is subject to disciplinary action under section 2266 of the Code, in that Respondent failed to maintain adequate and accurate records relating to his provision of medical services to Patient A.

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SEVENTH CAUSE FOR DISCIPLINE

(Incompetence)

37. By reason of the facts set forth above in paragraphs 12 through 28, Respondent is subject to disciplinary action under section 2234, subdivision (d) of the Code, in that Respondent has demonstrated incompetence in his care and treatment of Patient A.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

38. By reason of the facts set forth above in paragraphs 12 through 28, Respondent is subject to disciplinary action under section 2234 of the Code, in that Respondent in his provision of services to Patient A engaged in unprofessional conduct, gross negligence, repeated negligent acts, prescribing without appropriate prior examination and/or medical indication, repeated acts of excessive prescribing, violation of drug statutes, failure to maintain adequate and accurate medical records, and incompetence.

DISCIPLINARY CONSIDERATIONS

39. To determine the degree of discipline, if any, to be imposed on Respondent Moise Tofic Zagha, M.D., Complainant alleges that on April 7, 2016, in a prior disciplinary action entitled *In the Matter of the Accusation Against Moise Tofic Zagha, M.D.* before the Medical Board of California, Case Number 06-2012-228084, Respondent's Physician's and Surgeon's Certificate was revoked. The revocation was stayed subject to three years' probation with terms and conditions for gross negligence, incompetence, excessive treatment or prescribing, violation of drug statutes, prescribing without appropriate examination, failure to maintain adequate/accurate medical records, and unprofessional conduct. That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 34602, issued to Moise Tofic Zagha, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering him to pay the Board the costs of probation monitoring; and

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

DATED: June 4, 2018

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

Complainant