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

In the Matter of the Accusation and Petition to Revoke Probation Against: Gary Neal Furness, M.D. Physician's and Surgeon's Certificate No. A 42216 Respondent.	Case No.: 800-2021-077490

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 September 16, 2022.

IT IS SO ORDERED: August 17, 2022.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D. , Chair
Panel A

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
HAMSA M. MURTHY
Deputy Attorney General
State Bar No. 274745
455 Golden Gate Avenue, Suite 11000
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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/Petition to Revoke Probation Against: **GARY NEAL FURNESS, M.D.** **331 Gemma Circle** **Santa Rosa, CA 95404** **Physician's and Surgeon's Certificate No. A 42216** Respondent.	Case No. 800-2021-077490 **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. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Hamsa M. Murthy, Deputy Attorney General.

2. Respondent Gary Neal Furness, M.D. (Respondent) is represented in this proceeding by attorney Robert Hodges, whose business address is: 3480 Buskirk Avenue, Suite 250

Pleasant Hill, CA 94523. On or about October 15, 1985, the Board issued Physician's and Surgeon's Certificate No. A 42216 to Gary Neal Furness, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation/ Petition to Revoke Probation No. 800-2021-077490, and will expire on November 30, 2022 unless renewed.

JURISDICTION

3. Accusation/Petition to Revoke Probation No. 800-2021-077490 was filed before the Board, and is currently pending against Respondent. The Accusation/Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on July 21, 2021. Respondent timely filed his Notice of Defense contesting the Accusation/Petition to Revoke Probation.

4. A copy of Accusation/Petition to Revoke Probation No. 800-2021-077490 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2021-077490. Respondent has also carefully read, fully discussed with his 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/Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2021-077490, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations in Accusation/Petition to Revoke Probation No. 800-2021-077490, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 42216 to disciplinary action.

CONTINGENCY

10. 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.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation/Petition to Revoke Probation No. 800-2021-077490 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

12. 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.

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

DISCIPLINARY ORDER

On October 3, 2018, the Board entered its order in Case No. 800-2015-016308 (attached herewith as Exhibit B), adopting the parties' stipulated settlement in that case. Pursuant to the Board's order in Case No. 800-2015-016308, Respondent's Physician's and Surgeon's Certificate (No. A 42216) was revoked and Respondent was placed on probation for three years with a number terms and conditions. (See Exhibit B at pp. 1-11.) Respondent's probation in Case No. 2015-016308 was extended past November 2, 2021 due to filing of the Accusation/Petition to Revoke Probation in Case No. 800-2021-077490 on July 21, 2021 and the continuing jurisdiction of the Board and extension of probation until resolution of Case No. 800-2021-077490. (See Exhibit B at p. 9.) This Order hereby supersedes the order in Case No. 800-2015-016308.

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 42216 issued to Respondent Gary Neal Furness, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation until November 2, 2022, or, as required by Condition No. 10 below (Violation of Probation) of this Order, Respondent shall remain on probation until the date of final resolution of any Accusation, Petition to Revoke Probation, or Interim Suspension Order filed against Respondent during the probation imposed by this Order. Respondent's probation is also hereby subject to the following terms and conditions:

1. 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, and prior to the end of Respondent's probation. 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.

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. 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.

4. 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.

5. 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.

6. 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, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place

of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

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

Travel or Residence Outside California

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

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

7. 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.

8. 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.

9. 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.

10. 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.

11. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in

determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

12. 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.

13. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation/Petition to Revoke Probation No. 800-2021-077490 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney. 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: 15 June 22 _____

GARY NEAL FURNESS, M.D.
Respondent

I have read and fully discussed with Respondent Gary Neal Furness, 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: 22 June 2022 _____

Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

HAMSA M. MURTHY
Deputy Attorney General
Attorneys for Complainant

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney. 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: _____ _____

GARY NEAL FURNESS, M.D.
Respondent

I have read and fully discussed with Respondent Gary Neal Furness, 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: _____ _____

Attorney for Respondent

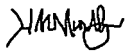
ENDORSEMENT

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

DATED: June 22, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General



HAMSA M. MURTHY
Deputy Attorney General
Attorneys for Complainant

Exhibit A
Accusation/Petition to Revoke Probation No. 800-2021-077490
Exhibit B
Order in Case No. 800-2015-016308

Exhibit A

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
HAMSA M. MURTHY
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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 and Petition to Revoke Probation Against: **Gary Neal Furness, M.D.** **331 Gemma Circle** **Santa Rosa, CA 95404** **Physician's and Surgeon's Certificate No. A 42216,** Respondent.	Case No. 800-2021-077490 **ACCUSATION AND PETITION TO REVOKE PROBATION**

PARTIES

1. William Prasifka (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On October 15, 1985, the Medical Board issued Physician's and Surgeon's Certificate Number A 42216 to Gary Neal Furness, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2022, unless renewed.

JURISDICTION

3. This Accusation and Petition to Revoke Probation 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 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 parts: "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. . . ."

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."

FACTUAL ALLEGATIONS

7. Respondent is a board certified family medicine physician and the medical director, with responsibility for utilization and quality of care, for a health maintenance organization (HMO) in Northern California. At all times relevant to this matter, Respondent was licensed and practicing medicine in California.

8. Pursuant to a Decision entered by the Board on October 3, 2018 and effective on November 2, 2018 (attached herewith as Exhibit A), Respondent's Physician's and Surgeon's Certificate Number A 42216 is subject to a three year probationary term as part of the resolution

of Board Case No. 800-2015-016308. In that case, Complainant alleged that Respondent committed gross negligence and/or repeated negligent acts and/or failed to maintain adequate medical records for a patient to whom Respondent prescribed large doses of Vicodin 5/500, among other controlled substances. Complainant also alleged that Respondent improperly prescribed controlled substances to his daughter and wife without examination.

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct/ Gross Negligence/ Repeated Negligent Acts)

9. Paragraphs 7 and 8 are incorporated herein. Respondent is guilty of unprofessional conduct and his license is subject to disciplinary action under sections 2234, 2234(b) and/or 2234(c) in that Respondent was grossly negligent and/or committed repeated negligent acts. The circumstances are as follows:

10. In his capacity as a primary care physician, Respondent saw Patient 1, an established elderly, female patient, on September 21, 2015 for an office visit.[1] At that visit, Patient 1 complained of fatigue, vaginal discharge, vaginal irritation, urinary discomfort and less restful sleep. Due to her fatigue and abdominal systems, Respondent ordered an ultrasound of Patient 1's pelvis and abdomen. At an urgent follow up visit with Patient 1 on September 30, 2015 to discuss the ultrasound results, Respondent noted a mass in the tail of the pancreas to be further evaluated via CT scan, as well as need for uterine biopsy due to possible uterine cancer. Respondent ordered a CT scan of Patient 1's abdomen and pelvis and referred her to gynecology.

11. On October 8, 2015, Respondent saw Patient 1 at an office visit for surgical clearance for endometrial biopsy and also discussed Patient 1's CT scan results with her. Respondent noted Patient 1 had a very high likelihood of having only benign pancreatic lesions, that Patient 1 will be due for a repeat CT scan in March 2016, and that "this" was discussed in detail. Respondent does not indicate in the medical record or specify appropriate discussion of the potential benefits and disadvantages of the option of an endoscopic ultrasound with potential biopsy, a more invasive option to investigate the pancreatic abnormality further. There is no indication of weighing the option of endoscopic ultrasound against the option of repeated CT scanning.

[1] Patient 1 and Patient 2 are used throughout to protect patient privacy.

Respondent also failed to properly educate Patient 1 regarding the potential for malignant transformation of the pancreatic abnormality, including but not limited to alarming signs, surveillance, complications, and alternatives.

12. Respondent subsequently saw Patient 1 for office visits related primarily to other concerns on April 14, 2016 and April 25, 2016. But he also did not educate or discuss with Patient 1 surveillance for symptoms of potential malignant transformation of the pancreatic mass at those times. At an office visit on June 19, 2017, Respondent recommended, with respect to the pancreatic mass, that there was no need for further imaging due to CT scans showing unchanged appearance of Patient 1's pancreas. June 19, 2017 was the last time he saw Patient 1. Respondent also did not educate Patient 1 on the possibility of subsequent malignant transformation of the pancreatic mass and looking out for symptoms at that time. Patient 1 passed away on June 7, 2019 of pancreatic adenocarcinoma.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct/ Gross Negligence/ Repeated Negligent Acts)

13. Paragraphs 7 through 12 are incorporated herein. Respondent is guilty of unprofessional conduct and his license is subject to disciplinary action under sections 2234, 2234(b) and/or 2234(c) in that Respondent was grossly negligent and/or committed repeated negligent acts. The circumstances are as follows:

14. Patient 2 is a young adult male with history of Crohn's disease with significant complications and high risk of morbidity and mortality. On August 12, 2019, September 12, 2019 and October 17, 2019, Patient 2 was seen by a gastroenterologist in the HMO for which Respondent serves as medical director. Due to deterioration in Patient 2's condition beginning in July 2019, Patient 2's gastroenterologist made several referrals during this period to UCSF, a tertiary care center for inflammatory bowel disease where Patient 2 had been previously seen for about a decade. The referrals were denied. Respondent, in his capacity as HMO medical director with responsibility for utilization management, denied those referrals due to Respondent's view that a different, in-network hospital could safely provide the required care to Patient 2.

Respondent, however, did not maintain any records of the referrals, and/or his denials, and/or his review of documents, and/or his reasoning regarding those denials. Respondent also failed to document communications related to the referrals, and no record of Respondent's reviews were provided to Patient 2 and/or maintained in Patient 2's medical record. Also, no records were maintained in a utilization review system for later review.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct/ Failure to Maintain Adequate and Accurate Records)

15. Paragraphs 7 through 14 are incorporated herein. Respondent is guilty of unprofessional conduct and his license is subject to disciplinary action under section 2234 and/or 2266 in that Respondent failed to maintain adequate and accurate records of the care and treatment provided to Patient 1, as a treating physician for her. Respondent is also guilty of unprofessional conduct and his license is subject to disciplinary action under section 2234 and/or 2266 in that Respondent failed to maintain adequate and accurate records regarding the provision of services to Patient 2, as an HMO medical director with responsibility for reviewing and approving or denying referrals.

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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 the probation that was granted by the Medical Board of California in Case number 800-2015-016308 and imposing the discipline that was stayed, thereby revoking Physician's and Surgeon's Certificate Number A 42216 to Gary Neal Furness, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate Number A 42216, issued to Gary Neal Furness, M.D.;

3. Revoking, suspending or denying approval of Gary Neal Furness, M.D.'s authority to supervise physician assistants and advanced practice nurses;

4. Ordering Gary Neal Furness, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: JUL 28 2021

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

Exhibit A

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

In the Matter of the Accusation Against:	)	
Gary Neal Furness, M.D.	)	Case No. 800-2015-016308
Physician's and Surgeon's Certificate No. A 42216	)	
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 November 2, 2018.

IT IS SO ORDERED: October 3, 2018.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
MACHAELA M. MINGARDI
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: **GARY NEAL FURNESS, M.D.** Sutter Medical Group of the Redwoods 2455 Summerfield Road Santa Rosa, CA 95405 Physician's and Surgeon's Certificate No. A42216 Respondent.	Case No. 800-2015-016308 OAH Case No. 2018050264 **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 Machaela M. Mingardi, Deputy Attorney General.

2. Respondent Gary Neal Furness, M.D. (Respondent) is represented in this proceeding by attorney Ronald Goldman, Esq., whose address is: Ronald Goldman, Esq., The Goldman Law Firm, 55 Main Street, Tiburon, CA 94920.

3. On or about October 15, 1985, the Board issued Physician's and Surgeon's Certificate No. A42216 to Gary Neal Furness, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-016308, and will expire on November 30, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-016308 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 December 1, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-016308 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. 800-2015-016308. 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. 800-2015-016308, 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 factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. 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

12. 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.

13. 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.

14. 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. A42216 issued to Respondent Gary Neal Furness, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. 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.

2. 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 25 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 50 hours of CME of which 25 hours were in satisfaction of this condition.

3. 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.

4. 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.

5. 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.

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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7. 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.

8. 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.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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, Ronald Goldman, 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: 6 Aug 2018

GARY NEAL FURNESS, M.D.
Respondent

I have read and fully discussed with Respondent Gary Neal Furness, 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: August 6, 2018

RONALD GOLDMAN, ESQ.
Attorney for Respondent

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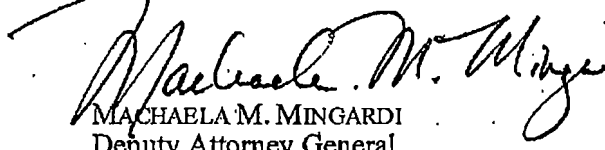
ENDORSEMENT

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

Dated: 8/6/2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General



MACHAELA M. MINGARDI
Deputy Attorney General
Attorneys for Complainant

SF2016201815

Exhibit A

Accusation No. 800-2015-016308

KAMALA D. HARRIS
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
MACHAELA M. MINGARDI
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Dec. 1 20 16
BY R. Firdaus ANALYST

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

In the Matter of the Accusation Against: **Gary Neal Furness, M.D.** Sutter Medical Group of the Redwoods 2455 Summerfield Road Santa Rosa, CA 95405 Physician's and Surgeon's Certificate No. A42216, Respondent.	Case No. 800-2015-016308 **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 October 15, 1985, the Medical Board issued Physician's and Surgeon's Certificate Number A42216 to Gary Neal Furness, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 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 unless otherwise indicated.

4. Section 2004 of the Code states, in relevant part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out of disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practices carried out by physician and surgeon certificate holders under the jurisdiction of the board."

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

6. Section 2234 of the Code states, in relevant 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."

7. Section 2242, subdivision (a), of the Code states that "[p]rescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct."

8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

9. At all times relevant to this matter, Respondent was licensed and practicing medicine in Santa Rosa, California.

PATIENT P-1[1]

10. Patient P-1 is a 71 year old man who has been a patient of Respondent for many years. He receives most of his care through the Veteran's Affairs (VA) system in Santa Rosa. P-1's VA records reflect diagnoses of, among other things, major depression, obesity, mitral valve regurgitation, post-traumatic stress disorder (PTSD), atrial fibrillation, osteoarthritis, concussion from a motor vehicle accident in 2006, cognitive impairment, hypertension, and opioid use disorder. His medication list from his VA records includes a number of drugs including Coumadin (a trade name for warfarin), a blood thinner for atrial fibrillation; bupropion (also sold under the trade name Wellbutrin) and Venlafaxine (also sold under the trade name Effexor) for depression; losartan for hypertension; and metoprolol, a beta blocker, for atrial fibrillation.

[1] The patients are designated in this document as Patients P-1 through P-4 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

11. Respondent's records show that P-1 was getting prescriptions for hydrocodone/APAP[2] 5/500 (Vicodin) and hydrocodone/APAP 10/325 (Norco) as early as August 24, 2010 with dosing of one tab of Vicodin 8 times a day as needed and one tab of Norco every 4-6 hours. This would provide as much as 5,950 mg of acetaminophen daily. The maximum 24 hour dosage of acetaminophen should not exceed 4000 mg. Furthermore, while Respondent states that the hydrocodone was prescribed for headaches and body aches, there is no description of the headaches in his chart notes for P-1. There is also no measurement of the severity of P-1's pain in his chart notes.

12. On February 21, 2011, Respondent prescribed 450 tablets of Vicodin with dosing directions of 1-2 tablets every 4 hours. This would provide up to 6000 mg of acetaminophen per day if P-1 took the maximum amount. Respondent continued providing 450 tablet prescriptions for Vicodin through December 19, 2011 along with regular prescriptions for 30 tablets of Norco during the same period. The total number of tablets prescribed during this time period would have provided more than 4,000 mg of acetaminophen a day.

13. Respondent continued to prescribe tablets of hydrocodone/APAP from December 20, 2011 through May 10, 2012. On May 10, 2012, he resumed prescribing 450 tablets of Vicodin at a time and, at the same time, issuing regular prescriptions for 30 tablets of Norco. He continued this regimen through June 7, 2013. The total number of tablets prescribed for P-1 during this time period would have provided over 5,500 mg of acetaminophen a day.

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[2] Hydrocodone bitartrate is an opioid analgesic. Hydrocodone with acetaminophen—hydrocodone/APAP—is sold under trade names such as Norco and Vicodin. It is a Schedule II controlled substance and narcotic and is a dangerous drug as defined in section 4022. Hydrocodone can produce drug dependence and, therefore, has the potential for being abused. It has a CNS depressant effect. The strength of a tablet is indicated by mg of hydrocodone/mg of acetaminophen, e.g., 5/500 reflects 5 mg of hydrocodone and 500 mg of acetaminophen. The 5/500 strength tablet is referred to as Vicodin in this document and the 10/325 strength tablet as Norco. At high levels, acetaminophen can cause liver toxicity and even death.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Failure to Maintain Adequate Records)

14. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), and section 2266 (inadequate records) of the Code in that Respondent was grossly negligent and/or committed repeated negligent acts and failed to maintain adequate records in the practice of medicine by engaging in the conduct described above including, but not limited to, the following:

A. Respondent prescribed large doses of Vicodin 5/500 providing potentially toxic amounts of acetaminophen for Patient P-1.

B. Respondent failed to describe P-1's headaches in his chart notes, the primary reason he stated he was prescribing hydrocodone/APAP to P-1, and failed to record any measurement of the severity of P-1's pain.

PATIENT P-2

15. Patient P-2 is Respondent's 17-year-old daughter. Respondent's records show that he prescribed 30 tablets of Lunesta,[3] a sleeping pill, for P-2 on March 18, 2015. The records do not reflect an office visit or an examination. Respondent stated that he prescribed Lunesta for P-2 to use on overseas trips with her mother.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Prescribing Without an Adequate Examination, Failure to Maintain Adequate Records)

16. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts); section 2242, subdivision (a) (prescribing without appropriate examination); and section 2266 (inadequate records) of the Code in that Respondent was grossly negligent and/or committed repeated negligent acts, prescribed a controlled substance without an examination, prescribed to a

[3] Lunesta is a trade name for eszopiclone, a nonbenzodiazepine hypnotic agent used for the treatment of insomnia. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

family member, and failed to maintain adequate records in the practice of medicine by engaging in the conduct described above including, but not limited to, the following:

A. Respondent failed to maintain a medical record reflecting an office visit for Patient P-2.

B. Respondent prescribed a controlled substance, Lunesta, to P-2 without a medical examination.

C. Respondent prescribed a controlled substance to a family member, his daughter, P-2.

PATIENT P-3

17. Patient P-3 is Respondent's wife. Respondent treated P-3 for at least four years yet, until October 21, 2015, when Respondent treated her for a superficial hand laceration and gave her a shingles shot, maintained no chart notes for her. During that time, he prescribed controlled substances Valium[4] and phentermine[5], and other dangerous drugs such as Fioricet[6] for her.

18. The prescription record lists a history of migraine headaches as the reason for prescribing Fioricet, but there are no notes addressing the reasons for the many prescriptions for Valium and phentermine. On January 29, 2013, a note documents a telephone call from P-3 requesting a lower dose of phentermine which should have, but did not, trigger an office visit to discuss and evaluate the change.

THIRD CAUSE FOR DISCIPLINE
(Gross Negligence, Repeated Negligent Acts, Prescribing Without an Adequate Examination, Failure to Maintain Adequate Records)

19. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts); section 2242, subdivision (a) (prescribing without appropriate examination); and section 2266 (inadequate records) of the Code in that Respondent was grossly negligent

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[4] Valium is a trade name for diazepam, a benzodiazepine. It is a psychotropic drug used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

[5] Phentermine hydrochloride is a sympathomimetic amine with pharmacologic activity similar to amphetamines. It is generally used to promote weight loss. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance.

[6] Fioricet is a trade name for a combination of acetaminophen, butalbital, and caffeine. Butalbital is in a group of drugs called barbiturates. Fioricet is a dangerous drug as defined in section 4022. It is used to treat tension headaches caused by muscle contractions.

and/or committed repeated negligent acts, prescribed a controlled substance without an examination, prescribed to a family member, and failed to maintain adequate records in the practice of medicine by engaging in the conduct described above including, but not limited to, the to, the following:

A. Respondent failed to maintain chart notes for Patient P-3 for the years that he treated her. He failed to list the diagnoses for the medications prescribed or to document, among other things, the severity of the pain for which he was prescribing, the patient's compliance with the pain regimen, and an examination of the area of the pain.

B. Respondent prescribed controlled substances and other dangerous drugs for P-3 without medical examinations.

C. Respondent prescribed a controlled substance to a family member, his wife, P-3.

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 A42216, issued to Gary Neal Furness, M.D.;

2. Revoking, suspending or denying approval of Gary Neal Furness, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Gary Neal Furness, 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: December 1, 2016

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

SF2016201815;
41622245.doc

Exhibit B

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

In the Matter of the Accusation Against:	)	
Gary Neal Furness, M.D.	)	Case No. 800-2015-016308
Physician's and Surgeon's Certificate No. A 42216	)	
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 November 2, 2018.

IT IS SO ORDERED: October 3, 2018.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
MACHAELA M. MINGARDI
Deputy Attorney General
State Bar No. 194400
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3489
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **GARY NEAL FURNESS, M.D.** Sutter Medical Group of the Redwoods 2455 Summerfield Road Santa Rosa, CA 95405 Physician's and Surgeon's Certificate No. A42216 Respondent.	Case No. 800-2015-016308 OAH Case No. 2018050264 **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 Machaela M. Mingardi, Deputy Attorney General.

2. Respondent Gary Neal Furness, M.D. (Respondent) is represented in this proceeding by attorney Ronald Goldman, Esq., whose address is: Ronald Goldman, Esq., The Goldman Law Firm, 55 Main Street, Tiburon, CA 94920.

3. On or about October 15, 1985, the Board issued Physician's and Surgeon's Certificate No. A42216 to Gary Neal Furness, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-016308, and will expire on November 30, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-016308 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 December 1, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-016308 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. 800-2015-016308. 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. 800-2015-016308, 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 factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. 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

12. 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.

13. 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.

14. 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. A42216 issued to Respondent Gary Neal Furness, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. 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.

2. 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 25 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 50 hours of CME of which 25 hours were in satisfaction of this condition.

3. 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.

4. 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.

5. 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.

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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7. 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.

8. 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.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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, Ronald Goldman, 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: 6 Aug 2018

GARY NEAL FURNESS, M.D.
Respondent

I have read and fully discussed with Respondent Gary Neal Furness, 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: August 6, 2018

RONALD GOLDMAN, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

Dated: 8/6/2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

MACHAELA M. MINGARDI
Deputy Attorney General
Attorneys for Complainant

SF2016201815

Exhibit A

Accusation No. 800-2015-016308

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Dec. 1 20 16
BY R. Firdaus ANALYST

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

In the Matter of the Accusation Against: **Gary Neal Furness, M.D.** Sutter Medical Group of the Redwoods 2455 Summerfield Road Santa Rosa, CA 95405 Physician's and Surgeon's Certificate No. A42216, Respondent.	Case No. 800-2015-016308 **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 October 15, 1985, the Medical Board issued Physician's and Surgeon's Certificate Number A42216 to Gary Neal Furness, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 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 unless otherwise indicated.

4. Section 2004 of the Code states, in relevant part:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out of disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practices carried out by physician and surgeon certificate holders under the jurisdiction of the board."

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

6. Section 2234 of the Code states, in relevant 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."

7. Section 2242, subdivision (a), of the Code states that "[p]rescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct."

8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

9. At all times relevant to this matter, Respondent was licensed and practicing medicine in Santa Rosa, California.

PATIENT P-1[1]

10. Patient P-1 is a 71 year old man who has been a patient of Respondent for many years. He receives most of his care through the Veteran's Affairs (VA) system in Santa Rosa. P-1's VA records reflect diagnoses of, among other things, major depression, obesity, mitral valve regurgitation, post-traumatic stress disorder (PTSD), atrial fibrillation, osteoarthritis, concussion from a motor vehicle accident in 2006, cognitive impairment, hypertension, and opioid use disorder. His medication list from his VA records includes a number of drugs including Coumadin (a trade name for warfarin), a blood thinner for atrial fibrillation; bupropion (also sold under the trade name Wellbutrin) and Venlafaxine (also sold under the trade name Effexor) for depression; losartan for hypertension; and metoprolol, a beta blocker, for atrial fibrillation.

[1] The patients are designated in this document as Patients P-1 through P-4 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

11. Respondent's records show that P-1 was getting prescriptions for hydrocodone/APAP[2] 5/500 (Vicodin) and hydrocodone/APAP 10/325 (Norco) as early as August 24, 2010 with dosing of one tab of Vicodin 8 times a day as needed and one tab of Norco every 4-6 hours. This would provide as much as 5,950 mg of acetaminophen daily. The maximum 24 hour dosage of acetaminophen should not exceed 4000 mg. Furthermore, while Respondent states that the hydrocodone was prescribed for headaches and body aches, there is no description of the headaches in his chart notes for P-1. There is also no measurement of the severity of P-1's pain in his chart notes.

12. On February 21, 2011, Respondent prescribed 450 tablets of Vicodin with dosing directions of 1-2 tablets every 4 hours. This would provide up to 6000 mg of acetaminophen per day if P-1 took the maximum amount. Respondent continued providing 450 tablet prescriptions for Vicodin through December 19, 2011 along with regular prescriptions for 30 tablets of Norco during the same period. The total number of tablets prescribed during this time period would have provided more than 4,000 mg of acetaminophen a day.

13. Respondent continued to prescribe tablets of hydrocodone/APAP from December 20, 2011 through May 10, 2012. On May 10, 2012, he resumed prescribing 450 tablets of Vicodin at a time and, at the same time, issuing regular prescriptions for 30 tablets of Norco. He continued this regimen through June 7, 2013. The total number of tablets prescribed for P-1 during this time period would have provided over 5,500 mg of acetaminophen a day.

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[2] Hydrocodone bitartrate is an opioid analgesic. Hydrocodone with acetaminophen—hydrocodone/APAP—is sold under trade names such as Norco and Vicodin. It is a Schedule II controlled substance and narcotic and is a dangerous drug as defined in section 4022. Hydrocodone can produce drug dependence and, therefore, has the potential for being abused. It has a CNS depressant effect. The strength of a tablet is indicated by mg of hydrocodone/mg of acetaminophen, e.g., 5/500 reflects 5 mg of hydrocodone and 500 mg of acetaminophen. The 5/500 strength tablet is referred to as Vicodin in this document and the 10/325 strength tablet as Norco. At high levels, acetaminophen can cause liver toxicity and even death.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Failure to Maintain Adequate Records)

14. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), and section 2266 (inadequate records) of the Code in that Respondent was grossly negligent and/or committed repeated negligent acts and failed to maintain adequate records in the practice of medicine by engaging in the conduct described above including, but not limited to, the following:

A. Respondent prescribed large doses of Vicodin 5/500 providing potentially toxic amounts of acetaminophen for Patient P-1.

B. Respondent failed to describe P-1's headaches in his chart notes, the primary reason he stated he was prescribing hydrocodone/APAP to P-1, and failed to record any measurement of the severity of P-1's pain.

PATIENT P-2

15. Patient P-2 is Respondent's 17-year-old daughter. Respondent's records show that he prescribed 30 tablets of Lunesta,[3] a sleeping pill, for P-2 on March 18, 2015. The records do not reflect an office visit or an examination. Respondent stated that he prescribed Lunesta for P-2 to use on overseas trips with her mother.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Negligent Acts, Prescribing Without an Adequate Examination, Failure to Maintain Adequate Records)

16. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts); section 2242, subdivision (a) (prescribing without appropriate examination); and section 2266 (inadequate records) of the Code in that Respondent was grossly negligent and/or committed repeated negligent acts, prescribed a controlled substance without an examination, prescribed to a

[3] Lunesta is a trade name for eszopiclone, a nonbenzodiazepine hypnotic agent used for the treatment of insomnia. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

family member, and failed to maintain adequate records in the practice of medicine by engaging in the conduct described above including, but not limited to, the following:

A. Respondent failed to maintain a medical record reflecting an office visit for Patient P-2.

B. Respondent prescribed a controlled substance, Lunesta, to P-2 without a medical examination.

C. Respondent prescribed a controlled substance to a family member, his daughter, P-2.

PATIENT P-3

17. Patient P-3 is Respondent's wife. Respondent treated P-3 for at least four years yet, until October 21, 2015, when Respondent treated her for a superficial hand laceration and gave her a shingles shot, maintained no chart notes for her. During that time, he prescribed controlled substances Valium[4] and phentermine[5], and other dangerous drugs such as Fioricet[6] for her.

18. The prescription record lists a history of migraine headaches as the reason for prescribing Fioricet, but there are no notes addressing the reasons for the many prescriptions for Valium and phentermine. On January 29, 2013, a note documents a telephone call from P-3 requesting a lower dose of phentermine which should have, but did not, trigger an office visit to discuss and evaluate the change.

THIRD CAUSE FOR DISCIPLINE
(Gross Negligence, Repeated Negligent Acts, Prescribing Without an Adequate Examination, Failure to Maintain Adequate Records)

19. Respondent is guilty of unprofessional conduct and subject to disciplinary action under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts); section 2242, subdivision (a) (prescribing without appropriate examination); and section 2266 (inadequate records) of the Code in that Respondent was grossly negligent

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[4] Valium is a trade name for diazepam, a benzodiazepine. It is a psychotropic drug used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance.

[5] Phentermine hydrochloride is a sympathomimetic amine with pharmacologic activity similar to amphetamines. It is generally used to promote weight loss. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance.

[6] Fioricet is a trade name for a combination of acetaminophen, butalbital, and caffeine. Butalbital is in a group of drugs called barbiturates. Fioricet is a dangerous drug as defined in section 4022. It is used to treat tension headaches caused by muscle contractions.

and/or committed repeated negligent acts, prescribed a controlled substance without an examination, prescribed to a family member, and failed to maintain adequate records in the practice of medicine by engaging in the conduct described above including, but not limited to, the to, the following:

A. Respondent failed to maintain chart notes for Patient P-3 for the years that he treated her. He failed to list the diagnoses for the medications prescribed or to document, among other things, the severity of the pain for which he was prescribing, the patient's compliance with the pain regimen, and an examination of the area of the pain.

B. Respondent prescribed controlled substances and other dangerous drugs for P-3 without medical examinations.

C. Respondent prescribed a controlled substance to a family member, his wife, P-3.

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 A42216, issued to Gary Neal Furness, M.D.;

2. Revoking, suspending or denying approval of Gary Neal Furness, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Gary Neal Furness, 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: December 1, 2016

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

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