

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

In the Matter of the Accusation)
Against:)
)
)
ADAM COLE DUER, M.D.)
)
Physician's and Surgeon's)
Certificate No. A92917)
)
Respondent)
_____)

Case No. 02-2012-227019

DECISION

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

This Decision shall become effective at 5:00 p.m. on January 1, 2017.

IT IS SO ORDERED December 27, 2016.

MEDICAL BOARD OF CALIFORNIA

By: _____

Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 VLADIMIR SHALKEVICH
Acting Supervising Deputy Attorney General
3 MIA PEREZ-ARROYO
Deputy Attorney General
4 State Bar No. 203178
California Department of Justice
5 1300 I Street, Suite 125
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 322-0762
7 Facsimile: (916) 327-2247
Attorneys for Complainant

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 02-2012-227019

12 **ADAM C. DUER, M.D.**
13 **2210 Del Paso Road, Suite A**
Sacramento, CA 95834
14 **Physician's and Surgeon's Certificate No. A**
92917

STIPULATED SURRENDER OF
LICENSE AND ORDER

15
16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California. She brought this action solely in her official capacity and is represented in this
23 matter by Kamala D. Harris, Attorney General of the State of California, by Mia Perez-Arroyo,
24 Deputy Attorney General.

25 2. Adam C. Duer, M.D. (Respondent) is represented in this proceeding by attorney
26 Dominique A. Pollara, Esq., whose address is 3600 American River Drive, Suite 160
27 Sacramento, CA 95864.

28 3. On or about September 28, 2005, the Medical Board of California issued Physician's
and Surgeon's Certificate No. A 92917 to Adam C. Duer, M.D. (Respondent). The Physician's

1 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
2 in Accusation No. 02-2012-227019 and will expire on May 31, 2017, unless renewed.

3
4 JURISDICTION

5 4. Accusation No. 02-2012-227019 was filed before the Medical Board of California
6 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
7 Accusation and all other statutorily required documents were properly served on Respondent on
8 June 24, 2014. Respondent timely filed his Notice of Defense contesting the Accusation. A copy
9 of Accusation No. 02-2012-227019 is attached as Exhibit A and incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 02-2012-227019. Respondent also has carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
14 and Order.

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

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

24 CULPABILITY

25 8. Respondent understands that the charges and allegations in Accusation No. 02-2012-
26 227019, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
27 Surgeon's Certificate.

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

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

9 RESERVATION

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

14 CONTINGENCY

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

25 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
26 copies of this Stipulated Surrender of License and Order, including Portable Document Format
27 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
28

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

3 **ORDER**

4 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 92917, issued
5 to Respondent Adam C. Duer, M.D., is surrendered and accepted by the Medical Board of
6 California.

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

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

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

15 4. If Respondent ever files an application for licensure or a petition for reinstatement in
16 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
17 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
18 effect at the time the petition is filed, and all of the charges and allegations contained in
19 Accusation No. 02-2012-227019 shall be deemed to be true, correct and admitted by Respondent
20 when the Board determines whether to grant or deny the petition.

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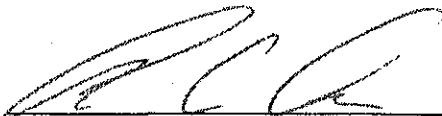
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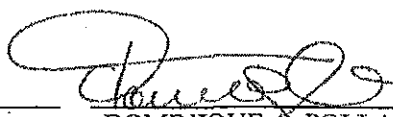
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ACCEPTANCE

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

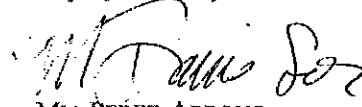
DATED: 8/31/2016  *ms*
ADAM C. DUER, M.D.
Respondent

I have read and fully discussed with Respondent Adam C. Duer, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 8/31/16 
DOMINIQUE A. POLLARA, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 12/5/16 Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
VLADIMIR SHALKEVICH
Deputy Attorney General

MIA PEREZ-ARROYO
Deputy Attorney General
Attorneys for Complainant

SA2014312531

Exhibit A

Accusation No. 02-2012-227019

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KAMALA D. HARRIS
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Supervising Deputy Attorney General
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Facsimile: (916) 327-2247
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Alonso 4 20 14*
BY *[Signature]* ANALYST

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

In the Matter of the Accusation Against:
ADAM DUER, M.D.
2 Medical Plaza Drive, Suite 130
Roseville, CA 95661
Physician's and Surgeon's Certificate No. A92917
Respondent.

Case No. 02-2012-227019

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.

2. On or about September 28, 2005, the Medical Board of California issued Physician's and Surgeon's Certificate Number A92917 to Adam Duer, 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 May 31, 2015, unless renewed.

///

JURISDICTION

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

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

9 5. Section 2234 of the Code states:

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

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

15 "(b) Gross negligence.

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

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

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

26 "(d) Incompetence.

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

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

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

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

10 6. Section 2241 of the Code states:

11 (a) A physician and surgeon may prescribe, dispense, or administer prescription drugs,
12 including prescription controlled substances, to an addict under his or her treatment for a purpose
13 other than maintenance on, or detoxification from, prescription drugs or controlled substances.

14 (b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or
15 prescription controlled substances to an addict for purposes of maintenance on, or detoxification
16 from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections
17 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this
18 subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer
19 dangerous drugs or controlled substances to a person he or she knows or reasonably believes is
20 using or will use the drugs or substances for a nonmedical purpose.

21 (c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also
22 be administered or applied by a physician and surgeon, or by a registered nurse acting under his
23 or her instruction and supervision, under the following circumstances:

24 (1) Emergency treatment of a patient whose addiction is complicated by the presence of
25 incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

26 (2) Treatment of addicts in state-licensed institutions where the patient is kept under
27 restraint and control, or in city or county jails or state prisons.

28 ///

1 "(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety
2 Code.

3 "(d)(1) For purposes of this section and Section 2241.5, "addict" means a person whose
4 actions are characterized by craving in combination with one or more of the following:

5 "(A) Impaired control over drug use.

6 "(B) Compulsive use.

7 "(C) Continued use despite harm.

8 "(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due
9 to the inadequate control of pain is not an addict within the meaning of this section or Section
10 2241.5."

11 7. Section 2241.5 of the Code states:

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

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

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

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

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

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

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

27 "(5) Fails to keep complete and accurate records of purchases and disposals of substances
28 listed in the California Uniform Controlled Substances Act (Division 10 (commencing with

1 Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal
2 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or
3 pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A
4 physician and surgeon shall keep records of his or her purchases and disposals of these controlled
5 substances or dangerous drugs, including the date of purchase, the date and records of the sale or
6 disposal of the drugs by the physician and surgeon, the name and address of the person receiving
7 the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall
8 otherwise comply with all state recordkeeping requirements for controlled substances.

9 "(6) Writes false or fictitious prescriptions for controlled substances listed in the California
10 Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse
11 Prevention and Control Act of 1970.

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

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

19 "(e) Nothing in this section shall prohibit the governing body of a hospital from taking
20 disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and
21 809.5."

22 8. Section 2242 of the Code states:

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

26 "(b) No licensee shall be found to have committed unprofessional conduct within the
27 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
28 the following applies:

1 "(1) The licensee was a designated physician and surgeon or podiatrist serving in the
2 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs
3 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
4 of his or her practitioner, but in any case no longer than 72 hours.

5 "(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
6 vocational nurse in an inpatient facility, and if both of the following conditions exist:

7 "(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
8 who had reviewed the patient's records.

9 "(B) The practitioner was designated as the practitioner to serve in the absence of the
10 patient's physician and surgeon or podiatrist, as the case may be.

11 "(3) The licensee was a designated practitioner serving in the absence of the patient's
12 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
13 the patient's records and ordered the renewal of a medically indicated prescription for an amount
14 not exceeding the original prescription in strength or amount or for more than one refill.

15 "(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
16 Code."

17 9. Section 2266 of the Code states: AThe failure of a physician and surgeon to maintain
18 adequate and accurate records relating to the provision of services to their patients constitutes
19 unprofessional conduct.®

20 10. Section 725 of the Code states:

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

27 "(b) Any person who engages in repeated acts of clearly excessive prescribing or
28 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of

1 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
2 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
3 imprisonment.

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

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

9 **DRUGS**

10 11. Fentanyl is a potent, synthetic opioid analgesic, a Schedule II controlled substance
11 pursuant to Health and Safety Code section 11055, subdivision (c)(8), a dangerous drug pursuant
12 to Code section 4022, and is used to treat breakthrough pain. It is 100 times more potent than
13 Morphine.

14 12. Norco is the brand name for hydrocodone bitartrate and acetaminophen, a Schedule II
15 controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), a
16 dangerous drug pursuant to Code section 4022, and is used to treat moderate to severe pain.

17 13. OxyContin is the trade name for oxycodone hydrochloride, a Schedule II controlled
18 substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), a dangerous
19 drug pursuant to Code section 4022, is highly addictive and is used to treat moderate to severe
20 pain.

21 14. Percocet is the trade name for oxycodone and acetaminophen, a Schedule II
22 controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(n), a
23 dangerous drug pursuant to Code section 4022, and is used for pain relief.

24 15. Methadone is an opioid (narcotic), a Schedule II controlled substance pursuant to
25 Health and Safety Code section 11055(c)(14), a dangerous drug pursuant to Code section 4022, is
26 used to treat drug addiction and it can also be used for pain relief.

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1 16. Xanax is a brand name for alprazolam, a Schedule IV controlled substance pursuant
2 to Health and Safety Code section 11057, subdivision (d)(1), a dangerous drug pursuant to Code
3 section 4022, and is used to treat anxiety.

4 17. Ativan is a brand name for lorazepam, a Schedule IV controlled substance pursuant to
5 Health and Safety Code section 11057, subdivision (d)(16), a dangerous drug pursuant to Code
6 section 4022, and is used to treat anxiety.

7 18. Soma is a brand name for carisoprodol, a Schedule IV controlled substance pursuant
8 to Health and Safety Code section 11057, subdivision (d)(17), a dangerous drug pursuant to Code
9 section 4022, and is used to treat musculoskeletal pain.

10 19. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety
11 Code section 11055, subdivision (c)(14), a dangerous drug pursuant to Code section 4022, and is
12 used to treat musculoskeletal pain.

13 20. Oxymorphone is a Schedule II controlled substance pursuant to Health and Safety
14 Code section 11055, subdivision (c)(14), a dangerous drug pursuant to Code section 4022, and is
15 used to treat musculoskeletal pain.

16 21. Hydrocodone is a Schedule III controlled substance pursuant to Health and Safety
17 Code section 11056, subdivision (e), a dangerous drug pursuant to Code section 4022, and is used
18 to treat pain.

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Gross Negligence)

21 [Bus. & Prof. Code, § 2234, subd. (b)]

22 22. Respondent is subject to disciplinary action under Code section 2234, subdivision (b),
23 in that he was grossly negligent in the care and treatment of Patient E.W. The circumstances are
24 as follows:

25 23. Patient E.W. was under the care of Respondent from on or about December 13, 2011,
26 until on or about April 19, 2013, for continuation care for chronic pain. He had previously been
27 treated by another physician with both hydrocodone and oxymorphone. Patient E.W. was
28 receiving a total of 320 mg. of morphine equivalent per day.

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1 24. After transferring care to Respondent, Patient E.W. complained of worsening pain.
2 His oxymorphone prescription was consequently increased from 30 tablets per month to 210
3 tablets every three weeks. Likewise, Respondent increased his hydrocodone prescription from
4 120 per month to 180 every three weeks. With this change, the morphine equivalence combined
5 increased to about 2,160 mg. per day.

6 25. Patient E.W. frequently emailed Respondent requesting increasingly more narcotics.
7 Respondent obliged adding hydromorphone to the analgesic mixture unsuccessfully for a time
8 when Oxymorphone became unavailable. Ultimately, the patient received 400 oxycodone 30 mg.
9 tablets every two weeks in addition to the hydrocodone 200 tablets per month. The morphine
10 equivalence was about 1,340 mg. per day.

11 26. In early October of 2012, Respondent explained to Patient E.W. that he needed to
12 wean the Oxycodone after he was made aware that the Drug Enforcement Administration (DEA)
13 was investigating him. Patient E.W. nevertheless demanded the refills with which Respondent
14 complied.

15 27. On or about October 16, 2012, Respondent performed an elective, uneventful
16 vasectomy. Patient E.W. subsequently complained of severe testicular pain. Multiple physicians
17 examined Patient E.W. and failed to find any source for the testicular pain. Advanced imaging
18 procedures were all found to be normal.

19 28. In January of 2013, Patient E.W. was examined by a urologist who noted the patient
20 was quite sedated. The urologist spoke to both the patient and Respondent about Patient E.W.'s
21 apparent narcotic addiction.

22 29. Respondent nevertheless continued to refill the narcotics prescriptions, and added
23 Lyrica and Cymbalta (non-narcotic adjunctive medications for chronic pain). Respondent then
24 requested a consultation with a pain management specialist. Patient E.W. continued to demand
25 via email communications increasing amounts of narcotics. By February of 2013, two
26 pharmacies refused to refill the prescriptions. Respondent continued to prescribe the narcotics
27 until April of 2013, when Patient E.W. was discharged from his practice.

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1 30. Respondent was grossly negligent when he clearly excessively prescribed narcotics to
2 Patient E.W. as set forth above.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Prescribing to an Addict)**
5 **[Bus. & Prof. Code, § 2241]**

6 31. Respondent is subject to disciplinary action under section 2241 of the Code in that he
7 prescribed controlled substances to Patient E.W., a person he reasonably knew was using the
8 drugs for a nonmedical purpose. The circumstances are as follows:

9 32. Complainant re-alleges paragraphs 21 through 30, inclusive above, which are
10 incorporated by reference as if fully set forth herein.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Repeated Negligent Acts)**
13 **[Bus. & Prof. Code, §§ 2234, subd. (c)]**

14 33. Respondent is subject to disciplinary action under Code section 2234, subdivision
15 (c), for his repeated acts of negligence in his care and treatment of Patient E.W. The
16 circumstances are as follows:

17 34. Complainant re-alleges paragraphs 21 through 30, inclusive above, incorporated by
18 reference as if fully set forth herein.

19 35. Respondent committed repeated negligent acts in his care and treatment of Patient
20 E.W. which included, but were not limited to, the following:

- 21 a. He failed to perform and document a thorough history and physical examination
22 with respect to the patient's pain problem and coexisting conditions;
- 23 b. He failed to document exactly the extent of the spine disease;
- 24 c. He failed to make a treatment plan;
- 25 d. He failed to obtain or document a written pain contract;
- 26 e. He failed to test the patient's actual use of controlled substances;
- 27 f. He failed to periodically review the course of pain management and make
28 appropriate modifications based on the progress; and
- g. He clearly excessively prescribed narcotics to Patient E.W.

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1 44. On or about July 18, 2011, Patient S.T. requested long-acting analgesics. Respondent
2 consequently prescribed 80 mg. of Oxycontin twice daily (240 morphine equivalents per day) in
3 addition to Norco, 600 mg. of Seroquel per day, and 6 mg. of Xanax per day. The following day,
4 Patient S.T. complained of adverse effects of the Oxycontin and specifically requested
5 oxymorphone. Respondent instead prescribed extended-release morphine based on the email
6 communication.

7 45. On or about September 13, 2011, Patient S.T. emailed another request for a long-
8 acting narcotic, citing side effects of the oxymorphone. Respondent subsequently sent a
9 prescription for a thirty (30) day supply of long-acting oxycodone in to the pharmacy. Two
10 weeks later, Patient S.T, again complained about the side effects. Respondent recommended an
11 office visit.

12 46. Patient S.T. was seen by Respondent on or about October 7, 2011. He stated that he
13 needed another long-acting pain medication. Patient S.T. also stated that he had stopped the
14 Seroquel after seeing a psychiatrist. Respondent prescribed methadone 10 mg. (80 morphine
15 equivalents per day). One week later, Patient S.T. received 660 tablets of hydrocodone from a
16 mail-order pharmacy. Within two weeks, Patient S.T. was emailing Respondent requests for
17 more oxycodone.

18 47. A chaotic pattern of prescribing ensued, with bottles of oxymorphone, oxycodone,
19 alprazolam, Soma, and hydrocodone in large amounts by Respondent from multiple pharmacies.
20 Ninety (90) day supplies of these drugs were sold by both mail-order and local pharmacies. On
21 or about June 4, 2012, following a phone call from Patient S.T., Respondent sent a prescription
22 for 600 tablets of hydrocodone to a mail-order pharmacy and another 200 tablets for hydrocodone
23 to retail the same day. In addition to the oxycodone (360 morphine equivalents per day), Soma 3
24 tablets per day, and alprazolam 8 mg. daily were prescribed.

25 48. Patient S.T. continued to call and send emails demanding refills and complaining
26 about pharmacy problems. Consistently, Respondent granted his refill request. In October 2012,
27 he referred the patient to neurosurgery. A diagnostic workup ensued.

28 ///

1 49. In April of 2013, Patient S.T. underwent surgery for his cervical spine. Post
2 operatively, he continued to request more pain medications. Respondent obtained a urine
3 toxicology screen on May 3, 2013. It was negative for all prescribed substances. Respondent
4 then sent Patient S.T. to a pain clinic. Two months later, on July 5, 2013, Respondent wrote
5 prescriptions for 220 tablets of hydrocodone as well as sleeping pills.

6 50. Respondent was grossly negligent when he clearly excessively prescribing narcotics
7 to Patient S.T, as described above.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Prescribing to an Addict)**
10 **[Bus. & Prof. Code, § 2241]**

11 51. Respondent is subject to disciplinary action under section 2241 of the Code in that he
12 prescribed controlled substances to Patient S.T., a person he reasonably knew was using the drugs
13 for a nonmedical purpose. The circumstances are as follows:

14 52. Complainant re-alleges paragraphs 38 through 50, inclusive above, which are
15 incorporated by reference as if fully set forth herein.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Repeated Negligent Acts)**
18 **[Bus. & Prof. Code, § 2234, subd. (c)]**

19 53. Respondent is subject to disciplinary action under Code section 2234, subdivision
20 (c), for his repeated acts of negligence in his care and treatment of Patient S.T. The
21 circumstances are as follows:

22 54. Complainant re-alleges paragraphs 38 through 50, inclusive above, which are
23 incorporated by reference as if fully set forth herein.

24 55. Respondent committed repeated negligent acts in his care and treatment of Patient
25 S.T. which included, but were not limited to, the following:

- 26 a. He failed to perform and document a thorough history and physical examination
27 with respect to the patient's pain problem;
- 28 b. He failed to periodically review the course of pain management and make
appropriate modifications based on the progress; and
- c. He clearly excessively prescribed narcotics to Patient S.T.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 (Excessive Prescribing)
3 [Bus. & Prof. Code, § 725]

4 56. Respondent is subject to disciplinary action under section 725 of the Code in that he
5 committed unprofessional conduct by repeatedly prescribing clearly excessive amounts of
6 controlled substances to Patient S.T. The circumstances are as follows.

7 57. Complainant re-alleges paragraphs 38 through 50, inclusive above, incorporated by
8 reference as if fully set forth herein.

9 **NINTH CAUSE FOR DISCIPLINE**

10 (Gross Negligence)
11 [Bus. & Prof. Code, § 2234, subd. (b)]

12 58. Respondent is subject to disciplinary action under Code section 2234, subdivision (b),
13 in that he was grossly negligent in the care and treatment of Patient T.P. The circumstances are
14 as follows:

15 59. Respondent treated Patient T.P. from on or about January 28, 2009, until on or about
16 March 19, 2013, for chronic cervicalgia, shoulder impingement, and upper extremity tendonitis.
17 Initially, she was seeing multiple physicians who were prescribing about sixty (60) hydrocodone
18 tablets per month for her pain. Her demands for narcotics increased. By the summer of 2011,
19 when she became pregnant, she was taking about ten (10) hydrocodone 10 mg. tablets daily plus
20 45 oxycodone 5 mg. tablets per three to four weeks. Patient T.P. went into withdrawal twice
21 during her pregnancy.

22 60. In July of 2012, Patient T.P.'s neck complaints increased after a motor vehicle
23 accident and her pills were reported "stolen." MRI imaging failed to elucidate the cause of her
24 severe pain. Respondent referred her to orthopedics and physical therapy, which she attended.
25 Patient T.P. failed to improve. She was then referred to a pain management specialist, and she
26 continued to present to Respondent for pain. He continued to prescribe oxycodone and
27 hydrocodone during that period. Her husband emailed Respondent requesting more narcotics
28 after the pharmacy denied her a refill in October of 2012 when a CURES report showed multiple
pharmacies and multiple prescribers dating back to June 2012.

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1 61. On or about March 19, 2013, during Patient T.P.'s last visit with Respondent, she
2 complained of neck pain and he prescribed a non-narcotic adjunctive drug, Cymbalta.

3 62. Respondent's actions constitute gross negligence and subject him to discipline within
4 the meaning of Code section 2234, subdivision (b), in that Respondent engaged in an extreme
5 departure from the standard of care by failing to develop a detailed treatment plan to manage
6 Patient T.P.'s opioid dependence during her pregnancy.

7 **TENTH CAUSE FOR DISCIPLINE**
8 **(Prescribing to an Addict)**
9 **[Bus. & Prof. Code, § 2241]**

10 63. Respondent is subject to disciplinary action under section 2241 of the Code in that he
11 prescribed controlled substances to Patient T.P., a person he reasonably knew was using the drugs
12 for a nonmedical purpose. The circumstances are as follows:

13 64. Complainant re-alleges paragraphs 58 through 62, inclusive above, which are
14 incorporated by reference as if fully set forth herein.

15 **ELEVENTH CAUSE FOR DISCIPLINE**
16 **(Repeated Negligent Acts)**
17 **[Bus. & Prof. Code, § 2234, subd. (c)]**

18 65. Respondent is subject to disciplinary action under Code section 2234, subdivision
19 (c), for his repeated acts of negligence in his care and treatment of Patient T.P. The
20 circumstances are as follows:

21 66. Complainant re-alleges paragraphs 58 through 62, inclusive above, which are
22 incorporated by reference as if fully set forth herein.

23 67. Respondent committed repeated negligent acts in his care and treatment of Patient
24 T.P. which included, but were not limited, to the following:

- 25 a. He failed to perform and document a thorough history and physical examination
26 with respect to the patient's chronic neck pain and tendonitis;
- 27 b. He failed to document a plan to manage the patient's pain;
- 28 c. He failed to obtain or document informed consent;
- d. He failed to obtain or document a written pain contract;

- 1 e. He failed to periodically review the course of pain management and make
2 appropriate modifications based on the progress; and
3 f. He failed to develop a treatment plan to manage Patient T.P.'s opioid dependence
4 during her pregnancy.

5 **TWELFTH CAUSE FOR DISCIPLINE**

6 (Excessive Prescribing)
7 [Bus. & Prof. Code, § 725]

8 68. Respondent is subject to disciplinary action under section 725 of the Code in that he
9 committed unprofessional conduct by repeatedly prescribing clearly excessive amounts of
10 controlled substances to Patient T.P. The circumstances are as follows.

11 69. Complainant re-alleges paragraphs 58 through 62, inclusive above, which are
12 incorporated by reference as if fully set forth herein.

13 **THIRTEENTH CAUSE FOR DISCIPLINE**

14 (Gross Negligence)
15 [Bus. & Prof. Code, § 2234, subd. (b)]

16 70. Respondent is subject to disciplinary action under Code section 2234, subdivision (b),
17 in that he was grossly negligent in the care and treatment of Patient R.W. The circumstances are
18 as follows:

19 71. Respondent treated Patient R.W. from on or about May 29, 2012, until on or about
20 March 20, 2013. Her diagnosis was fibromyalgia. Prior to seeing Respondent, Patient R.W. was
21 seeing two different doctors simultaneously. Both were prescribing high dose narcotics.

22 72. During her first visit with Respondent on or about May 29, 2012, he offered
23 hydromorphone as an alternative to her existing oxymorphone/hydrocodone regimen (morphine
24 equivalence of 900 mg. per day). Respondent prescribed 240 tablets of hydromorphone 8 mg.
25 tablets with a morphine equivalence of 320 mg. daily.

26 73. A few days later, Patient R.W. began emailing Respondent about inadequate pain
27 control (there had been a substantial decrease in the dosing equivalence). In his email reply on
28 June 8, 2012, Respondent offered to prescribe oxycodone as an alternative. He then began
prescribing oxycodone 30 mg. with a morphine equivalence of 135 mg. daily.

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1 74. Patient R.W. requested more oxycodone by email. She received 390 tablets in June
2 (daily equivalence of 585 mg.). During July of 2012, Respondent prescribed 1,540 tablets of
3 oxycodone 30 mg. for a daily total morphine equivalence of 2,310 milligrams. Patient R.W.
4 subsequently received prescriptions from Respondent for 900 tablets of Oxycodone 30 mg.
5 monthly for a total of 1,250 morphine equivalents daily. She used multiple pharmacies and made
6 many insistent demands for additional oxycodone of Respondent by telephone and email as well.

7 75. In December of 2012, Respondent began prescribing methadone in response to
8 Patient R.W.'s email requests specifically for it. On or about February 19, 2013, Patient R.W.
9 told Respondent during an office visit that she did not like the methadone. Respondent then
10 referred her to a pain specialist.

11 76. Respondent was grossly negligent when he clearly excessively prescribed narcotics
12 to Patient R.W, as described above.

13 **FOURTEENTH CAUSE FOR DISCIPLINE**

14 **(Prescribing to an Addict)**
15 **[Bus. & Prof. Code, § 2241]**

16 77. Respondent is subject to disciplinary action under section 2241 of the Code in that he
17 prescribed controlled substances to Patient R.W., a person he reasonably knew was using the
18 drugs for a nonmedical purpose. The circumstances are as follows:

19 78. Complainant re-alleges paragraphs 70 through 76, inclusive above, which are
20 incorporated by reference as if fully set forth herein.

21 **FIFTEENTH CAUSE FOR DISCIPLINE**

22 **(Repeated Negligent Acts)**
23 **[Bus. & Prof. Code, § 2234, subd. (c)]**

24 79. Respondent is subject to disciplinary action under Code section 2234, subdivision
25 (c), for his repeated acts of negligence in his care and treatment of Patient R.W. The
26 circumstances are as follows:

27 80. Complainant re-alleges paragraphs 70 through 76, inclusive above, which are
28 incorporated by reference as if fully set forth herein.

81. Respondent committed repeated negligent acts in his care and treatment of Patient
R.W. which included, but were not limited to, the following:

- 1 a. He failed to perform and document a thorough history and physical examination
2 with respect to the patient's chronic neck pain and tendonitis;
3 b. He failed to identify the patient's coexisting conditions;
4 c. He failed to obtain or document a written pain contract;
5 d. He failed to periodically review the course of pain management and make
6 appropriate modifications based on the progress; and
7 e. He clearly excessively prescribed narcotics to Patient R.W.

8 **SIXTEENTH CAUSE FOR DISCIPLINE**

9 (Excessive Prescribing)
10 [Bus. & Prof. Code, § 725]

11 82. Respondent is subject to disciplinary action under section 725 of the Code in that he
12 committed unprofessional conduct by repeatedly prescribing clearly excessive amounts of
13 controlled substances to Patient R.W. The circumstances are as follows.

14 83. Complainant re-alleges paragraphs 70 through 76, inclusive above, which are
15 incorporated by reference as if fully set forth herein.

16 **SEVENTEENTH CAUSE FOR DISCIPLINE**

17 (Gross Negligence)
18 [Bus. & Prof. Code, § 2234, subd. (b)]

19 84. Respondent is subject to disciplinary action under Code section 2234, subdivision (b),
20 in that he was grossly negligent in the care and treatment of Patient L.W. The circumstances are
21 as follows:

22 85. Patient L.W. was the adult daughter of Patient R.W. She was under the care of
23 Respondent from on or about December 11, 2011, until on or about April 19, 2013. He assumed
24 care of this patient after his colleague was on maternity leave. She had been receiving
25 hydrocodone and oxymorphone (620 morphine equivalents per day) for what was initially
26 identified as abdominal pain of unknown etiology and was later identified as low backache and
27 body pain.

28 86. At the time of her first visit with Respondent on or about December 11, 2011, Patient
L.W. had already been referred to a pain clinic by her previous physician. She complained of
back pain. Respondent prescribed oxymorphone 40 mg. three times daily (840 morphine

1 equivalents) and continued the hydrocodone (30 morphine equivalents) in addition to continuing
2 the Xanax initially prescribed by Respondent's colleague.

3 87. There is no documentation of a complete spine examination performed by
4 Respondent. He did, however, order an MRI which showed only minor lumbar disc disease, a
5 herniated disc at L4-5, and degenerative joint disease.

6 88. Patient L.W. returned every three to four weeks complaining of increased pain and
7 the need for more analgesics. In March of 2012, the oxymorphone reportedly became
8 unavailable, and Respondent added hydromorphone (320 morphine equivalents daily). Patient
9 L.W. continued to receive the oxymorphone until May of that year when the change was made to
10 oxycodone (180 morphine equivalents daily), hydromorphone (320) and hydrocodone (60
11 morphine equivalents per day) for a total of 560 morphine equivalents daily.

12 89. Patient L.W. was using two pharmacies, and was also getting amphetamines from
13 both her psychiatrist and Respondent. By the summer of 2012, she was filling 450 tablets of
14 oxycodone every 10 days or so.

15 90. In February of 2012, Respondent referred Patient L.W. to a pain management
16 specialist, but continued to fill her requests for pain medications. During her visit on or about
17 April 11, 2013, he explained that her care with him would end on April 23, 2013. Respondent
18 saw Patient L.W. for the last time on or about April 19, 2013, during which he gave her one last
19 refill.

20 91. There is no record of a urine toxicology analysis for this patient.

21 92. Respondent was grossly negligent when he clearly excessively prescribed narcotics to
22 Patient L.W.

23 **EIGHTEENTH CAUSE FOR DISCIPLINE**

24 **(Prescribing to an Addict)
[Bus. & Prof. Code § 2241]**

25 93. Respondent is subject to disciplinary action under section 2241 of the Code in that he
26 prescribed controlled substances to Patient L.W., a person he reasonably knew was using the
27 drugs for a nonmedical purpose. The circumstances are as follows:
28

1 94. Complainant re-alleges paragraphs 84 through 92, inclusive above, which are
2 incorporated by reference as if fully set forth herein.

3 **NINETEENTH CAUSE FOR DISCIPLINE**

4 (Repeated Negligent Acts)

5 [Bus. & Prof. Code, § 2234, subd. (c)]

6 95. Respondent is subject to disciplinary action under Code section 2234, subdivision
7 (c), for his repeated acts of negligence in his care and treatment of Patient L.W. The
8 circumstances are as follows:

9 96. Complainant re-alleges paragraphs 84 though 92, inclusive above, which are
10 incorporated by reference as if fully set forth herein.

11 97. Respondent committed repeated negligent acts in his care and treatment of Patient
12 L.W which included, but were not limited to, the following:

- 13 a. He failed to perform and document a thorough history and physical examination
14 with respect to the patient's pain problem;
- 15 b. By prescribing narcotics for the patient's abdominal pain of unknown origin and
16 fibromyalgia when narcotics are not recommended for such complaints;
- 17 c. He failed to make a treatment plan;
- 18 d. He failed to obtain or document a written pain contract;
- 19 e. He failed to employ additional therapeutic modalities;
- 20 f. He failed to test the patient's actual use of controlled substances;
- 21 g. He failed to periodically review the course of pain management and make
22 appropriate modifications based on the progress; and
- 23 h. Respondent clearly excessively prescribed narcotics to Patient L.W.

24 **TWENTIETH CAUSE FOR DISCIPLINE**

25 (Excessive Prescribing)

26 [Bus. & Prof. Code, § 725]

27 98. Respondent is subject to disciplinary action under section 725 of the Code in that he
28 committed unprofessional conduct by repeatedly prescribing excessive amounts of controlled
substances to Patient L.W. The circumstances are as follows:

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1 99. Complainant re-alleges paragraphs 84 through 92, inclusive above, which are
2 incorporated by reference as if fully set forth herein.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Repeated Negligent Acts)**

5 **[Bus. & Prof. Code, § 2234, subd. (c)]**

6 100. Respondent is subject to disciplinary action under Code section 2234, subdivision
7 (c), for his repeated acts of negligence in his care and treatment of Patient S.E. The
8 circumstances are as follows:

9 101. Patient S.E. is a 49-year-old man who was treated by Respondent from 2008 until
10 2013 for chronic abdominal pain associated with three failed ventral hernia repairs. Definitive
11 treatment in the form of surgical reconstruction was the only possibility if the patient would both
12 reduce his obesity and wean off narcotics. Patient S.E. did not comply with the surgeon's
13 conditions and was consequently left with a massive hernia and abdominal pain.

14 102. At the time of Patient S.E.'s first visit with Respondent in 2008, he was taking 8
15 Hydrocodone tablets per day for this pain (80 morphine equivalents per day). Respondent soon
16 changed his prescriptions to both long and short-acting oxycodone as well as hydrocodone. The
17 patient frequently requested early refills and used multiple pharmacies. Respondent discussed
18 narcotic tapering with the patient, but it never happened.

19 103. By July of 2012, Patient S.E. was receiving fentanyl 2400 mg. per day, hydrocodone
20 200 mg. per day, and oxycodone 360 mg. per day (800 total morphine equivalents per day). In
21 April of 2013, Respondent performed a urine toxicology test which showed the patient was using
22 cannabis as well as the prescribed narcotics. Respondent explained to Patient S.E. that he could
23 not continue to prescribe narcotics while he was using cannabis. Patient S.E. elected to find
24 another physician to treat his pain.

25 104. Respondent committed repeated negligent acts in his care and treatment of Patient
26 S.E. which included, but were not limited to, the following:

- 27 a. He failed to obtain or document a written pain contract; and
28 b. He failed to obtain or document informed consent.

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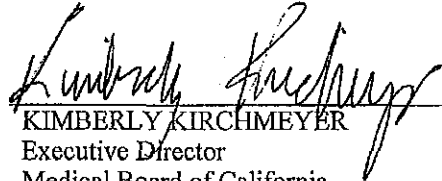
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PRAYER

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 or suspending Physician's and Surgeon's Certificate Number A92917, issued to Adam Duer, M.D.;
2. Revoking, suspending or denying approval of Adam Duer, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Adam Duer, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: June 24, 2014



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