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

In the Matter of the Accusation Against:)))
JOAN H. MACKENZIE, M.D.) Case No. 800-2014-006603
Physician's and Surgeon's)
Certificate No. G12153)
Respondent)

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 May 4, 2017

IT IS SO ORDERED April 27, 2017.

MEDICAL BOARD OF CALIFORNIA

Kimberly Kirchmeyer / Executive Director

KATHLEEN KENEALY Acting Attorney General of California 2 E. A. Jones III Supervising Deputy Attorney General CINDY M. LOPEZ 3 Deputy Attorney General 4 State Bar No. 119988 California Department of Justice 5 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 6 Telephone: (213) 897-7373 Facsimile: (213) 897-9395 7 Attornevs for Complainant BEFORE THE MEDICAL BOARD OF CALIFORNIA 9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 11 In the Matter of the Accusation Against: Case No. 800-2014-006603 12 JOAN MACKENZIE, M.D. 348 Calle De Andalucia 13 STIPULATED SURRENDER OF Redondo Beach, CA 90277 LICENSE AND ORDER 14 Physician's and Surgeon's Certificate No. G12153 15 Respondent. 16 17 18 In the interest of a prompt and speedy settlement of this matter, consistent with the public 19 interest and the responsibility of the Medical Board of California of the Department of Consumer 20 Affairs, the parties hereby agree to the following Stipulated Surrender and Disciplinary Order 21 which will be submitted to the Board for approval and adoption as the final disposition of the 22 Accusation. 23 PARTIES 24 Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board 1. 25 of California (Board). She brought this action solely in her official capacity and is represented in 26 this matter by Kamala D. Harris, Attorney General of the State of California, by Cindy M. Lopez, 27 Deputy Attorney General. 28

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- JOAN MACKENZIE, M.D. (Respondent) is represented in this proceeding by attorney Peter R. Osinoff, whose address is 3699 Wilshire Boulevard, 10th Floor Los Angeles, CA 90010.
- 3. On or about August 1, 1966, the Board issued Physician's and Surgeon's Certificate No. G12153 to Joan MacKenzie, 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. 800-2014-006603 and expired on November 30, 2016.

JURISDICTION

4. Accusation No. 800-2014-006603 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 October 18, 2016. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2014-006603 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2014-006603. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of her 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 her; the right to present evidence and to testify on her 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

- Respondent understands that the charges and allegations in Accusation No. 800-2014-006603, if proven at a hearing, constitute cause for imposing discipline upon her Physician's and Surgeon's Certificate.
- 9. Respondent retired from the practice of medicine in 2014. 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 those charges constitute cause for discipline. Respondent hereby gives up her right to contest that cause for discipline exists based on those charges.
- 10. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Physician's and Surgeon's Certificate without further process.

CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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 Surrender 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.
- 12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (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 formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G12153, issued to Respondent JOAN MACKENZIE, M.D., is surrendered and accepted by the Medical Board of California.

- 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Medical Board of California.
- 2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.
- 4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2014-006603 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Peter R. Osinoff. 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:	<u></u>	11	17	I can it the Kennya	141
				IOAN MACKENZIE M.D.	

Respondent

1	I have read and fully discussed with Respon	ndent JOAN MACKENZIE, M.D. the terms and				
2	conditions and other matters contained in this Stip	conditions and other matters contained in this Stipulated Surrender of License and Order. I				
3	approve its form and content.					
4						
5	c 11	ETER R. OSINOFF ttorney for Respondent				
6		,				
7	7 ENDORS	EMENT				
8	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted					
9	for consideration by the Medical Board of Californ	nia of the Department of Consumer Affairs.				
10	0 Dated: 4. 18.17	Respectfully submitted,				
11	1	Kamala D. Harris Attorney General of California				
12	2	E. A. JONES III Supervising Deputy Attorney General				
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14	4	Cina m2				
15	5	CINDY M. LOPEZ Deputy Attorney General				
16	6	Attorneys for Complainant				
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1	KAMALA D. HARRIS Attorney General of California						
2	E. A. JONES III Supervising Deputy Attorney General FILED						
3	CINDY M. LOPEZ Deputy Attorney General State Bar No. 119988 STATE OF CALIFORNIA MEDICAL BOARD OF CALIFORNIA SACRAMENTO DEPART 18, 2016						
5	California Department of Justice 300 So. Spring Street, Suite 1702						
6	Los Angeles, CA 90013 Telephone: (213) 897-7373						
7	Facsimile: (213) 897-9395 Attorneys for Complainant						
8							
9	BEFORE THE MEDICAL BOARD OF CALIFORNIA						
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA						
11							
12	In the Matter of the Accusation Against: Case No. 800-2014-006603						
13	JOAN MACKENZIE, M.D. 348 Calle De Andalucia						
14	Redondo Beach, CA 90277						
15	Physician's and Surgeon's Certificate No. G12153,						
16	Respondent.						
17							
18							
19	Complainant alleges:						
20	<u>PARTIES</u>						
21	1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official						
22	capacity as the Executive Director of the Medical Board of California, Department of Consumer						
23	Affairs (Board).						
24	2. On or about August 1, 1966, the Medical Board issued Physician's and Surgeon's						
25	Certificate Number G12153 to Joan MacKenzie, M.D. (Respondent). The Physician's and						
26	Surgeon's Certificate was in full force and effect at all times relevant to the charges brought						
27	herein and will expire on November 30, 2016, unless renewed.						
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	(JOAN MACKENZIE, M.D.) ACCUSATION NO. 800-2014-006603						

JURISDICTION

- 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 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:

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

- "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
 - "(b) Gross negligence.
- "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
 - "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
 - "(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
 - "(d) Incompetence.
- "(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

- "(f) Any action or conduct which would have warranted the denial of a certificate.
- "(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.
- "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

CAUSE FOR DISCIPLINE

(Gross Negligence)

- 6. Respondent Joan MacKenzie, M.D. is subject to disciplinary action under section 2234, subdivision (b), in that Respondent was grossly negligent. The circumstances are as follows:
 - A. This case was initiated based on a complaint from a pharmacy alleging over prescribing of controlled substances. The pharmacists noticed in September 2014 that there were large amounts of Xanax and Amphetamine combinations prescribed to several new patients.
 - B. A CURES report (Controlled Substance Utilization Review and Evaluation System) showed that Respondent had been prescribing this combination of Xanax and Amphetamines for at least three years. One patient in particular, M.B., had 27 prescriptions from April 2014 through September 11, 2014, for Xanax, Adderall, Dextroamphetamine, and Vicodin.
 - C. There were only seven pages for this patient that Respondent indicated were the complete medical records for M.B.
 - D. Respondent was grossly negligent in her care and treatment of patient M.B. in that: there was no discussion or acknowledgment regarding treatment goals; there were no copies of prescriptions in the records, and no corresponding appropriate prior examinations; and the records lacked an opioid agreement and urine drug screening. The records indicate

1	no discussion of the potential risks and benefits, and there is no discussion charted about			
2	diversion or side effects.			
3				
4	PRAYER			
5	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,			
6	and that following the hearing, the Medical Board of California issue a decision:			
7	1. Revoking or suspending Physician's and Surgeon's Certificate Number G12153,			
8	issued to Joan MacKenzie, M.D.;			
9	2. Revoking, suspending or denying approval of Joan MacKenzie, M.D.'s authority to			
10	supervise physician assistants, pursuant to section 3527 of the Code;			
11	3. Ordering Joan MacKenzie, M.D., if placed on probation, to pay the Board the costs of			
12	probation monitoring; and			
13	4. Taking such other and further action as deemed necessary and proper.			
14	.) 7 / 1			
15	DATED: October 18, 2016 KIMBERLY KIRCHMEYER			
16	Executive Director Medical Board of California			
17	Department of Consumer Affairs State of California			
18	Complainant			
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