

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

In the Matter of the Accusation )  
Against: )  
)  
)  
Kiansi Blaise Boni, M.D. )  
)  
Physician's and Surgeon's )  
Certificate No. A 45536 )  
)  
Respondent )  
\_\_\_\_\_ )

Case No. 05-2013-229574

DECISION

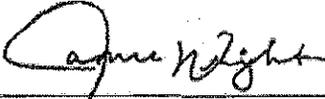
The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 18, 2017

IT IS SO ORDERED April 18, 2017.

MEDICAL BOARD OF CALIFORNIA

By: \_\_\_\_\_

  
Jamie Wright, J.D., Chair  
Panel A

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

In the Matter of the Accusation Against:

KIANSI BLAISE BONI, M.D.,  
Physician's and Surgeon's Certificate  
No. A45536,

Respondent.

Case No. 05-2013-229574

OAH No. 2016070280

**PROPOSED DECISION**

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 6 through 9, 2017, in Los Angeles.

Chris Leong, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs (Department), State of California.

Respondent Kiansi Blaise Boni, M.D., appeared and represented himself.

Oral and documentary evidence was received. The record was held open to allow further submissions. Complainant submitted an additional document, which was marked and admitted as part of Exhibit 4. Respondent made no additional submissions.

The record was closed and the matter was submitted on February 21, 2017.

*Protective Order*

Complainant moved for a protective order sealing exhibits to protect confidential information concerning third parties; respondent made no objection. The ALJ issued a protective order dated March 22, 2017. Redaction of those documents subject to the protective order, to obscure confidential information, was not practicable and would not have provided adequate privacy protection. Those exhibits shall remain under seal and shall not be opened, except by order of the Board, by OAH, or by a reviewing court. The ALJ ordered that every court reporter refer in the hearing transcript to respondent's patients by initials only.

## FACTUAL FINDINGS

### *Jurisdiction*

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.

2. The Board issued Physician and Surgeon's Certificate No. A45536 to respondent on November 28, 1988. That certificate is scheduled to expire on March 31, 2018.

### *Respondent's Certification Status from 2012 to 2014*

3. From July 10, 2008, through August 13, 2013, respondent's address of record, according to Board records, was Kush Medical Group, at 9061 Magnolia Avenue in Riverside. From August 13, 2013, to the present, respondent's address of record is P.O. Box 6299 in Torrance.<sup>1</sup>

4. Respondent and complainant agree that there is no building with an address of 9061 Magnolia Avenue. Complainant offered no documentation to show that respondent ever identified his address as 9061 Magnolia Avenue. Respondent testified that Kush Medical Group was located at 9661 Magnolia Avenue. Respondent testified that he telephoned the Board to inform the Board that it was using an incorrect address; in 2013, however, Board investigators went to 9661 Magnolia Avenue and found no Kush Medical Group located there. Respondent did not send a written address correction to the Board, and offered no evidence to corroborate the telephone call he claims to have made.

5. On March 13, 2012, the Department mailed respondent a 30-day notice of intent to suspend his certificate on the ground that he had violated a child or family support judgment or order of the Los Angeles County Department of Child Support Services, a local child support agency. By a Suspension Notice dated April 18, 2012, the Department suspended respondent's certificate effective April 17, 2012. The Suspension Notice recited that "the suspension will remain in effect until we receive a valid 'release' form from the Local Child Support Agency[] . . . certifying that you are in compliance with a judgment or order of child or family support." (Ex. 8.) The suspension ended on August 8, 2013.

6. The Department mailed both the 30-day notice of intent and the actual Suspension Notice to respondent at the nonexistent 9061 Magnolia Avenue. Correspondence sent to that invalid street address was returned as not deliverable. (See, e.g., Ex. 11, pp. 144, 160.) Respondent, nevertheless, appears to have received notice of the suspension at some time

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<sup>1</sup> At some point in 2013, the Board was also aware of respondent's business address at L.A. Urgent Care on Hobson Way in Oxnard, reflected on prescriptions respondent issued, and respondent's home address in Camarillo, where respondent was interviewed and arrested.

prior to the investigation in this matter. When Senior Deputy Scott Hardy of the Ventura County Sheriff's Department (VCSD) mentioned the suspension in an interview with respondent on June 20, 2013, respondent acknowledged that he knew about the status of his certificate due to failure to pay child support. He maintained that his certificate had not been suspended, however, but had been what he termed "denied." (See, e.g., Ex. 27, p. 369.) Respondent was also aware he was not allowed to practice medicine. (*Id.* at p. 371.)

7. While the Department's suspension order was in effect, on July 8, 2013, in *People v. Boni*, Superior Court of California, Ventura County, case number 2013021185, in which respondent was charged with three felony counts, the court set respondent's bail at \$50,000 and ordered respondent to sign a conditional "Own Recognizance Release," a condition being that respondent will "not practice medicine without a valid license issued in California." (Ex. 12.) The order was removed on August 13, 2013; the Department's suspension had ended five days earlier. When respondent submitted his certification renewal fees, he was sent a pocket license.

#### *The Board's Investigation and Complainant's Allegations*

8. In early 2013, the Board received complaints that respondent was practicing medicine while his physician's and surgeon's certificate was suspended. Julie Escat and William Boyd, investigators with the Health Quality Investigation Unit (HQIU) of the Department's Division of Investigation, investigated respondent.

9. Robert Davidson, a Senior Deputy in the VCSD, also began a criminal investigation of respondent in May 2013 based on an unconfirmed third party complaint that respondent was prescribing controlled substances illegally. Deputy Davidson determined that respondent's certificate had been suspended. He then twice visited respondent's medical office undercover, posing as patient "Troy McKinney" (patient TM).

10. On his first visit, on June 14, 2013, patient TM sat in the waiting area and then walked to the examination room; respondent observed the patient. Once in the examination room, patient TM told respondent that he suffered from lower back pain. Patient TM volunteered that he had found Norco effective in the past and that Vicodin had caused him stomach problems. Respondent told patient TM that he did not want him to become addicted to drugs. Respondent's nurse took patient TM's blood pressure and weight. Respondent listened to patient TM's upper chest with a stethoscope, checking for myocarditis (a heart complication from heroin addiction), and checked his arms for needle marks. Respondent conducted no other physical examination, did not inquire into the history of patient TM's back pain, did not inquire into the severity of the pain, did not ask for any prior medical records, and did not discuss patient TM's prior drug use or whether patient TM had any addiction issues. Patient TM paid \$150 for the visit and provided a urine sample. Respondent prescribed Subutex, a Schedule III controlled substance, and Baclofen, a muscle relaxant. Respondent called the prescription into a pharmacy across the street. Patient TM picked up the medications.

11. Deputy Davidson then asked Senior Deputy Scott Hardy of the VCSD to ask respondent whether he knew his license was suspended and to record the conversation. Deputy

Hardy and another deputy visited respondent's office on June 20, 2013. Respondent denied that his license was suspended, claiming instead that it was "denied" for failure to pay child support. He did not explain the difference between "suspended" and "denied," and maintained that, despite the "denial," he was allowed to practice medicine and issue prescriptions. Sergeant Victor Fazio authored a report detailing the contents of the recording made by Deputy Hardy. Respondent admitted having seen his license status, posted on the Board's website, stating "No practice [was] permitted." (Ex. 22, p. 309.) Respondent also acknowledged that he was receiving mail from the Board at his medical office at 650 Hobson Way in Oxnard.

12. On June 26, 2013, Deputy Davidson returned to respondent's office as patient TM without an appointment. Patient TM told the receptionist he wanted a follow-up because the Subutex was ineffective. The receptionist walked patient TM to an exam room. Respondent approached the entrance of the room and asked the receptionist why patient TM was there. The receptionist told respondent that patient TM said his medications were not working. Respondent remained in the doorway, spoke to patient TM, and prescribed methocarbamol, a muscle relaxant, and Seboxone, a Schedule III controlled substance used to treat opioid addiction. Respondent told patient TM to pick up the new medications at the pharmacy across the street. (Ex. 22, pp. 318-319.)

13. On July 3, 2013, Deputy Davidson authorized a search warrant for respondent's office at 650 Hobson Way and for respondent's home in Camarillo, and executed the search at respondent's home. Respondent again acknowledged that his license had been "denied." (Ex. 22, p. 315.)

14. Complainant alleges seven causes for discipline against respondent: for gross negligence (First Cause for Discipline); repeated negligent acts (Second Cause for Discipline); failure to maintain adequate and accurate records (Third Cause for Discipline); prescribing controlled substances without a physical exam (Fourth Cause for Discipline); unlawful practice of medicine (Fifth Cause for Discipline); excessive prescribing (Sixth Cause for Discipline); and unprofessional conduct (Seventh Cause for Discipline).

#### *Expert Witness*

15. Complainant offered the testimony of Timothy A. Munzing, M.D., to establish the standard of care for the treatment of the patient in this case. Dr. Munzing has been a staff family physician at Southern California Permanente Medical Group (Kaiser Permanente) in Santa Ana, California for the past 30 years. He has been the Program Director of the Kaiser Permanente Orange County Family Medicine Residency Program since 1988, and is a Clinical Professor at the University of California, Irvine, College of Medicine. He received his medical degree from the University of California, Los Angeles, School of Medicine in 1982 and completed a family practice internship and residency at Kaiser Foundation Hospital in 1985. He is licensed in California and has been a diplomate of the American Board of Anesthesiology since October 1982, with a subspecialty certification in pain medicine that expires in 2023. He has been a diplomate of the American Board of Family Practice since 1985 and a Fellow of the American Academy of Family Physicians since 1988, and he is a member of the American Pain

Society and the Academy of Integrative Pain Management, among other associations. He has published and lectured on opioid prescribing and monitoring. Dr. Munzing is a qualified medical evaluator for the Board and is a medical expert reviewer consultant for the Drug Enforcement Administration Tactical Diversion Squad. He has provided medical expert consultations for the Federal Bureau of Investigation, the VCSD, and the U.S. Attorney's Office, among other agencies.

16. Dr. Munzing was qualified to testify as an expert on the standard of care in this case.

17. Respondent did not offer the testimony of an expert witness.

*Standard of Care for the Treatment of "Troy McKenzie," or Patient TM*

18. Dr. Munzing testified that the standard of care is what a reasonable trained physician in the community would do under similar circumstances.

19. Dr. Munzing reviewed respondent's medical file for patient TM, examined on June 14 and June 26, 2013, recordings of those two visits, Department and Board correspondence to respondent, and recordings and transcripts of Deputy Hardy's conversation with respondent, among other documents. In his expert report dated February 26, 2015, and a supplemental expert report dated December 7, 2016, both of which Dr. Munzing adopted in his testimony at hearing, Dr. Munzing found that respondent had departed from the standard of care in the following ways.

20. Respondent failed to perform and document an adequate history and physical examination prior to prescribing controlled substances, an extreme departure from the standard of care. Respondent did not obtain information about patient TM's past and current medications and treatments, behavioral or psychiatric issues, and degree of pain. Respondent did not perform a general physical examination or a detailed examination of patient TM's lower back. Respondent did not check patient TM's reflexes or examine his range of motion. Respondent did not utilize pain or functional scales, did not obtain past medical records, and did not access a Controlled Substance Utilization Review and Evaluation System (CURES) report for patient TM. Respondent testified that he believed patient TM might be a drug addict, but ordered no blood tests. Respondent had patient TM provide a urine sample but failed to document whether the sample was analyzed. Respondent concluded patient TM was seeking controlled substances but failed to perform or document an appropriate inquiry into whether that conclusion was supported. Respondent did not document whether the back pain was chronic or acute; if chronic, respondent should have obtained images, but he did not. Respondent's progress notes documenting both visits were minimal and insufficient, with poor legibility. There was no documentation that the risks and benefits of controlled substances were discussed with the patient, or that he had obtained the patient's informed consent for the prescription of controlled substances. There was documentation of a discussion of subjects, including diet, exercise, and smoking, that was not reflected on the patient visit recordings.

21. Respondent failed to document an adequate history and physical exam while prescribing controlled substances on a frequent basis for a long time period, and failed to document discussing the major potential risks of the controlled substances, an extreme departure from the standard of care.

22. Respondent practiced medicine while his certificate was suspended, an extreme departure from the standard of care.

#### *Character Evidence*

23. Respondent offered no character witness testimony and no character reference letters.

#### *Mitigation and Rehabilitation*

24. Respondent has a general practice and performs pain management services for his patients; at relevant times he practiced in Riverside and Oxnard, California. Respondent testified that his treatment of "Troy McKenzie" was appropriate for the conditions he presented with, and that his observations of patient TM's gait, posture, and behavior were sufficient to warrant issuing TM a prescription for a controlled substance. His testimony was, for the most part, not persuasive, in light of the expert testimony of Dr. Munzing regarding the standard of care.

25. Respondent testified that his patient examinations differ from those performed by other physicians. His findings are based primarily on his visual observation and his nurse's visual observation of his patients. He testified that he does not waste time with a patient who is faking pain and faking his or her history, and who has no insurance. "I make a quick and effective diagnosis, like this [snaps fingers], based on my expertise." Because some of his patients have no insurance, respondent "cuts some corners to reach the right diagnosis." His patients cannot afford to pay for imaging and specialist examinations. Nevertheless, despite treating "difficult patients" and having the highest patient load in Oxnard, respondent testified, "I rarely make mistakes." In 29 years of practice, from 1988 to today, according to respondent, no patient has complained about him and there has been no patient morbidity or mortality. Respondent testified he would make no changes to his practice. He believes he makes decisions appropriate to the needs of his client population, which is poor and uninsured. Respondent practices what he termed offensive, not defensive, medicine; it is practical, efficient, and cheap. Offensive medicine, respondent testified, involves taking a limited history and performing an examination focused on only relevant positive and negative findings, and then making quick and cheap diagnoses.

26. Patient TM, respondent believed, was displaying drug-seeking behavior. Respondent observed the patient leaning in his chair in the reception area, filling out documents, and walking to the examination room. Patient TM was not sweating, anxious, or apprehensive, and was "too well-dressed for a pain patient;" respondent testified that pain patients do not usually care about their appearance. Respondent checked the patient's heart for signs of heroin addiction and his arms for needle tracks. He made patient TM walk and sit, and observed

whether he appeared to be compensating for pain. Respondent testified that he concluded patient TM was either an undercover agent or was seeking drugs. Respondent did not want to prescribe Norco or Soma, but, respondent testified, he feared that if he refused to prescribe any medication, the patient might buy opioids on the street and perhaps overdose and die, for which respondent would be responsible. Respondent instead prescribed Suboxone to alleviate patient TM's pain without intoxicating him. Respondent testified that this is "the only way I can triage the patients with drug-seeking behavior from the real ones."

27. Respondent complained that the Board did not send notice that his certificate was suspended to the right address, and then, when the notice was returned as non-deliverable, the Board did not send it to respondent's home address or post office box. Respondent denied telling Deputy Hardy that he knew his license had been suspended or denied. Respondent testified that Deputy Hardy had lied about their conversation and that the VCSD had altered or fabricated evidence. This testimony was unsupported and not credible. Respondent testified that a pharmacy would not fill his prescriptions if his certificate were inactive. Respondent offered in evidence a document entitled "Doctor Record Maintenance;" he testified that all pharmacies have access to the database reflecting information appearing on this document. The document which is undated, shows respondent's status as "active." Without more, this document is insufficient to overcome convincing evidence that respondent's certificate was suspended when he prescribed controlled substances to patient TM. Respondent testified that the Board would have returned his certificate fees if his certificate were inactive, instead of sending him a pocket license. Deputy Davidson testified that he believed the pocket card license was sent to respondent by mistake, when respondent paid certificate renewal fees online. The pocket card, which was not in evidence, would be insufficient to establish that respondent's certificate was not suspended when he treated patient TM.

28. Respondent's professed methods of taking patient histories, performing physical examinations, and rendering diagnoses, which respondent adhered to in his examination and treatment of patient TM, depart from the standard of care, as established by Dr. Munzing. Respondent's record-keeping practices, too, were not defensible using the applicable standard of care, as respondent's notes were incomplete or illegible.

29. There was no evidence on this record that respondent has changed his history and physical examination practices or his recordkeeping practices or that he intends to do so. Respondent insisted at hearing that his method of assessing his patients' conditions, by observation of their posture and movement, with the assistance of his nurse, and by asking a few questions and checking for track marks and heart condition, is adequate and well-suited to the patient population he serves.

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## LEGAL CONCLUSIONS

### *Burden of Proof*

1. The rigorous educational, training, and testing requirements for obtaining a physician's license justify imposing on complainant a burden of proof of clear and convincing evidence. (Evid. Code, § 115; see *Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911.)

### *Applicable Authority*

2. The Board's highest priority is to protect the public. (Bus. & Prof. Code, § 2229.)<sup>2</sup> The Board is responsible for enforcing the disciplinary provisions of the Medical Practice Act (§ 2004, subd. (a)), and may take action against a licensee for unprofessional conduct, which includes gross negligence, repeated negligent acts, incompetence, violations of the Medical Practice Act, prescribing dangerous drugs without an appropriate prior examination and a medical indication, and a failure to maintain adequate and accurate medical records. (§§ 2234, subs. (a), (b), (c), & (d), 2242, 2266.)

3. A certificated practitioner who is found guilty under the Medical Practice Act may have his or her certificate revoked or suspended or placed on probation and be required to pay the costs of probation monitoring, or "other action taken in relation to discipline" as the Board deems proper. (§ 2227.)

4. In selecting a method of treatment, skillful members of the medical profession may differ; however, the practitioner must keep within the "recognized and approved methods." (*Callahan v. Hahnemann Hospital* (1934) 1 Cal.2d 447.)

5. A licensee whose certificate is suspended "shall not engage in the practice of medicine during the term of such suspension;" practicing medicine during suspension constitutes a public offense and, among other things, shall result in revocation of the certificate (§§ 2052, subs. (a), (c), 2306.)

### *Cause for Discipline*

6. Cause exists to suspend or revoke respondent's license under section 2234, subdivision (b), in that clear and convincing evidence established that he committed gross negligence during his care, treatment, and management of patient TM, as set forth in Factual Findings 3 through 29.

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<sup>2</sup> Further statutory references are to the Business and Professions Code.

7. Cause exists to suspend or revoke respondent's license under section 2234, subdivision (c), in that clear and convincing evidence established that he committed repeated negligent acts during his care, treatment, and management of Patient TM, as set forth in Factual Findings 3 through 29.

8. Cause exists to suspend or revoke respondent's license under section 2266, in that clear and convincing evidence established that he failed to prepare and maintain adequate and accurate medical records relating to the provision of care to Patient TM, as set forth in Factual Findings 3 through 29.

9. Cause exists to suspend or revoke respondent's license under section 2242, in that clear and convincing evidence established that he prescribed controlled substances without performing an appropriate physical examination, as set forth in Factual Findings 3 through 29.

10. Cause exists to suspend or revoke respondent's license under sections 2052, subdivision (a), and 2306, in that clear and convincing evidence established that he practiced medicine, and prescribed controlled substances and dangerous drugs to Patient TM, while his certificate was suspended, as set forth in Factual Findings 3 through 29.

11. In view of all the evidence, including evidence of respondent's practicing medicine while his certificate was suspended, of his inadequate examinations and recordkeeping, and of his belief that there is no reason to change the way he practices to conform to the standards of the profession, complainant has clearly and convincingly established that respondent cannot practice medicine in a safe and proper manner. The purpose of a disciplinary action such as this one is to protect the public, and not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) In this case revocation is necessary and mandated by law, to protect the public.

#### ORDER

Physician's and Surgeon's Certificate No. A45536, issued to respondent Kiansi Blaise Boni, M.D., is hereby revoked.

DATED: March 23, 2017

DocuSigned by:  
*Howard W. Cohen*  
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HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearing

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Jan 19 20 16  
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8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 05-2013-229574

12 **KIANSI BLAISE BONI, M.D.,**  
13 P.O. Box 6299  
Torrance, California 90504

**ACCUSATION**

14 Physician's and Surgeon's Certificate  
15 No. A45536,

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 28, 1988, the Board issued Physician's and  
23 Surgeon's Certificate No. A45536 to Kiansi Blaise Boni, M.D. ("Respondent"). The Physician's  
24 and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and,  
25 unless renewed, expires on March 31, 2016.

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1 punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to  
2 subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not  
3 exceeding one year, or by both the fine and either imprisonment.

4 (b) Any person who conspires with or aids or abets another to commit any act described in  
5 subdivision (a) is guilty of a public offense, subject to the punishment described in that  
6 subdivision.

7 (c) The remedy provided in this section shall not preclude any other remedy provided by  
8 law."

9 6. Section 2227 of the Code states:

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

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

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

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

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

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

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

1                   7.       Section 2234 of the Code, states:

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

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

7                   "(b) Gross negligence.

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

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

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

18                   "(d) Incompetence.

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

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

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

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

1                   8.       Section 2242 of the Code, states:

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

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

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

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

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

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

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

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

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

27                   10.       Section 725 of the Code states:

28                   "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering

1 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated  
2 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of  
3 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,  
4 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech language  
5 pathologist, or audiologist.

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

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

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

16 11. Section 2241 of the Code states:

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

20 "(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or  
21 prescription controlled substances to an addict for purposes of maintenance on, or detoxification  
22 from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections  
23 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this  
24 subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer  
25 dangerous drugs or controlled substances to a person he or she knows or reasonably believes is  
26 using or will use the drugs or substances for a nonmedical purpose.

27 "(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also  
28 be administered or applied by a physician and surgeon, or by a registered nurse acting under his

1 or her instruction and supervision, under the following circumstances:

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

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

6 “(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety  
7 Code.

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

10 “(A) Impaired control over drug use.

11 “(B) Compulsive use.

12 “(C) Continued use despite harm.

13 “(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily  
14 due to the inadequate control of pain is not an addict within the meaning of this section or Section  
15 2241.5.”

16 12. Section 2241.5 of the Code states:

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

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

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

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

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

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

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

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

14           “(6) Writes false or fictitious prescriptions for controlled substances listed in the California  
15 Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse  
16 Prevention and Control Act of 1970.

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

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

24           “(e) Nothing in this section shall prohibit the governing body of a hospital from taking  
25 disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and  
26 809.5.”

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**INTRODUCTION**

13. This Accusation involves prescriptions for medications regulated by the Comprehensive Drug Abuse Prevention and Control Act, passed into law in 1970. Title II of this law, the Controlled Substances Act, is the legal foundation of narcotics enforcement in the United States. The Controlled Substances Act regulates the manufacture, possession, movement, and distribution of drugs in our country. The Controlled Substances Act places all drugs into one of five schedules, or classifications, and is controlled by the Department of Justice and the Department of Health and Human Services, including the Federal Drug Administration. In 1972, California followed the federal lead by adopting the Uniform Controlled Substance Act. (Gov. Code, § 11153 et seq.)

**CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

14. **Subutex (Buprenorphine)** is a dangerous drug pursuant to Code section 4022. It is a Food and Drug Administration (FDA) Schedule C-III controlled substance pursuant to Code of Federal Regulations section 1308.13(e)(2)(i). It is used to relieve opioid dependence.

15. **Suboxone (Buprenorphine and Naloxone)** is a dangerous drug pursuant to Code section 4022. It is a Food and Drug Administration (FDA) Schedule C-III controlled substance pursuant to Code of Federal Regulations section 1308.13(e)(2)(i). It is used to relieve opioid dependence.

16. **Baclofen** is not a controlled substance. It is a skeletal muscle relaxant. It is a dangerous drug pursuant to Code section 4022 and therefore requires a prescription.

17. **Robaxin** is not a controlled substance. It is a skeletal muscle relaxant. It is a dangerous drug pursuant to Code section 4022 and therefore requires a prescription.

**FIRST CAUSE FOR DISCIPLINE**

(Gross Negligence)

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

1 Patient T.M.<sup>1</sup>

2 19. On June 14, 2013, T.M. visited Respondent's office for medical care.  
3 The progress note of the visit was hand written and was difficult to read. The notes recorded the  
4 following: Vital signs: temperature 98.3; blood pressure 118/88; pulse 72; weight 182; Chief  
5 complaint: Suboxone. Exam: General: W/N (well-nourished) Chest, Clear, no rales. Heart: S1-  
6 S2 without murmur. [However, in fact, no exam was performed at the visit in spite of the  
7 progress note charting.] Assessment: Opioid Dependence. Plan: Subutex 8 mg twice daily #60  
8 Baclofen 20 mg twice daily #60. Diet was listed in the notes, however, in fact, it was not  
9 discussed during the visit.

10 20. On June 26, 2013, T.M. visited Respondent's office for medical care a  
11 second time. The patient entered the office and was asked to sign the sign-in sheet by the  
12 receptionist/medical assistant (MA). He was then advised that the visit would cost \$100 which he  
13 paid in cash. T.M. was brought to the back office and had his weight and temperature taken.  
14 T.M. told the MA that the medications did not help too much - "not really working." She said  
15 that it was because "you are used to the heavy stuff." Respondent entered the exam room and  
16 spent between 3.5 and 4 minutes with the patient. T.M. reminded Respondent that he had  
17 received prescriptions for Subutex [8 mg] and Baclofen on the first visit and stated that they did  
18 not help. Initially Respondent said he would increase the Baclofen to three times daily. They  
19 discussed muscle relaxants and Respondent said he does not prescribe Soma as it is too addicting.  
20 T.M. asked about other treatments for the back. Respondent mentioned Suboxone and T.M. said  
21 he had heard about it and agreed to try it. Respondent said he had a coupon to give him for this.  
22 Respondent wrote him a prescription for a one month supply of Suboxone and told him, "Don't  
23 come back early." He also prescribed Robaxin, a muscle relaxant. T.M. asked the MA which  
24 days they see pain management patients and she said, "Whenever we need to." T.M. then left the  
25 exam room and office. The total time in the office was less than 10 minutes. During this visit:

26 <sup>1</sup>The names of patients are kept confidential to protect their privacy rights, and, though  
27 known to Respondent, will be revealed to him upon receipt of a timely request for discovery.  
28 T.M. was an undercover agent.

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- No exam was performed at all
- Minimal history was taken
- No past medical history was taken
- No discussion of risks/benefits of treatment
- No questions re pain level scales
- No questions re functional level scales
- Blood pressure was high – with no comment by Respondent

21. The progress note for the second visit was hand written and was difficult to read. The note recorded the following: Vital signs: temperature 98.5; blood pressure 138/92; pulse 72; weight 186. Chief complaint: Suboxone. Exam: General: W/N. Chest: Clear, no rales. Heart: S1-S2 without murmur. [In fact, no exam was performed at the visit in spite of the progress note charting.] Assessment: Opioid Dependence. Plan: Suboxone 8/2 mg twice daily #60, Robaxin 750 mg twice daily #60. The notes listed a discussion of diet, exercise, and return in one month. However in fact, these were not discussed during the visit.

22. Respondent's conduct, as described above, constitutes unprofessional conduct and represents extreme departures from the standard of care in the treatment of Patient T.M. as follows:

- A. Respondent engaged in an extreme departure from the standard of care when he failed to take a sufficient pain history given that opioid treatment was involved. Additional information should have included past medications, treatments, physical therapy, non-medication treatments and consultations.
- B. Respondent engaged in an extreme departure from the standard of care when he failed to perform an appropriate physical exam.
- C. Respondent engaged in an extreme departure from the standard of care when he failed to inquire in detail about the presence or absence of behavioral and psychiatric issues and addiction issues.
- D. Respondent engaged in an extreme departure from the standard of care when he failed to utilize pain or functional scales to assess the efficacy of the treatment.

1 E Respondent engaged in an extreme departure from the standard of care  
2 when he failed to obtain outside past medical records.

3 F. Respondent engaged in an extreme departure from the standard of care  
4 when he failed to utilize medical monitoring urine drug screens and obtain CURES reports.  
5 Urine screens would help ensure that the patient was not using additional controlled substances or  
6 diverting medications, and would verify that Subutex was being used. The CURES report would  
7 help ensure the patient was not obtaining medications from multiple physicians.

8 G. Respondent engaged in an extreme departure from the standard of care  
9 when he failed to properly document both visits.

10 H. Respondent engaged in an extreme departure from the standard of care  
11 when he failed to create legible progress notes.

12 I. Respondent engaged in an extreme departure from the standard of care  
13 when he included in his progress notes details that did not occur at the visit, including the exam  
14 and some of the patient education.

15 J. Respondent engaged in an extreme departure from the standard of care  
16 when he failed to document a discussion with the patient of the risks and benefits of the use  
17 controlled substances.

18 K. Respondent engaged in an extreme departure from the standard of care  
19 when he failed to obtain and/or document FDA approval for his prescribing of Suboxone and  
20 Subutex.

21 L. Respondent engaged in an extreme departure from the standard of care  
22 when he Respondent failed to perform and document an adequate history and physical exam prior  
23 to refilling controlled substances.

24 **SECOND CAUSE FOR DISCIPLINE**

25 (Repeated Negligent Acts)

26 23. Respondent is subject to disciplinary action under Code section 2234,  
27 subdivision (c), in that he was repeatedly negligent in the care and treatment of a patient. The

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1 facts and circumstances alleged above in the First Cause for Discipline are incorporated here as if  
2 fully set forth.

3           A.     Respondent engaged in a departure from the standard of care when he  
4 failed to take a sufficient pain history given that opioid treatment was involved. Additional  
5 information should have included past medications, treatments, physical therapy, non-medication  
6 treatments and consultations.

7           B.     Respondent engaged in a departure from the standard of care when he  
8 failed to perform an appropriate physical exam.

9           C.     Respondent engaged in a departure from the standard of care when he  
10 failed to inquire in detail about the presence or absence of behavioral and psychiatric issues and  
11 addiction issues.

12           D.     Respondent engaged in a departure from the standard of care when he  
13 failed to utilize pain or functional scales to assess the efficacy of the treatment.

14           E.     Respondent engaged in a departure from the standard of care when he  
15 failed to obtain outside past medical records.

16           F.     Respondent engaged in a departure from the standard of care when he  
17 failed to utilize medical monitoring urine drug screens and obtain CURES reports. Urine screens  
18 would help ensure that the patient was not using additional controlled substances or diverting  
19 medications, and would verify that Subutex was being used. The CURES report would help  
20 ensure the patient was not obtaining medications from multiple physicians.

21           G.     Respondent engaged in a departure from the standard of care when he  
22 failed to properly document both visits.

23           H.     Respondent engaged in a departure from the standard of care when he  
24 failed to create legible progress notes.

25           I.     Respondent engaged in a departure from the standard of care when he  
26 included in his progress notes details that did not occur at the visit, including the exam and some  
27 of the patient education.

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1 J. Respondent engaged in a departure from the standard of care when he  
2 failed to document a discussion with the patient of the risks and benefits of the use controlled  
3 substances.

4 K. Respondent engaged in a departure from the standard of care when he  
5 failed to obtain and/or document FDA approval for his prescribing of Suboxone and Subutex.

6 L. Respondent engaged in a departure from the standard of care when he  
7 Respondent failed to perform and document an adequate history and physical exam prior to  
8 refilling controlled substances.

9 **THIRD CAUSE FOR DISCIPLINE**

10 (Failure to Maintain Adequate and Accurate Records)

11 24. Respondent is subject to disciplinary action under Code section 2266 in  
12 that he failed to maintain adequate and accurate records relating to the provision of medical  
13 services to Patient T.M. The fact and circumstances alleged above are incorporated here as if  
14 fully set forth.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 (Prescribing Controlled Substances Without a Physical Exam)

17 25. Respondent is subject to disciplinary action under Code section 2242 in  
18 that he prescribed controlled substances to Patient T.M. without first performing an appropriate  
19 physical examination. The facts and circumstances alleged above are incorporated here as if fully  
20 set forth.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 (Unlawful Practice of Medicine)

23 26. Respondent is subject to disciplinary action under Code section 2052,  
24 subdivision (a), in that he prescribed controlled substances and dangerous drugs to Patient T.M.  
25 while his certificate was suspended. The circumstances are as follows.

26 27. On or about March 13, 2012, a Department of Consumer Affairs (DCA)  
27 30-day notice of intent to suspend his physician's and surgeon's certificate was sent to  
28 Respondent for failing to pay child support. On or about April 17, 2012, a suspension/denial

1 notice was sent to Respondent. On April 18, 2012, Respondent's physician's and surgeon's  
2 certificate went into suspension/denial status. The denied status was lifted on August 8, 2013.

3 28. From or about April 18, 2012, until about August 8, 2013, Respondent  
4 knowingly continued to practice medicine while his physician's and surgeon's certificate was  
5 suspended or under denied status.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 (Excessive Prescribing)

8 29. Respondent is subject to disciplinary action under Code section 725 in  
9 that he engaged in clearly excessive treatment or prescribing in his care and treatment of Patient  
10 T.M. The facts and circumstances alleged above are incorporated here as if fully set forth.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct)

13 30. Respondent is subject to disciplinary action under Code section 2234 in  
14 that he engaged in unprofessional conduct in care and treatment of Patients T.M. The facts and  
15 circumstances alleged above in paragraphs 18 through 29 are incorporated here as if fully set  
16 forth. In addition, the following circumstances are alleged.

17 31. On or about May 13, 2013, it was reported to the Board by the Manager of  
18 the Communicable Diseases Office, Ventura County Public Health (VCPH) that Respondent has  
19 a large high-risk patient clientele and has changed the name of his business numerous times. A  
20 high number of Respondent's patients have sexually transmitted diseases (STD) and are being  
21 over-treated. The over-treatment or under-treatment of these STDs has the possibility to build  
22 immunity to the strains. The California Code of Regulation (CCR) Title 17, section 2500,  
23 mandates that every healthcare provider and/or physician report the listed communicable diseases  
24 (e.g., HIV, gonococcal infections, and syphilis) within seven calendar days. Failure to report is a  
25 citable offense and subject to civil penalty.

26 32. From on about August 2012 to May 13, 2013, VCPH had extreme  
27 difficulty obtaining reporting information from Respondent and/or his medical facility. On  
28 numerous occasions, Respondent refused to provide the required information within the time

1 limits. Respondent stated that he is a doctor and can do what he wants to do. Respondent even  
2 locked up the fax machine in his office and instructed his staff not to provide the reportable  
3 information until he gives them permission. Additionally, a Ventura County Health Officer went  
4 to Respondent's office in an attempt to obtain the reportable information for February and March  
5 2013; however, Respondent refused to comply with the request.

6 33. Respondent's conduct, as described above, constitutes unprofessional  
7 conduct inasmuch as Respondent failed to report communicable diseases information to the  
8 VCPH, after numerous requests.

9 **DISCIPLINARY CONSIDERATION**

10 34. On or about March 13, 2013, the Board issued Citation Order  
11 No. 24-2013-230477 against Respondent.

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PRAAYER

WHEREFORE, Complainant request 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 A45536, issued to KIANSI BLAISE BONI, M.D.;
2. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering him to pay the Medical Board of California, if placed on probation, the cost of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: January 19, 2016

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

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