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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 14 2016
BY Debra Anger ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 800-2016-025788

12 **Thomas J. Murnane, M.D.**
13 **358 Kenwood Ave.**
Delmar, NY 12054

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. G 11890,**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 10, 1966, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 11890 to Thomas J. Murnane, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on January 31, 2018, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 sections of the California Business and Professions Code (Code) and/or other relevant statutory
4 enactment:

5 A. Section 2227 of the Code provides in part that the Board may revoke, suspend
6 for a period not to exceed one year, or place on probation, the license of any licensee who has
7 been found guilty under the Medical Practice Act, and may recover the costs of probation
8 monitoring.

9 B. Section 2305 of the Code provides, in part, that the revocation, suspension, or
10 other discipline, restriction, or limitation imposed by another state upon a license to practice
11 medicine issued by that state, or the revocation, suspension, or restriction of the authority to
12 practice medicine by any agency of the federal government, that would have been grounds for
13 discipline in California of a license under the Medical Practice Act, constitutes grounds for
14 disciplinary action.

15 C. Section 141 of the Code provides:

16 “(a) For any licensee holding a license issued by a board under the jurisdiction of
17 the department, a disciplinary action taken by another state, by any agency of the
18 federal government, or by another country for any act substantially related to the
19 practice regulated by the California license, may be a ground for disciplinary action
20 by the respective state licensing board. A certified copy of the record of the
disciplinary action taken against the licensee by another state, an agency of the
federal government, or by another country shall be conclusive evidence of the events
related therein.

21 (b) Nothing in this section shall preclude a board from applying a specific
22 statutory provision in the licensing act administered by the board that provides for
discipline based upon a disciplinary action taken against that licensee by another
state, an agency of the federal government, or another country.”

23 **CAUSE FOR DISCIPLINE**

24 **(Discipline, Restriction, or Limitation Imposed by Another State)**

25 4. On July 19, 2016, Respondent entered into a Consent Order with the New York State
26 Board for Professional Medical Conduct (New York Board) regarding Respondent’s license to
27 practice medicine in the State of New York. The Consent Order contains factual findings that
28 Respondent’s course of treatment of two patients was contrary to accepted standards of practice.

- 1 2. Revoking, suspending or denying approval of Thomas J. Murnane, M.D.'s authority
- 2 to supervise physician assistants, pursuant to section 3527 of the Code;
- 3 3. Ordering Thomas J. Murnane, M.D., if placed on probation, to pay the Board the
- 4 costs of probation monitoring; and
- 5 4. Taking such other and further action as deemed necessary and proper.

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DATED: November 14, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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EXHIBIT A

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
THOMAS MURNANE, M.D.

BPMC No. 16-255
CONSENT
ORDER

Upon the application of (Respondent) THOMAS MURNANE, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and

it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board,

either

by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney,

whichever is first.

SO ORDERED.

DATE: 7/19/2016


ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
THOMAS MURNANE, M.D.

CONSENT
AGREEMENT

THOMAS MURNANE, M.D., represents that all of the following statements are true

That on or about March 10, 1964, I was licensed to practice as a physician in the State of New York, and issued License No. 091950 by the New York State Education Department

My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the allegations, in full satisfaction of the charges against me, and agree to the following penalty:

Immediately upon issuance of the Consent Order for which I apply, my license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance upon my license to practice medicine to exempt me from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State.

I further agree that the Consent Order for which I apply shall impose the following conditions:

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a; and

That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full

description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in N Y Educ Law § 6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail OR upon facsimile transmission to me or my attorney, whichever is first. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Order are authorized by N.Y. Pub Health Law §§ 230 and 230-a, and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

DATE 27 June 2016


THOMAS MURNANE, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions

DATE: N/A

N/A
[NONE], ESQ.
Attorney for Respondent

DATE: July 7, 2016


MICHAEL A. HISER, ESQ
Deputy Counsel
Bureau of Professional Medical Conduct

DATE: 7/7/16


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
THOMAS MURNANE, M.D.

STATEMENT
OF
CHARGES

THOMAS MURNANE, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 10, 1964, by the issuance of license number 091950 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A [patients are identified in the attached appendix], an approximately 55 year old female, at Respondent's office at 200 Delaware Avenue, Delmar, New York (hereafter, "Respondent's office") at various times in 2013 and 2014. Respondent's care of Patient A was contrary to accepted standards of practice, in that:

1. Respondent prescribed opioid medications to Patient A throughout the course of care, without adequate medical indication, and/or without documenting such adequate medical indication.
2. Respondent prescribed opioid medications to Patient in in dosage amounts and quantities that were not medically indicated, and/or without documenting the medical indication.

B. Respondent provided medical care to Patient B, an approximately 40 year old male, at Respondent's office at various times in 2015. Respondent's care of Patient B was contrary to accepted standards of practice, in that:

1. Respondent prescribed opioid medications to Patient B in dosage amounts and quantities that were not medically indicated, and/or without documenting the medical indication.
2. Respondent failed to adequately monitor the opioid medications that he prescribed to Patient B, and/or failed to document adequate monitoring.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. The facts in Paragraphs A and A.1, A and A.2, B and B.1, and/or B and B.2.

SECOND SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of:

2. The facts in Paragraphs A and A.1, A and A.2, B and B.1, and/or B and B.2.

DATE: July 7, 2016
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

**Requirements for Closing a Medical Practice Following a
Revocation, Surrender, Limitation or Suspension of a Medical License**

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license; in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure

place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from

engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.

9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.

1 XAVIER BECERRA
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Attorneys for Complainant
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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against,

Case No. 800-2016-025788

12 **THOMAS J. MURNANE, M.D.**

13 **358 Kenwood Ave.**
14 **Delmar, NY 12054**

DEFAULT DECISION
AND ORDER

15 **Physician's and Surgeon's Certificate No. G**
16 **11890**

[Gov. Code §11520]

17 Respondent

18 FINDINGS OF FACT

19 1. On or about November 14, 2016, Complainant Kimberly Kirchmeyer, in her official
20 capacity as the Executive Director of the Medical Board of California (Board), Department of
21 Consumer Affairs, filed Accusation No. 800-2016-025788 against Thomas J. Murnane, M.D.
22 (Respondent) before the Board.

23 2. On or about June 10, 1966, the Board issued Physician's and Surgeon's Certificate
24 No. G 11890 to Respondent. The Physician's and Surgeon's Certificate was in full force and
25 effect at all times relevant to the charges brought herein and will expire on January 31, 2018,
26 unless renewed. (Exhibit Package¹, Exhibit 1, License Certification.)

27 ¹ The evidence in support of this Default Decision and Order is submitted as the "Exhibit
28 Package" and is incorporated herein by reference as if fully set forth.

1 3. On or about November 14, 2016, an employee of the Board served by Certified and
2 First Class Mail a copy of Accusation No. 800-2016-025788, Statement to Respondent, Notice of
3 Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7
4 to Respondent's address of record with the Board, which was and is 358 Kenwood Avenue,
5 Delmar, NY 12054. On or about November 21, 2016, Respondent signed the certified mail
6 receipt card. Respondent has not signed and returned the Notice of Defense to date. (Exhibit
7 Package, Exhibit 2: Accusation No. 800-2016-025788, the related documents, Declaration of
8 Service and certified mail receipt card.)

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c).

11 5. On or about January 27, 2017, an employee of the Attorney General's Office sent by
12 regular mail addressed to Respondent at the address of record set forth above, a courtesy Notice
13 of Default, advising Respondent of the service of the Accusation, and providing him with an
14 opportunity to request relief from default. No Notice of Defense has been received from
15 Respondent. (Exhibit Package, Exhibit 3: Courtesy Notice of Default and declaration of service.)

16 6. Government Code section 11506 states, in pertinent part:

17 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
18 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
19 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
20 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

21 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
22 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-
23 2016-025788.

24 7. California Government Code section 11520 states, in pertinent part:

25 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
26 agency may take action based upon the respondent's express admissions or upon other evidence
27 and affidavits may be used as evidence without any notice to respondent."
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1 8. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on
3 Respondent's express admissions by way of default and the evidence before it, contained in the
4 Exhibit Package, finds that the allegations in Accusation No. 800-2016-025788 are true as
5 follows:

6 A. On July 19, 2016, Respondent entered into a Consent Order with the New York State
7 Board for Professional Medical Conduct (New York Board) regarding Respondent's license to
8 practice medicine in the State of New York. The Consent Order contains factual findings that
9 Respondent's course of treatment of two patients was contrary to accepted standards of practice.
10 Respondent provided medical care to Patient A and prescribed her opioid medications at various
11 times in 2013 and 2014 without adequate medical indication, in dosage amounts and quantities
12 that were not medically indicated, and/or without documenting such medical indication.
13 Respondent provided medical care to Patient B and prescribed him opioid medications at various
14 times in 2015 in dosage amounts and quantities that were not medically indicated, and/or without
15 documenting such medical indication, failing to adequately monitor the opioid medications
16 prescribed, and failing to document adequate monitoring.

17 B. Pursuant to the Consent Order, Respondent's license to practice medicine in the State of
18 New York is limited to preclude patient contact and any practice of medicine, clinical or
19 otherwise. Respondent is precluded from diagnosing, treating, operating, or prescribing for any
20 human disease, pain, injury, deformity, or physical condition. Respondent is prohibited from
21 further reliance upon his license to practice medicine to exempt him from licensure, certification
22 or other requirements set forth in statute or regulations for the practice of any other profession
23 licensed, regulated or certified by the Board of Regents, Department of Education, Department of
24 Health or the Department of State. Respondent is required to notify the New York State
25 Education Department, Division of Professional Licensing Services, within 30 days of the
26 issuance of the Consent Order that his license status is "inactive," and shall provide proof of such
27 notification to the Director of the Office of Professional Medical Conduct immediately upon
28

1 having done so. (Exhibit Package, Exhibit 2, Consent Order and Agreement issued by the New
2 York Board attached to Accusation No. 800-2016-025788 as Exhibit A.)

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent's conduct and the action taken
5 by the New York Board regarding Respondent's license to practice medicine, as set forth above,
6 constitutes cause for disciplinary action and/or unprofessional conduct within the meaning of
7 sections 141 and/or 2305 of the Code.

8 2. The agency has jurisdiction to adjudicate this case by default.

9 ORDER

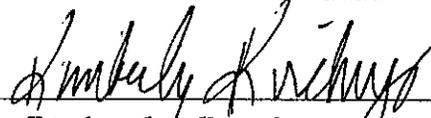
10 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 11890, heretofore
11 issued to Respondent Thomas J. Murnane, M.D., is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The board in its discretion may
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

16 This Decision shall become effective on March 24, 2017.

17 It is so ORDERED February 22, 2017

18
19 FOR THE MEDICAL BOARD OF CALIFORNIA
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 
23 Kimberly Kirchmeyer
24 Executive Director

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