FILED
NOV 29 2016
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. NAGA RAJA THOTA, Defendant.	Case No. 16-cr-02187-LAB Superseding **INFORMATION** Title 21, U.S.C., Sec. 841(a)(1) and Title 18, U.S.C., Sec. 2(b) - Distributing and Dispensing Controlled Substances Without Legitimate Medical Purpose

The United States Attorney charges:

Counts 1-7

On or about the dates listed below, within the Southern District of California, defendant NAGA RAJA THOTA, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed the following number of tablets containing: oxycodone (Schedule II), and Hydrocodone (Schedule II); described below for each count, each date constituting a separate count:

/ / /

Ct	Date Filled	Controlled Substance	No. of Tablets	Dosage per tablet	Prescribed to:
1	03-09-13	Hydrocodone	150	10 mg	J.S.'s Father
2	03-11-13	Hydrocodone	150	10 mg	J.S.'s Brother
3	03-19-13	Hydrocodone	150	10 mg	J.S.'s Father
4	04-01-13	Oxycodone	180	15 mg	J.S.'s Brother
5	04-03-13	Oxycodone	180	10 mg	L.E.
6	04-18-13	Oxycodone	240	30 mg	L.E.
7	04-25-13	Oxycodone	120	30 mg	J.S.'s Brother

All in violation of Title 21, United States Code, Section 841(a) (1), and Title 18, United States Code, Section 2(b).

DATED: 11-29-16.

LAURA E. DUFFY
United States Attorney

ORLANDO B. GUTIERREZ
Assistant U.S. Attorney

FILED
NOV 29 2016
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. NAGA RAJA THOTA Defendant.	Criminal No. 3: 16-CR-2187-LAB **CONSENT TO RULE 11 PLEA IN A FELONY CASE BEFORE UNITED STATES MAGISTRATE JUDGE**

I have been advised by my attorney and by the United States Magistrate Judge of my right to enter my plea in this case before a United States District Judge. I hereby declare my intention to enter a plea of guilty in the above case, and I request and consent to have my plea taken by a United States Magistrate Judge pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

I understand that if my plea of guilty is taken by the United States Magistrate Judge, and the Magistrate Judge recommends that the plea be accepted, the assigned United States District Judge will then decide whether to accept or reject any plea agreement I may

have with the United States and will adjudicate guilt and impose sentence.

I further understand that any objections to the Magistrate Judge's findings and recommendation must be filed within 14 days of the entry of my guilty plea.

Dated: 11/29/16

Defendant

Dated: 11/29/16

Attorney for Defendant

The United States Attorney consents to have the plea in this case taken by a United States Magistrate Judge pursuant to Criminal Local Rule 11.1.

Dated: 11-29-16

Assistant United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,	Case No.: 16CR2187-LAB
v.	FINDINGS AND RECOMMENDATION OF THE MAGISTRATE JUDGE UPON A PLEA OF GUILTY
NAGA RAJA THOTA, Defendant.	

Upon Defendant's request to enter a guilty plea to Counts One (1) through Seven (7) of the Superseding Information pursuant to Rule 11 of the Federal Rules of Criminal Procedure, this matter was referred to the Magistrate Judge by the District Judge, with the written consents of the Defendant, counsel for the Defendant, and counsel for the United States.

Thereafter, the matter came on for a hearing on Defendant's guilty plea, in full compliance with Rule 11, Federal Rules of Criminal Procedure, before the Magistrate Judge, in open court and on the record.

In consideration of that hearing and the allocution made by the Defendant under oath on the record and in the presence of counsel, and the remarks of the Assistant United States Attorney,

I make the following FINDINGS - that the Defendant understands:

1. The government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;
2. The right to persist in a plea of "not guilty";
3. The right to a speedy and public trial;
4. The right to trial by jury, or the ability to waive that right and have a judge try the case without a jury;
5. The right to be represented by counsel-and if necessary to have the court appoint counsel-at trial and at every other stage of the proceeding;
6. The right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

7. The defendant's waiver of these trial rights if the court accepts a guilty plea or nolo contendere;
8. The nature of each charge to which the defendant is pleading;
9. Any maximum possible penalty, including imprisonment, fine, and term of supervised release;
10. Any applicable mandatory minimum penalty;
11. Any applicable forfeiture;
12. The court's authority to order restitution;
13. The court's obligation to impose a special assessment;
14. In determining a sentence, the court's obligation to calculate the applicable sentencing guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C § 3553(a);
15. The term of any plea agreement and any provision in that agreement that waives the right to appeal or to collaterally attack the conviction and sentence; and

16. That, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

I further find that:

17. The defendant is competent to enter a plea;

18. The defendant's guilty plea is made knowingly and voluntarily, and did not result from force, threats or promises (other than those made in a plea agreement); and

19. There is a factual basis for Defendant's plea.

I therefore RECOMMEND that the District Judge accept the Defendant's guilty plea to Count One (1) through Seven (7) of the Superseding Information.

The sentencing hearing will be before United States **District Judge Larry Alan Burns**, on **2/21/2017** at **9:30 AM**. The court excludes time from 11/29/2016 through 2/21/2017 pursuant to 18 USC § 3161(h)(1)(G) on the ground that the District Judge will be considering the proposed plea agreement.

Objections to these Findings and Recommendations are waived by the parties if not made within 14 days of this order. If the parties waive the preparation of the

Presentence Report, objections are due within three days of this order.

Dated: 11/29/2016

Hon. Bernard G. Skomal
United States Magistrate Judge

Copies to:
Judge Larry Alan Burns
Assistant United States Attorney
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, V. NAGA RAJA THOTA, Defendant.	Criminal Case No. 16CR2187-LAB ORDER ADOPTING FINDINGS AND RECOMMENDATION

No objections having been filed, **IT IS ORDERED** that the Findings and Recommendation of the Magistrate Judge are adopted and this Court accepts Defendant's PLEA OF GUILTY to Counts(s) 1,2,3,4,5,6,7 of the Superseding Information .

Dated: December 27, 2016

Larry A. Burns

Larry Alan Burns
United States District Judge

AO 245B (CASDRev. 08/13) Judgment in a Criminal Case

FILED

17 MAR 14 PM 2:52

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.

NAJA RAJA THOTA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 16CR2187-LAB

ROBERT SCHLEIN, RETAINED
Defendant's Attorney

REGISTRATION NO. 57696298

☐ –

☒ pleaded guilty to count(s) 1-7 OF THE SUPERSEDING INFORMATION

☐ _____
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title & Section	Nature of Offense	Count Number(s)
21 USC 841(a)(1) and 18 USC 2(b)	DISTRIBUTING AND DISPENSING CONTROLLED SUBSTANCE WITHOUT LEGITIMATE MEDICAL PURPOSE	1-7

The defendant is sentenced as provided in pages 2 through 4 of this judgment.
The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) UNDERLYING INFORMATION is dismissed on the motion of the United States.

☒ Assessment : $100.00 per count, total $700.00

☒ No fine ☐ Forfeiture pursuant to order filed _____, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

March 6, 2017
Date of Imposition of Sentence

HON. LARRY ALAN BURNS
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of:
30 MONTHS, EACH COUNT CONCURRENT

☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
☒ The court makes the following recommendations to the Bureau of Prisons:
JUDICIAL RECOMMENDATION FOR MAXIMUM PLACEMENT IN RRC/RELEASE AT EARLIEST DATE POSSIBLE.
WESTERN REGION DESIGNATION.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ A.M. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ on or before

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
5 YEARS, EACH COUNT CONCURRENT

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons unless removed from the United States.

The defendant shall not commit another federal, state or local crime.

For offenses committed on or after September 13, 1994:

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (*Check, if applicable.*)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC section 3583(a)(7) and 3583(d).
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (*Check if applicable.*)
- ☐ The defendant shall participate in an approved program for domestic violence. (*Check if applicable.*)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. Submit your person, property, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

2. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.

3. Not enter or reside in the Republic of Mexico without permission of the court or probation officer.

4. Provide complete of personal business financial records to the probation officer as requested.

5. The defendant may request early termination of supervision after three years.

6. Not have any contact, direct or indirect, either telephonically, visually, verbally or through written material, or through any third-party communication, with the victim(s) or victim's family (J.S., D.H., L.E., and M.R.), without prior approval of the probation officer.

7. No contact with prescriptions.

//

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

In the Matter of the Accusation Against:	)	
NAGA RAJA THOTA, M.D.	)	**Case No. 8002015018418**
Physician's and Surgeon's Certificate No. A 53526	)	
Respondent	)	

DECISION AND ORDER

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 March 22, 2017.

IT IS SO ORDERED March 15, 2017.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
MARTIN W. HAGAN
Deputy Attorney General
State Bar No. 155553
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9405
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **NAGA RAJA THOTA, M.D.** **2732 Navajo Road** **El Cajon, CA 92020** **Physician's and Surgeon's Certificate No. A53526** Respondent.	Case No. 800-2015-018418 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Martin W. Hagan, Deputy Attorney General.

2. Naga Raja Thota, M.D. (respondent) is represented in this proceeding by Robert W. Frank, Esq., whose address is Neil, Dymott, Frank, McFall & Trexler, APLC, 1010 Second Ave., Ste. 2500, San Diego CA 92101.

3. On or about September 14, 1994, the Board issued Physician's and Surgeon's Certificate No. A53526 to respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-018418 and will expire on August 31, 2018, unless renewed.

4. On September 20, 2016, an Interim Order of Suspension was issued pursuant to Government Code section 11529 which immediately suspended respondent's Physician's and Surgeon's Certificate No. A53526 and prohibited respondent from practicing medicine in the State of California pending further order from the Office of Administrative Hearings. The Interim Order of Suspension remains in full force and effect as of the effective date of this Stipulated Surrender and Disciplinary Order.

JURISDICTION

5. On or about January 31, 2017, Accusation No. 800-2015-018418 was filed before the Medical Board of California, and is currently pending against respondent. A true and correct copy of Accusation 800-2015-018418 and all other statutorily required documents were properly served on respondent on January 31, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2015-018418 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2015-018418. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation No. 800-2015-018418; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other

applicable laws.

8. Having the benefit of counsel, respondent hereby voluntarily, knowingly and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the complete truth and accuracy of all of the allegations in paragraph 32 in Accusation No. 800-2015-018418, and that his guilty plea in the criminal matter as to Counts 1-7 was accepted by the Court on December 27, 2016, and, further, does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to all of the remaining charges and allegations in Accusation No. 800-2015-018418, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated by reference as if fully set forth herein. Respondent further admits that he has thereby subjected his Physician's and Surgeon's Certificate No. A53526 to disciplinary action and hereby surrenders his Physician's and Surgeon's Certificate No. A53526 for the Board's formal acceptance.

10. The admissions made by respondent in paragraph 9, above, are solely for the purposes of this Stipulated Surrender and Disciplinary Order and shall not be used in any other criminal or civil proceeding.

11. Respondent agrees that his Physician's and Surgeon's Certificate No. A53526 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

12. Respondent further agrees that if he ever petitions for reinstatement of his Physician's and Surgeon's Certificate No. A53526, or petitions to revoke probation or if an accusation is ever filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2015-018418 shall be deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California or elsewhere.

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13. Respondent understands that by signing this stipulation he enables the Executive Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his Physician's and Surgeon's Certificate No. A53526 without further notice to, or opportunity to be heard by, respondent.

CONTINGENCY

14. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . . stipulation for surrender of a license."

15. This Stipulated Surrender of License and Disciplinary Order shall be subject to approval of the Executive Director on behalf of the Medical Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

16. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Executive Director on behalf of the Board does not, in her discretion, approve and adopt this

Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director on behalf of the Board, respondent will assert no claim that the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

17. This Stipulated Surrender of License and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

18. The parties agree that copies of this Stipulated Surrender of License and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

19. In consideration of the foregoing admissions and stipulations, the parties agree the Executive Director of the Medical Board may, without further notice to or opportunity to be heard by respondent, issue and enter the following Disciplinary Order on behalf of the Board:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A53526, issued to respondent Naga Raja Thota, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of respondent's Physician's and Surgeon's Certificate No. A53526 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 his pocket license and, if one was issued, his 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. 800-2015-018418 shall be deemed to be true, correct and admitted by respondent when the Board determines whether to grant or deny the petition.

5. If respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2015-018418 shall be deemed to be true, correct, and admitted by respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney Robert W. Frank, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A53526. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Disciplinary Order of the Medical Board of California.

DATED: Feb. 14th 2017

NAGA RAJA THOTA, M.D.
Respondent

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I have read and fully discussed with respondent Naga Raja Thota, M.D., the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 2-14-17

ROBERT W. FRANK, ESQ.
Attorney for respondent

ENDORSEMENT

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

Dated: 2-15-17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

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81591342.doc

Exhibit A

Accusation No. 800-2015-018418

KATHLEEN A. KENEALY
Acting Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
MARTIN W. HAGAN
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 31 20 17
BY D. Firdaus ANALYST

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

In the Matter of the Accusation Against: **Naga Raja Thota, M.D.** **2732 Navajo Road** **El Cajon, CA 92020** **Physician's and Surgeon's Certificate No. A 53526,** Respondent.	Case No. 800-2015-018418 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 14, 1994, the Medical Board issued Physician's and Surgeon's Certificate Number A 53526 to Naga Raja Thota, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 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, be publicly reprimanded which may include a requirement that the licensee complete relevant educational courses, or have such other action taken in relation to discipline as the Board deems proper.

5. Section 725 of the Code states:

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

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

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

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

6. Section 726 of the Code states:

"(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division.

"(b) This section shall not apply to consensual sexual contact between a licensee and his or her spouse or person in an equivalent domestic relationship when that licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

7. Section 729 of the Code states:

"(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

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8. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct.[1] 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.

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[1] Unprofessional conduct has been defined as conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 654.)

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

"...."

9. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

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10. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

11. Section 2241 of the Code states:

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

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

". . . ."

12. Section 2242 of the Code states:

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

". . . ."

13. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

14. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs Without Conducting an Appropriate Prior Examination and a Medical Indication)

15. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2242, of the Code, in that respondent prescribed dangerous drugs to patient J.S., J.S.'s brother, J.S.'s father, patient L.E., and patient M.R. without an appropriate prior examination and a medical indication, as more particularly alleged herein.

16. On or about December 2012, respondent had his first consultation with patient M.R., a then-20 year old female who had been admitted to the hospital after suffering a seizure related to her abuse of controlled substances. A review of respondent's prescribing history, as documented through her Controlled Substances Utilization and Evaluation System (CURES) report, indicated that she received a total of 3,952 pills during the period of December 18, 2012, to February 20, 2014, which included prescriptions for methadone hydrochloride,[2] alprazolam,[3] and Suboxone.

17. On or about February 6, 2013, respondent had his initial visit with patient J.S., a then-25 year old female, who had been referred to respondent's pain management clinic by another physician for management of her alleged neck and right upper extremity pain. During the period of March 1, 2013, to October 3, 2013, respondent had an additional ten (10) office visits with respondent. A review of respondent's prescribing history, as documented through a CURES

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[2] Methadone (Dolophine Hydrochloride) is a Schedule II Controlled Substance under Health and Safety Code section 11055(c) (14) and a dangerous drug under Code section 4022 (a).

[3] Alprazolam (Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the treatment of anxiety and panic attacks.

report for patient J.S., indicated that she received a total of 5,230 pills during the period of February 6, 2013, to February 2, 2014, which included prescriptions for hydrocodone,[4] oxycodone,[5] methadone hydrochloride and alprazolam.

18. At some time in 2014, the United States Drug Enforcement Administration (DEA) opened an investigation regarding respondent. The DEA opened its investigation after being informed that respondent was having sex with one of his patients, patient J.S., and was writing her prescriptions for controlled substances without any medical justification.

19. On or about December 6, 2014, patient J.S.'s brother was interviewed by the DEA regarding three prescriptions that were written in his name by respondent as indicated on a CURES report. Specifically, a prescription for hydrocodone/APAP 10/325 mg (#150) filled on March 11, 2013; a prescription for oxycodone HCL 15 mg (#180) filled on April 1, 2013; and another prescription for oxycodone HCL 30 mg (#120) filled on April 25, 2013. When questioned, J.S.'s brother stated he was not respondent's patient and never received any of the prescriptions.

20. On or about December 6, 2014, the DEA interview interviewed patient J.S.'s father regarding two prescriptions that were written by respondent in his name. Specifically, two prescriptions for hydrocodone/APAP 10/325 mg (#150) filled on March 9, 2013, and March 19, 2013. When questioned, patient J.S.'s father stated he wasn't aware of the prescriptions and he was not respondent's patient. Patient J.S.'s father also stated he was aware his daughter had been

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[4] Hydrocodone bitartrate (Lorcet, Lortab, Vicodin, Vicoprofen, Tussionex and Norco) is a hydrocodone combination of hydrocodone bitartrate and acetaminophen which is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the treatment of moderate to severe pain.

[5] Oxycodone hydrochloride (Oxycodone, Oxycontin, Roxicodone) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the treatment of moderate to severe pain. Oxycodone has been identified as a drug of abuse by the DEA. According to the DEA, "Oxycodone is abused orally or intravenously. The tablets are crushed and sniffed or dissolved in water and injected. Others heat a tablet that has been placed on a piece of foil and inhale the vapors....Euphoria and feelings of relaxation are the most common effects of oxycodone on the brain, which explains its high potential for abuse." (Drugs of Abuse – A DEA Resource Guide (2011), at p. 41.)

romantically involved with respondent and his daughter admitted that respondent was providing her with "pills."

21. On or about December 9, 2014, patient J.S. was interviewed by the DEA regarding the nature of her relationship with respondent. Among other things, patient J.S. advised the DEA that during her initial consultation with respondent on February 6, 2013, respondent was "super friendly," "flirty," and "kinda unprofessional." During the course of her initial consultation, respondent asked patient J.S. about her nipple rings and commented that he would be really excited if his girlfriend had nipple rings.[6] At the end of the initial visit, respondent wrote patient J.S. a prescription for hydrocodone. According to patient J.S., three days later, respondent called her, told her it was a personal call, and then asked if she had a date for Valentine's Day. Patient J.S. told the DEA that this was the beginning of her intimate relationship with respondent, which became sexual, and thereafter they began communicating regularly through telephone calls and text messages.[7] Patient J.S. informed the DEA that shortly after respondent became her physician, he switched her from hydrocodone to oxycodone 15 milligrams (mg) and then increased the oxycodone to 30 mg without advising her of the increase. Patient J.S. stated she liked how she felt when taking the oxycodone and became addicted to the oxycodone. According to patient J.S., after she became addicted to the oxycodone 30 mg, she would ask for early refills. In order to avoid possible detection associated with early refills, patient J.S. requested that respondent write her prescriptions in the name of her father, brother and friend, L.E., that would be used to divert additional controlled substances to her. Thereafter, respondent wrote her some

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[6] Respondent's electronic medical record for his initial visit with patient J.S. on February 6, 2013, indicated "[t]he patient was multiple piercings" with respondent recommending "[r]emoval of the [n]ipple piercing" because "I think these piercing[s] may be responsible for lymph node enlargement and abscess formation."

[7] Respondent voluntarily appeared for an investigatory interview before the DEA and the federal prosecutor assigned to his case on or about June 4, 2015, where he, among other things, "volunteered that he had become emotionally and physically involved with J.S." Respondent stated that he put J.S.'s cell phone on his phone plan, and then bought her a new cell phone when her cell phone broke. According to the report of investigation, "THOTA admitted that he knew his relationship with [patient J.S.] was inappropriate and crossed boundaries..."

prescriptions in the name of her father, brother, and her friend, L.E., without medical indication, and with the knowledge that the controlled substances would be taken by J.S.

22. During the course of their investigation, the DEA reviewed J.S.'s cell phone which contained numerous text message exchanges between respondent and J.S. The text message exchanges between J.S. and respondent confirmed their sexual relationship, that respondent was providing money and controlled substances to J.S., and that J.S. was, at times, struggling with withdrawal symptoms.

23. On or about December 14, 2014, patient J.S.'s brother was interviewed by the DEA regarding the prescriptions from respondent written in his name. According to J.S.'s brother, he had no knowledge of the prescriptions. During a subsequent execution of a search warrant at respondent's office, the DEA was unable to find a patient file for J.S.'s brother.

24. On or about November 20, 2015, the DEA received a phone call from M.B., the mother of patient M.R., who reported she believed her daughter was involved in, or had been involved in, a sexual relationship with respondent while he was prescribing her controlled substances, and that respondent also gave her daughter expensive gifts. At a subsequent interview with the DEA on December 14, 2015, M.B. told the DEA that respondent had first met her daughter, who was then 20 years old, at a local hospital in December 2012, after she had a seizure following her abuse of controlled substances. According to M.B., respondent commented that patient M.R. was "going to be my next wife" when respondent first saw her daughter, M.R., at the hospital. The mother, M.B., thought the comment was odd and believed respondent was just joking. A few days after her daughter was released from the hospital, respondent called M.B.'s cell phone and told her that he was trying to reach M.R. to see how she was doing. Respondent provided M.B. with his personal cell phone number and asked her to have M.R. give him a call on his personal cell phone. M.B. advised the DEA that she was aware of at least two occasions where respondent personally delivered prescriptions for controlled substances to her daughter along with money to pay for the prescriptions; that respondent prescribed methadone to her daughter even though she didn't have any pain issues; that respondent had provided her daughter with money to make car payments, purchased her an Apple laptop, and other gifts; that

her other daughter (M.R.'s sister) had reported seeing sexually explicit text messages on her daughter's cell phone; and that there were numerous times when M.R. did not come home for the evening and later told her she had fallen asleep at respondent's medical office where she had spent the night.

25. On or about January 6, 2016, the DEA interviewed patient M.R.'s sister. M.R.'s sister confirmed many of the details that had been reported to the DEA by her mother, M.B. Among other things, M.R.'s sister reported she and her sister started abusing hydrocodone in 2010. The sister told the DEA that she stopped abusing opiates but her sister continued to abuse opiates and would get prescriptions from respondent. M.R. told her sister that respondent prescribed her methadone for alleged chronic pain, even though she had no pain issues, and respondent had informed M.R. that it "could cause problems if it was not for pain and [M.R.] would be 'on a list.'" The sister also informed the DEA of two occasions when respondent delivered prescriptions to M.R. and provided her with money to purchase the controlled substances. The sister further informed the DEA that respondent made car payments for M.R. and had also sent her sexually explicit messages.

26. On or about January 6, 2016, the DEA interviewed L.E., one of patient J.S.'s friends, and asked her about prescriptions for controlled substances in her name that were issued by respondent. Specifically, one prescription for oxycodone/APAP 10/325 mg (#180) filled on April 3, 2013, and one prescription for oxycodone hydrochloride 30 mg (#240) filled on April 18, 2013. L.E. advised the DEA, among other things, that she only had one appointment with respondent but never received a prescription from respondent. L.E. told the DEA that J.S. said she was romantically involved with respondent and she had received a prescription from respondent in L.E.'s name.

27. On or about January 12, 2016, the DEA interviewed patient M.R. who indicated that she first met respondent in a local hospital after she had suffered a seizure related to her withdrawal from controlled substances. According to M.R., she wanted to get on a Suboxone[8]

[8] Suboxone (buprenorphine hydrochloride and naloxone hydrochloride) is clinically indicated for maintenance treatment for opioid dependence and should be used as part of a

(continued...)

program to treat her addiction and to help with withdrawal symptoms. However, she did not have health insurance, so respondent prescribed her methadone instead of the Suboxone because it was cheaper. M.R. stated respondent told her that he would be documenting that the methadone was for pain instead of addiction treatment so she would not be denied a job later if someone were to review her medical records and see that she was an addict. M.R. indicated that she had no pain, had never been in any accidents, and she had no serious medical problems which caused any pain. M.R. also told the DEA, among other things, that respondent would provide her prescriptions for methadone and provide her with money often in excess of the prescription costs, that she was allowed to keep; that she would have lunch with respondent at a nearby Denny's restaurant and that would be her 'consultation' for the controlled substances that she was being prescribed; she was only seen in respondent's exam room on two occasions; and that there were several times when she fell asleep in respondent's private office where she would spend the night. According to M.R., when respondent would meet her in a parking lot to deliver her prescriptions for the Methadone and Xanax prescriptions, she would give him "hand jobs" and they would also engage in sexual acts in his private office.[9] M.R. stated that respondent told her the sexual contact was good for her and made statements such as "[t]his is good for you," "it's introducing you back into the world," "[i]t's healthy for you," and "[e]veryone should be like sleeping with each other." M.R. confirmed that respondent bought her expensive gifts including an Apple laptop computer, and gave her a check for her car payment.[10] M.R. further informed the DEA that she felt that if she did not engage in the sexual acts with respondent, he would not provide her with the prescriptions for controlled substances. According to M.R., she ended her relationship with

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(...continued)
complete treatment program to include counseling and psychosocial support. One of the active ingredients, burprenorphrine, is a schedule III controlled substance.

[9] According to the DEA's investigative report, "[M.R.] estimated that she engaged in sexual activity eight out of ten times when she received prescriptions from THOTA."

[10] According to the DEA's investigative report, M.R. informed them that "[Respondent] also purchased expensive gifts for her such as an Apple MacBook, purchased via the credit card at the Apple Store in Fashion Valley, diamond earrings, Burberry perfume, a Galaxy phone, shopping sprees at Victoria's Secret, and Aeropostale, a check for $675.00 to pay off her car loan and a weekly card for $50.00 at Starbuck's."

respondent around the time he provided her with the $675.00 check dated January 23, 2016, for a "car payment," and when she was no longer getting prescriptions from respondent, she began using heroin. M.R. provided one image from her cell phone of a check from respondent in the amount of $675.00 written to her with the memo line indicating "car payment" and two images of her and respondent taken inside a restroom in respondent's office. According to the DEA's investigative report, "[a] review of phone tolls previously obtained for [respondent's] cellular phone identified 2460 contacts between [respondent's] cellular phone and [M.R.'s] cellular phone number...between the dates of 02/01/2013 and 12/31/2013."

28. On or about June 21, 2016, DEA Special Agent T.H. prepared a report of investigation which summarized her "[r]eview of Dr. Thota's medical records and prescription records for [patient M.R.]" for the schedule II controlled substances that had been prescribed to her." The Report of Investigation indicates, in pertinent part:

> "[Special Agent T.H.] found 32 separate dates THOTA wrote prescriptions [for] Methadone 10 mg tablets, a schedule II controlled substance to [patient M.R.] The dates were obtained from [patient M.R.'s] CURES report and previously obtained pharmacy records. In comparison, the medical file for [patient M.R.] obtained by THOTA had 13 dates with office visit notes and indicated prescriptions for prescriptions [for] Methadone schedule II prescriptions were written by THOTA for [patient M.R.]. There were 4 copies of Methadone prescriptions in [patient M.R.'s] name in the chart with the corresponding office notes. In addition, there were only 9 copies of the Methadone prescriptions written for [patient M.R.] in [her] chart.
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> "[Special Agent T.H.] reviewed the appointment schedule maintained by THOTA's medical practice. The appointment schedule documents 5 appointments for [patient M.R.] during the time period the 32 prescriptions for the schedule II controlled substances were written by THOTA for [patient M.R.]."

29. On or about November 30, 2016, the DEA received an expert report from Dr. W.S., who was retained to offer his expert opinions regarding respondent's prescribing of controlled substances to patient J.S. (which included the prescriptions for controlled substances written in the name of J.S.'s brother, J.S.'s father, and patient L.E., which were diverted to patient J.M.) After his expert review, Dr. W.S., found multiple violations of the standard of care pertaining to the proper prescribing on controlled substances. Dr. W.S. subsequently wrote a supplemental report in which he opined that the prescriptions, referenced above, and the prescriptions to patient

M.R. "were not for a legitimate medical purpose and were written outside the usual course of medical practice."

30. On or about August 3, 2016, a seven-count criminal complaint was filed against respondent in the United States District Court, Southern District of California, in the action entitled *United States of America v. Naga Raja Thota.* The criminal complaint charged respondent with seven counts of Distributing and Dispensing Controlled Substances Without Legitimate Medical Purpose in violation of Title 21, United States Code (U.S.C.), Section 841, subdivision (a)(1). The complaint generally alleged that respondent issued prescriptions to a friend and/or relatives of patient J.S., that were diverted back to patient J.S.

31. The criminal complaint, above, included a supporting affidavit that from Drug Enforcement Administration (DEA) Special Agent D.R. which set forth the results of the DEA's investigation concerning respondent which resulted in the filing of the criminal complaint against him. Among other things, the affidavit alleged that respondent was engaged in a sexual relationship with his female patient J.S., and had improperly prescribed and/or diverted controlled substances to her in 2013. According to the affidavit, during the period of March 5, 2013, to April 30, 2013, respondent issued multiple prescriptions to patient J.S., and also issued prescriptions in the name of her brother, her father, and her friend (L.E.)[11] that were, in truth and fact, diverted back to J.S. for her own use. The total amount of controlled substances prescribed during this period was approximately 1,460 tablets of oxycodone and 660 tablets of hydrocodone. The affidavit accompanying the criminal complaint also alleged that respondent had numerous cell phone communications with another female patient, patient D.H., during the 2015 timeframe and that "Thota had text messaged her on numerous occasions, asking D.H. to have sex with him and stating he would pay her $100.00." The affidavit alleged that patient D.H. advised the DEA "that on one occasion Thota told her to come by his office after hours for a 'procedure' ... some

[11] Paragraph 25 of the affidavit provided that "J.S. said she also asked Thota to give her prescriptions in the name of a friend, L.E. According to J.S., she made a deal with L.E. to split Thota's CPD [controlled pharmaceutical drug] prescriptions with her. J.S. would again meet Thota in the parking lot of his practice where he would give her the CPD prescriptions. J.S. said Thota insisted that L.E. come in to see him for a consult after he gave J.S. the prescription."

kind of injection..." and the next thing she recalled was waking up in Thota's surgical center at 4:00 a.m. with an IV in her arm [with] D.H. stat[ing] she had no idea what was going on."[12] The supporting affidavit also alleged that another female patient, patient M.R., advised the DEA that, among other things, respondent prescribed methadone and alprazolam to her, assisted her in obtaining early prescriptions, purchased gifts for her, and engaged in sexual acts with her during the time he was prescribing her controlled substances.

32. On or about November 29, 2016, respondent, who was represented by counsel, entered into a written plea agreement to resolve the criminal charges against him. In executing the written plea agreement, respondent, among other things, agreed to plead guilty to criminal counts 1 through 7, for Distributing and Dispensing Controlled Substances Without Legitimate Medical Purpose in violation of Title 21, United States Code (U.S.C.), Section 841, subdivision (a)(1). In doing so, respondent admitted, among other things, that he committed each element of the crime[13] and that there was a factual basis for his guilty plea. Respondent further admitted that certain facts were true and undisputed including that:

(a) While he was a physician licensed in the State of California, he wrote three prescriptions in the name of patient J.S.'s brother that "were made to J.S.'s Brother without any valid doctor patient relationship existing between J.S.'s Brother and Thota[,]" that the "prescriptions were written with the intent of fraudulently and illegally providing [patient] J.S. with SPDs [Scheduled

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[12] Paragraph 55 of the supporting affidavit provides, "Thota was asked [by the DEA] if D.H.'s treatment had ever required an IV. Thota responded negatively. Thota was asked what happened that caused D.H. to wake up at 4 a.m. in Thota's surgical center with an IV in her arm. Thota stated that he had gone to dinner at BJ's restaurant located at Grossmont Center. Thota explained that D.H. drank too much wine and complained of dizziness. Thota then stated that D.H. couldn't walk and he had to physically support her. Thota added that D.H. complained she was too dizzy to go home and she asked Thota to take her to his office and 'check her out' and he agreed. Thota stated D.H.'s blood pressure had been pretty low, so he started her on an IV."

[13] The admitted elements were that (1) the practitioner distributed controlled substances; (2) the distribution of those controlled substances was outside the usual course of professional practice and without a legitimate medical purpose; and (3) the practitioner acted with intent to distribute the controlled substance and with the intent to distribute them outside the course of professional practice.

pharmaceutical drugs]" and that the "prescriptions were made outside the usual and course of professional practice and without a legitimate medical purpose[;]"

(b) While he was a physician licensed in the State of California, he wrote two prescriptions in the name of patient J.S.'s father that "were made to J.S.'s Father without any valid doctor patient relationship existing between J.S.'s Father and Thota[,]" that the "prescriptions were written with the intent of fraudulently and illegally providing [patient] J.S. with SPDs" and that the "prescriptions were made outside the usual and course of professional practice and without a legitimate medical purpose[;]"

(c) While he was a physician licensed in the State of California, he wrote two prescriptions in the name of L.E. that "were made to L.E. without any valid doctor patient relationship existing between L.E. and Thota[,]" that the "prescriptions were written with the intent of fraudulently and illegally providing [patient] J.S. with SPDs" and that the "prescriptions were made outside the usual and course of professional practice and without a legitimate medical purpose[;]" and

(d) "Between February 06, 2013 and February 20, 2014, Thota engaged in sexual acts with two patients (one of whom was J.S.) that were under his care and to whom he was prescribing SPDs."

As part of his plea agreement, respondent also agreed that he shall no longer prescribe or dispense any controlled substances and that he "shall cooperate with and not contest or oppose any administrative action to revoke or suspend any professional license or professional registration held by [respondent], including by the Medical Board of California or the United States Drug Enforcement Administration."

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

33. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b) of the Code, in that he committed gross negligence in his care and treatment of patient J.S., J.S.'s brother, J.S.'s father, patient L.E., patient M.R., as more

particularly alleged in paragraphs 15 through 32, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

PATIENT J.S.

(a) Respondent prescribed narcotics and controlled substances to patient J.S. without adequate justification and outside the course of his professional practice; and

(b) Respondent repeatedly prescribed narcotics and controlled substances to patient J.S. without adequately monitoring her use of the narcotics and controlled substances that were being prescribed.

PATIENT J.S.'s BROTHER

(a) Respondent prescribed narcotics and controlled substances to patient J.S.'s brother without adequate justification and outside the course of his professional practice;

(b) Respondent prescribed narcotics and controlled substances to patient J.S.'s brother without adequately monitoring his use of the narcotics and controlled substances that were prescribed under his name; and

(c) Respondent prescribed narcotics and controlled substances to patient J.S.'s brother without maintaining adequate and accurate medical records.

PATIENT J.S.'s FATHER

(a) Respondent prescribed narcotics and controlled substances to patient J.S.'s father without adequate justification and outside the course of his professional practice; and

(b) Respondent prescribed narcotics and controlled substances to patient J.S.'s father without adequately monitoring his use of the narcotics and controlled substances that were prescribed under his name.

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PATIENT L.E.

(a) Respondent prescribed narcotics and controlled substances to patient L.E. without adequate justification and outside the course of his professional practice; and

(b) Respondent prescribed narcotics and controlled substances to patient L.E. without adequately monitoring his use of the narcotics and controlled substances that were prescribed under her name.

PATIENT J.M.S.

34. On or about January 18, 2012, respondent started treating patient J.M.S., a then sixty-eight (68) year old female, who had been referred to him by another physician, for treatment of her multifocal pain that was noted to be progressive. After obtaining a medical and social history, conducting a physical examination, and obtaining vital signs, respondent diagnosed patient J.M.S. as suffering from thoracic or lumbarsacral neurotis or radiculitis (not otherwise specified); lumbar or lumbosacral disc degeneration; and generalized osteoarthritis of multiple sites. Respondent's treatment plan was to add methadone to "improve pain control" to the patient's medication regiment, "decrease all acetaminophen product" and for the patient to "conduct all activities of daily living as normally as possible, walk for exercise as tolerated, continue healthy diet, exercise as tolerated, increase her water intake and take medications as directed" with respondent to provide "medical management only" at this point in time. Respondent was prescribed Methadone HCL 10 mg (#60) one tablet to be taken twice daily for pain management; and Norco 10/325 mg (#180) one tablet ever 4-6 hours.

35. During the period of February 16, 2012, to September 9, 2012, respondent saw patient J.M.S. on a near-monthly basis for follow up and medication management. Respondent discontinued the methadone prescription at his visit with the patient of March 29, 2012, and changed the Norco prescription to Oxycodone HCL IR 5 mg (#120) one tablet four times a day at his visit with the patient on July 25, 2012.[14]

[14] According to respondent's electronic medical record, the Norco was discontinued due to the patient having Hepatitis B and based on concerns over the acetaminophen in the Norco.

36. On or about October 17, 2012, respondent examined patient J.M.S. and he noted a new diagnosis of "closed fracture of lumbar vertebra without spinal cord injury." Respondent discontinued patient J.M.S.'s previously prescribed medications because "according to patient medications are less effective now." The electronic medical record for this visit indicates "[c]onsideration being given for Kyphoplasty[15] in the future" and it was noted that "[p]atient would benefit from procedure/injections, initiating authorization process for – Kyphoplasty."

37. On or about October 30, 2012, respondent performed the kyphoplasty procedure on patient J.M.S. on an outpatient basis. Respondent noted patient J.M.S.'s "[p]ain level has increased since last visit." According to the electronic medical record for this date, the diagnosis was "[c]ompressed fracture of the L1 vertebral body" and the "clinical data" was noted as follows:

> "CLINICAL DATA: The patient had a pathological fracture at L1 level. The patient was refractory for any medical treatment. The pain continues to be originating from L1. The pressure on the L1 gives raise (sic) to severe pain. All conservative measures failed hence planned kyphoplasty at that level. Patient also has osteoporosis."

The electronic medical record for the procedure noted that there was difficulty with a right side approach as follows:

> "On the right side a similar approach was made unable to enter the body with pedicular approach. New skin incision was given. 2-3 cm of the lateral through the midline and a paramedian approach was made to the vertebral body. With the (sic) great difficulty the vertebral body could be entered. The entrance was between posterior one third and middle one third of the vertebral body. The cavity creation was done without any difficulty. The cement was mixed. Before injecting cement the contrast was injected. Because of the excessive bleeding from the right sided needle, the contrast was diffused and it was not confined to the vertebral body so it was decided not to inject any cement through the right sided cannula. The flow of cement was satisfactory."

According to the electronic medical record for the kyphoplasty procedure, "there was little excess bleeding than usual" after the needle from the right side was removed and "[p]ressure was applied and the bleeding could be stopped without any difficulty." Staples were applied for the

[15] Kyphoplasty is typically a minimally invasive procedure that is performed to treat vertebral compressions fractures of the spine that can be caused by osteoporosis, spinal tumors or injuries. By restoring the vertebral height with a balloon and injecting cement into the fractured bone, patients can potentially recover faster and reduce the risk of future fractures.

incisions, dressings were applied, and the patient was transferred to a recovery room. After being provided with post-procedure instructions, the patient was discharged.

38. On or about October 31, 2012, respondent was advised in the afternoon that patient J.M.S. had been transferred to the intensive care unit (ICU) for a retroperitoneal hematoma and that she was being given blood transfusions. Respondent went to the hospital where patient J.M.S. was admitted and reviewed her CT scan which "indicate[d] that retroperitoneal bleeding possibly bleeding from inferior vena cavity on the right side when the needle went through the body, possibly went through the wall of the inferior vena cavity." According to his electronic medical record, respondent "spoke with [Dr. S.] and explained to her the procedure I did and I told her that this is possibly the complication of the procedure with inferior vena caval bleeding." The hospital records noted that patient J.M.S. "had outpatient procedure of kyphoplasty when the patient had possible iatrogenic injury to the inferior vena cavity." Over the next few days, patient J.M.S. remained in critical condition.

39. On or about November 5, 2012, patient J.M.S.'s condition declined and she began experiencing multisystem organ failure. After further consultation, and discussion with Patient J.M.S.'s family, she was placed on "comfort care" measures and expired later in the evening, without further intervention. The coroner's autopsy report listed the cause of death as "retroperitoneal and peritoneal hemorrhage" due to "injury of inferior vena cavity during kyphoplasty for the treatment of lumbar vertebral compression fracture" with a contributing factor being patient J.M.S.'s "hepatic cirrhosis due to chronic ethanolism; hypertensive and atherosclerotic cardiovascular disease."

40. Respondent committed gross negligence in his care and treatment of J.M.S., which included, but was not limited to, the following:

(a) Respondent not performing an adequate work-up on patient J.M.S. prior to proceeding with the kyphoplasty procedure and/or proceeding with the kyphoplasty procedure that was not indicated;

(b) Respondent failed to actively seek out basic lab values before proceeding with the kyphoplasty procedure on patient J.M.S.; and

(c) Respondent failed to actively communicate with personnel from patient J.M.S.'s skilled nursing facility and/or her other treating physicians to confirm whether patient J.M.S. was competent to sign a consent for proceeding with the kyphoplasty procedure prior to proceeding with the procedure.

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

41. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in her care and treatment of patient J.S., J.S.'s brother, J.S.'s father, patient L.E., patient M.R. and patient J.M.S., as more particularly alleged in paragraphs 15 through 40, above, which are hereby incorporated by reference and realleged as if fully set forth herein. The repeated negligent acts included, but were not limited to the following:

PATIENT J.S.

(a) Respondent prescribed narcotics and controlled substances to patient J.S. without adequate justification and outside the course of his professional practice; and

(b) Respondent repeatedly prescribed narcotics and controlled substances to patient J.S. without adequately monitoring her use of the narcotics and controlled substances that were being prescribed.

PATIENT J.S.'s BROTHER

(a) Respondent prescribed narcotics and controlled substances to patient J.S.'s brother without adequate justification and outside the course of his professional practice;

(b) Respondent prescribed narcotics and controlled substances to patient J.S.'s brother without adequately monitoring his use of the narcotics and controlled substances that were prescribed under his name; and

(c) Respondent prescribed narcotics and controlled substances to patient J.S.'s brother without maintaining adequate and accurate medical records;

FOURTH CAUSE FOR DISCIPLINE

(Violation of Statutes Regulating Dangerous Drugs and Controlled Substances)

42. Respondent is also subject to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the Code, as defined by section 2238 of the Code, in that respondent has violated various statutes regulating dangerous drugs and controlled substances, including, but not limited to, sections 725, 2241 and 2242 of the Code; Health and Safety Code sections 11153, subdivision (a) [unlawful controlled substance prescriptions], 11154, subdivision (a) [prescribing to person not under practitioner's care], 11157 [false prescriptions], and Title 21, U.S.C., section 841, subdivision (a)(1) [distributing and dispensing controlled substances without legitimate medical purpose] as more particularly alleged in paragraphs 15 through 33, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Furnishing Drugs To Addict)

43. Respondent is also subject to disciplinary action under sections 2227 and 2234, as defined by section 2241 of the Code, in that respondent prescribed controlled substances and dangerous drugs to patients J.S. and M.R. whom he knew or reasonably should have known were addicts and/or were using or would be using the controlled substances and dangerous drugs for a nonmedical purpose, as more particularly alleged in paragraphs 15 through 33, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Repeated Acts of Clearly Excessive Prescribing)

44. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 725, of the Code, in that he has committed repeated acts of clearly excessive prescribing drugs or treatment to patients J.S. and M.R., as determined by the standard of the community of physicians, as more particularly alleged in paragraphs 15 through 33, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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SEVENTH CAUSE FOR DISCIPLINE

(Commission of an Act or Acts of Sexual Abuse, Misconduct or Relations with Patient)

45. Respondent is further subject to disciplinary action under section 726 of the Code, in that he engaged in an act or acts of sexual abuse, misconduct or relations with patients J.S. and M.R., as more fully particularly alleged in paragraphs 15 through 33, above, which are incorporated by reference and realleged as if fully set forth herein.

EIGHTH CAUSE FOR DISCIPLINE

(Sexual Exploitation of a Patient)

46. Respondent is further subject to disciplinary action under section 729 of the Code, in that he committed an act or acts of sexual intercourse, sodomy, oral copulation and/or sexual contact with patients J.S. and M.R., as more fully particularly alleged in paragraphs 15 through 33, above, which are incorporated by reference and realleged as if fully set forth herein

NINTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Record)

47. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that she failed to maintain adequate and accurate records in her care and treatment of patient J.S., J.S.'s brother, J.S.'s father, patient L.E., and patient M.R., as more particularly alleged in paragraphs 15 through 33, and paragraph 41, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

TENTH CAUSE FOR DISCIPLINE

(Signing a Document that Falsely Represents the Existence or Non-Existence of a State of Facts)

48. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2261 of the Code, in that respondent signed documents for patient J.S., J.S.'s brother, J.S.'s father, patient L.E., and patient M.R. that falsely represented the existence or non-existence of a state of facts, as more particularly alleged in paragraphs 15 through 41, above, which are incorporated by reference and realleged as if fully set forth herein.

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ELEVENTH CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

49. Respondent is further subjected to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (e), of the Code, in that he has engaged in an act or acts of dishonesty or corruption substantially related to the qualifications, functions, or duties of a physician, as more particularly alleged in paragraphs 15 through 41, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

TWELFTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

50. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code, in that Respondent engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 15 through 49, above, which are hereby incorporated by reference and realleged as if fully set forth herein, and as more particularly alleged hereinafter regarding J.J.

PATIENT J.J.

51. On or about January 14, 2014, respondent had her initial appointment with patient J.J., a then fifty-seven (57) year old female, who stated she had been referred by another physician to determine whether she was a candidate for Suboxone treatment. Patient J.J. was accompanied by her mother. According to patient J.J., at some time during the office visit respondent "began to rant and rave." Among other things, respondent called himself the "shit," told patient J.J. he (respondent) was going to hell and asked patient J.J. if she wanted to go with him. Respondent also used speech that was "peppered with the f--- word," called himself a "lesbian" and indicated he had several girlfriends and told patient J.J. she "could be one also." Patient J.J.'s mother witnessed respondent's behavior and noted that shortly after the visit began, respondent started acting "weird." Patient J.J.'s mother indicated that respondent was "being very vulgar, saying bad words, nasty words," making comments with sexual innuendo.

According to patient J.J.'s mother, her daughter got up to leave the exam room but came back and sat down again. Respondent continued yelling at patient J.J. and made the statement that "sometimes you have to get them mad."[16] After the visit ended, patient informed her primary care physician about the encounter with respondent. Patient had no additional visits with respondent.

DISCIPLINARY CONSIDERATIONS

52. To determine the degree of discipline, if any, to be imposed on respondent, complainant alleges that an Accusation was filed against respondent on or about September 4, 2014, in a prior disciplinary action entitled *In the Matter of the Accusation against: Naga Raja Thota, M.D.*, Medical Board of California Case No. 10-2012-224091. The aforementioned Accusation alleged that respondent engaged in unprofessional conduct when he violated the standard of care in his prescribing of controlled substances to six patients, engaged in excessive prescribing of controlled substances as to three of the six patients, and failed to maintain adequate and accurate medical records as to each of the six patients. On March 2, 2016, respondent's medical license was revoked, the revocation was stayed, and respondent was placed on probation for seven (7) years probation, on various terms and conditions, including suspension of his medical license for thirty (30) days; partial restriction of his ability to prescribe controlled substances (limited to prescribing Schedule IV and V controlled substances); successful completion of additional education course requirements, a prescribing practices course, a medical record keeping course; successful completion of a clinical training program; appointment of a practice monitor; a prohibition about engaging in the solo practice of medicine; and the other standard terms and conditions of probation. That decision is now final and is incorporated by reference as if fully set forth herein.

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[16] During the course of his interview with a Health Quality Investigation Unit (HQIU) investigator, respondent stated he would sometimes provoke patients to get them angry in order to see how they will react. When asked why he sometimes provoked his patients, respondent stated his intention was to see the patient's commitment to the treatment protocol he was suggesting. According to respondent, if the patient gets angry after being provoked it tends to show that the patient will potentially have a greater chance for success for the treatment protocol that is being recommended.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A53526, issued to respondent Naga Raja Thota, M.D.;

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

3. Ordering respondent Naga Raja Thota, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: January 31, 2017

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

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[X] (**BY U.S. CERTIFIED MAIL**) I enclosed the documents in a sealed envelope or package addressed to the person(s) at the address(es) listed above and:

[X] Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of State of California that the above is true and correct.

Executed on November 3, 2017, at Oakland, California.

URSULA JONES