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

In the Matter of the Accusation
Against:

ANDREW CLOUGH KERR, M.D.) Case No. 800-2013-000478

Physician's and Surgeon's
Certificate No. G 51543

Respondent

DECISION

The attached Stipulated Settlement and Disciplinary 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 December 7, 2016.

IT IS SO ORDERED: November 7, 2016.

MEDICAL BOARD OF CALIFORNIA

Jamie Wright, JD, Chair
Panel A
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW KERR, M.D.
3555 Loma Vista Road, Suite 100
Ventura, CA 93003

Physician's and Surgeon's Certificate No.
G51543

Respondent.

Case No. 800-2013-000478
OAH No. 2016021066

STIPULATED SETTLEMENT AND
DISCIPLINARY 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. She brought this action solely in her official capacity and is represented in this
matter by Kamala D. Harris, Attorney General of the State of California, by Tan N. Tran, Deputy
Attorney General.

2. Respondent ANDREW KERR, M.D. ("Respondent") is represented in this
proceeding by attorney Barbara S. Kilroy, Esq., whose address is: Bertling & Clausen, 15 West
Carrillo Street, Suite 100, Santa Barbara, CA 93101.

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3. On or about October 31, 1983, the Medical Board of California issued Physician's and Surgeon's Certificate No. G51543 to ANDREW KERR, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2013-000478, and will expire on August 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 800-2013-000478 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 2, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2013-000478 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2013-000478. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement 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; 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. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation
No. 800-2013-000478., and that he has thereby subjected his Physician's and Surgeon's
Certificate No. G51543 to disciplinary action.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
discipline and he agrees to be bound by the Board's probationary terms as set forth in the
Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

11. Respondent ANDREW KERR, M.D. has never been the subject of any disciplinary
action. He has been cooperative.

RESERVATION

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

CONTINGENCY

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

14. The parties understand and agree that Portable Document Format (PDF) and facsimile
copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
signatures thereto, shall have the same force and effect as the originals.

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

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G51543 issued
to Andrew Kerr, M.D. (Respondent) is revoked. However, the revocation is stayed and
Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **CONTROLLED SUBSTANCES - PARTIAL RESTRICTION.** During the first year
of probation, Respondent shall not order, prescribe, dispense, administer, furnish, or possess any
controlled substances as listed in Schedule II of the California Uniform Controlled Substances
Act, except for Adderall, if indicated.

   Respondent shall not issue an oral or written recommendation or approval to a patient or a
patient’s primary caregiver for the possession or cultivation of marijuana for the personal medical
purposes of the patient within the meaning of Health and Safety Code section 11362.5. If
Respondent forms the medical opinion, after an appropriate prior examination and medical
indication, that a patient’s medical condition may benefit from the use of marijuana, Respondent
shall so inform the patient and shall refer the patient to another physician who, following an
appropriate prior examination and medical indication, may independently issue a medically
appropriate recommendation or approval for the possession or cultivation of marijuana for the
personal medical purposes of the patient within the meaning of Health and Safety Code section
11362.5. In addition, Respondent shall inform the patient or the patient’s primary caregiver that
Respondent is prohibited from issuing a recommendation or approval for the possession or
cultivation of marijuana for the personal medical purposes of the patient and that the patient or
the patient’s primary caregiver may not rely on Respondent’s statements to legally possess or
cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully
document in the patient’s chart that the patient or the patient’s primary caregiver was so
informed. Nothing in this condition prohibits Respondent from providing the patient or the
patient’s primary caregiver information about the possible medical benefits resulting from the use
of marijuana.

2. **CONTROLLED SUBSTANCES- MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES.** Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient’s primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent’s knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

4. **PRESCRIBING PRACTICES COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents
that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent’s initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

5. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent’s initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have
been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

6. **PROFESSIONALISM PROGRAM (ETHICS COURSE).** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent’s initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent’s expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

7. **MONITORING - PRACTICE.** Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent’s field of practice, and must agree to serve as Respondent’s monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent’s practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent’s performance, indicating whether Respondent’s practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the
name and qualifications of a replacement monitor who will be assuming that responsibility within
15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
notification from the Board or its designee to cease the practice of medicine within three (3)
calendar days after being so notified Respondent shall cease the practice of medicine until a
replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program
equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
University of California, San Diego School of Medicine, that includes, at minimum, quarterly
chart review, semi-annual practice assessment, and semi-annual review of professional growth
and education. Respondent shall participate in the professional enhancement program at
Respondent’s expense during the term of probation.

STANDARD CONDITIONS

8. **NOTIFICATION.** Within seven (7) days of the effective date of this Decision, the
Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
Chief Executive Officer at every hospital where privileges or membership are extended to
Respondent, at any other facility where Respondent engages in the practice of medicine,
including all physician and locum tenens registries or other similar agencies, and to the Chief
Executive Officer at every insurance carrier which extends malpractice insurance coverage to
Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

9. **SUPERVISION OF PHYSICIAN ASSISTANTS.** During probation, Respondent is
prohibited from supervising physician assistants.

10. **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, all rules
governing the practice of medicine in California and remain in full compliance with any court
ordered criminal probation, payments, and other orders.

11. **QUARTERLY DECLARATIONS.** Respondent shall submit quarterly declarations
under penalty of perjury on forms provided by the Board, stating whether there has been
compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end
of the preceding quarter.

12. GENERAL PROBATION REQUIREMENTS.

   Compliance with Probation Unit

   Respondent shall comply with the Board’s probation unit and all terms and conditions of
   this Decision.

   Address Changes

   Respondent shall, at all times, keep the Board informed of Respondent’s business and
   residence addresses, email address (if available), and telephone number. Changes of such
   addresses shall be immediately communicated in writing to the Board or its designee. Under no
   circumstances shall a post office box serve as an address of record, except as allowed by Business
   and Professions Code section 2021(b).

   Place of Practice

   Respondent shall not engage in the practice of medicine in Respondent’s or patient’s place
   of residence, unless the patient resides in a skilled nursing facility or other similar licensed
   facility.

   License Renewal

   Respondent shall maintain a current and renewed California physician’s and surgeon’s
   license.

   Travel or Residence Outside California

   Respondent shall immediately inform the Board or its designee, in writing, of travel to any
   areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
   (30) calendar days.

   In the event Respondent should leave the State of California to reside or to practice
   Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
   departure and return.
13. **INTERVIEW WITH THE BOARD OR ITS DESIGNEE.** Respondent shall be available in person upon request for interviews either at Respondent’s place of business or at the probation unit office, with or without prior notice throughout the term of probation.

14. **NON-PRACTICE WHILE ON PROBATION.** Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent’s return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent’s period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board’s “Manual of Model Disciplinary Orders and Disciplinary Guidelines” prior to resuming the practice of medicine.

Respondent’s period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

15. **COMPLETION OF PROBATION.** Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent’s certificate shall be fully restored.

16. **VIOLATION OF PROBATION.** Failure to fully comply with any term or condition
of probation is a violation of probation. If Respondent violates probation in any respect, the
Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
continuing jurisdiction until the matter is final, and the period of probation shall be extended until
the matter is final.

17. LICENSE SURRENDER. Following the effective date of this Decision, if
Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
the terms and conditions of probation, Respondent may request to surrender his or her license.
The Board reserves the right to evaluate Respondent’s request and to exercise its discretion in
determining whether or not to grant the request, or to take any other action deemed appropriate
and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
shall within 15 calendar days deliver Respondent’s wallet and wall certificate to the Board or its
designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
to the terms and conditions of probation. If Respondent re-applies for a medical license, the
application shall be treated as a petition for reinstatement of a revoked certificate.

18. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
with probation monitoring each and every year of probation, as designated by the Board, which
may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
California and delivered to the Board or its designee no later than January 31 of each calendar
year.

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ACCEPIANDE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have discussed it with my attorney, Barbara S. Kilroy, Esq. I understand the stipulation and the order will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: July 28, 2016
ANDREW KERR, M.D.
Respondent

I have read and fully discussed with Respondent ANDREW KERR, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order, and approve its form and content.

DATED: July 28, 2016
BARBARA S. KILROY
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Respectfully submitted,

KANG, LAD, Esq.
Attorney General of California
JERRY L. JOHNSON
Supervising Deputy Attorney General

TAN N. TRAN
Deputy Attorney General
Attorneys for Plaintiff

LA2015601023 62054651.doc
Exhibit A

Accusation No. 800-2013-000478
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Andrew Kerr, M.D.
3555 Loma Vista Road, Suite 100
Ventura, CA 93003

Physician's and Surgeon's Certificate
No. G51543,

Respondent.

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 October 31, 1983, the Medical Board issued Physician's and Surgeon's
Certificate Number G51543 to Andrew Kerr, 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, 2017, unless renewed.

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

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program."

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

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

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

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

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

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

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

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

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

"(A) Impaired control over drug use.

"(B) Compulsive use.

"(C) Continued use despite harm.

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

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

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

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

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

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

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

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

9. 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."
10. 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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence- Patient D.L.)

11. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code for the commission of acts or omissions involving gross negligence in the care and treatment of Patient D.L.¹ ("patient" or "D.L."). The circumstances are as follows:

Patient D.L.

12. Per the medical records, Respondent had been treating D.L. intermittently since 2008 until D.L.'s death from suicide on or about October 24, 2013.² D.L. was diagnosed with various

¹ The patient is identified by initials to protect his privacy.
² D.L. had a history of substance abuse and mental problems and, at one point, had been sleeping in the garage of Respondent's home.
conditions including anxiety, panic disorder, insomnia and GERD. The patient had also
diagnosed himself with bipolar disorder. During this time period, the patient was treated with
multiple medications including Xanax, Ambien, Klonopin, Seroquel, Zyprexa, Pristiq, Viibryd,
Abilify, Cymbalta, Cerefolin, Deplin, and Nexium. Specifically, on March 4, 2008, the patient
was taking Lamictal, Zyprexa, Cymbalta, and Klonopin.

13. On February 11, 2009, the patient was given samples of Cymbalta, Deplin, Zyprexa,
Zomig, Lunesta, and a prescription for Vicodin #20 for severe pain. On March 19, 2009, the
patient stated that he was having hematemesis (vomiting of blood). There was no documentation
of vital signs despite the note that the patient was “unsteady on his feet.” There were no labs
drawn to determine the patient’s hematocrit, and Respondent made no referrals for the patient’s
condition. Respondent prescribed Klonopin 1 mg to the patient and asked him to follow up in a
few days. The follow-up visit on April 7, 2009 did not reflect any further evaluation of the
previous medical complaints of hematemesis. The patient was treated for a laceration and given a
prescription for Percocet # 20.

14. On April 21, 2009, the patient presented with intermittent hematemesis, generalized
anxiety disorder, insomnia and alcohol abuse. The patient was recommended to go to the
emergency room but refused. The patient was counseled regarding alcohol abuse and given a
prescription for Antabuse (a drug used in the treatment of chronic alcoholism). On October 31,
2009, the patient complained of panic attacks, depression, and gastritis (inflammation of the
lining of the stomach). He was prescribed Pristiq, Abilify, Xanax, and Nexium. On March 9,
2010, the patient was treated for cellulitis, panic disorder, and depression. He was prescribed
Seroquel 150 XR, Pristiq, and Deplin, and then later was given several refills of Xanax 0.5 mg
#60.

3 Controlled substances with a potential for addiction and abuse.
4 It is not clear from the record where the patient was given these medications since the
previous record from January 23, 2008 does not reflect any previous medication prescription.
5 In the notes, Respondent stated that the patient had been drinking alcohol occasionally,
and that Respondent had a concern that the patient was having substance abuse problems.
6 The patient continued to get prescriptions for Xanax but there is no note as to whether
the patient was still taking the other antidepressant medications.
15. In 2013, the patient was given prescriptions for Xanax 1 mg, Ambien 10 mg, and Soma 350 mg. On June 20, 2013, there is a notation that the patient had run out of Xanax and was given another prescription for Valium 10 mg #30. On July 2, 2013, the patient was given another prescription for Ambien 10 mg, 2 at bedtime #60 and Xanax 1 mg #45.

16. On October 17, 2013, the patient was seen after being hospitalized at Ventura County Medical Center, where he was treated for a fall that caused fractures of his pelvis and ribs, and a hemo-pneumothorax that resulted in him having a chest tube. The patient denied being depressed or having suicidal ideations. He was given a sample of Amrix (an extended-release muscle relaxer medication), then a prescription for Norco, Soma (another muscle relaxer), and Xanax. The patient was seen again on October 20, 2013 and was treated for pain with Toradol (anti-inflammatory drug used as an analgesic) injection.\(^7\)

17. On October 23, 2013, there is a message from the patient’s mother to Respondent that the patient was taking all of the medications at once, that he was slurring his speech, and falling down. The patient’s mother requested that Respondent not give the patient any more medication. The next day, on October 24, 2013, the patient died, and medication bottles that Respondent had prescribed to the patient were found empty. The death certificate stated that the cause of death was from combined drug intoxication due to suicide.\(^8\)

18. The following acts or omissions committed by Respondent in his care and treatment of Patient D.L. constitute an extreme departure from the standard of care:

a. Overprescribing medications for pain and anxiety in a patient with mental instability that could be abused, and which could cause respiratory suppression that could lead to the death of the patient.

b. Failing to properly monitor multiple psychiatric medications and other narcotics which were prescribed to Patient D.L.

\(^7\) During this time period, the patient had been trying to get into a shelter and, at one point, had been sleeping in the garage of Respondent’s home. According to pharmacy records, during this time period, there was a prescription for Vicodin 10/325 filled on October 17, 2013 for 20 tablets, and then another prescription for 90 tablets filled on October 22, 2013.

\(^8\) The coroner report also stated that the patient had jumped off a bridge one month earlier in a suicide attempt.
c. Failing to order laboratory tests for the patient’s liver and kidney conditions.

d. Failing to properly treat the patient’s issues/conditions relating to mental illness/instability and alcohol abuse.

e. Failing to perform any appropriate medical tests including blood tests, scans, stool analysis for blood or testing for other causes for the hematemesis.

f. Failing to recommend and/or refer the patient out for psychiatric treatment for depression and alcohol abuse.

g. Failing to consult outside records in order to learn about the patient’s past medical history, including mental instability/suicide attempts, and the like.

h. Failing to adequately follow-up with outside groups who were requesting the patient’s records.

i. Failing to refer the patient to an appropriate specialist for his substance/alcohol abuse problems, psychiatric disorder; and other conditions such as hematemesis.

j. Failing to timely notify the paramedics after being informed that the patient had tried to commit suicide.

19. Respondent’s acts and/or omissions as set forth in paragraphs 12 through 18, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts- 2 Patients)

20. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care of Patients D.L. and N.K. The circumstances are as follows:

21. The facts and circumstances in the First Cause for Discipline, above, are incorporated by reference as if set forth in full herein.

22. Respondent also committed repeated negligent acts in his care of Patient N.K. The circumstances are as follows:
Patient N.K

23. Patient N.K. is a family member of Respondent. N.K. had been treating with another physician for chronic prostatitis, bipolar disorder, depression, and hypogonadism. The record contains documentation of multiple injections with testosterone, but it is not clear from the record who ordered the injections and who was monitoring the therapy. The pharmacy records show that Respondent had prescribed two prescriptions for Ambien (a Schedule IV drug) to N.K.

24. The following acts or omissions committed by Respondent in his care and treatment of Patient D.L. and Patient N.K. constitute repeated negligent acts:

Patient D.L.

a. Overprescribing medications for pain and anxiety in a patient with mental instability that could be abused, and which could cause respiratory suppression that could lead to the death of the patient.

b. Failing to properly monitor multiple psychiatric medications and other narcotics which were prescribed to Patient D.L.

c. Failing to order laboratory tests for the patient’s liver and kidney conditions;

d. Failing to properly treat the patient’s issues/conditions relating to mental illness/instability and alcohol abuse.

e. Failing to perform any appropriate medical tests including blood tests, scans, stool analysis for blood or testing for other causes for the hematemesis.

f. Failing to recommend and/or refer the patient out for psychiatric treatment for depression and alcohol abuse.

g. Failing to consult outside records in order to learn about the patient’s past medical history, including mental instability/suicide attempts, and the like.

h. Failing to adequately follow-up with outside groups who were requesting the patient’s records.

i. Failing to refer the patient to an appropriate specialist for his substance/alcohol abuse problems, psychiatric disorder; and other conditions such as hematemesis.

///
j. Failing to timely notify the paramedics after being informed that the patient had tried to commit suicide.

Patient N.K

k. Failing to record who ordered the multiple injections of testosterone.

l. Failing to monitor the testosterone therapy.

m. Issuing two prescriptions of Ambien to Patient N.K. without medical indication or examination.

n. Excessively prescribing Ambien and testosterone to Patient N.K.

o. Failing to document that prescriptions for Ambien had been issued to Patient N.K.

25. Respondent’s acts and/or omissions as set forth in paragraphs 21 through 24, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Without Exam/Indication)

26. By reason of the facts and allegations set forth in the First and Second Causes for Discipline above, Respondent is subject to disciplinary action under section 2242 of the Code, in that Respondent prescribed dangerous drugs to Patients D.L. and N.K. without an appropriate prior examination or medical indication therefor.

FOURTH CAUSE FOR DISCIPLINE

(Excessive Prescribing)

27. By reason of the facts and allegations set forth in the First and Second Causes for Discipline above, Respondent is subject to disciplinary action under section 725 of the Code, in that Respondent excessively prescribed dangerous drugs to Patients D.L. and N.K.

FIFTH CAUSE FOR DISCIPLINE

(Inadequate Records)

28. By reason of the facts and allegations set forth in the First and Second Causes for Discipline above, Respondent is subject to disciplinary action under section 2266 of the Code, in
that Respondent failed to maintain adequate and accurate records of his care and treatment of Patients D.L. and N.K.

SIXTH CAUSE FOR DISCIPLINE

(Prescribing to an Addict-Patient D.L.)

29. Respondent is subject to disciplinary action under section 2241 of the Code in that Respondent prescribed controlled substances to Patient D.L., a patient who had signs of addiction.

30. The facts and circumstances in First Cause for Discipline above, are incorporated by reference as if set forth in full herein.

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 G51543, issued to Andrew Kerr, M.D.;

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

3. Ordering Andrew Kerr, 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: **February 2, 2016**

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

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