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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 WILLIAM TICE VICARY, M.D.
13 3575 Cahuenga Blvd. W., Suite 300
Los Angeles, California 90068
14 Physician's and Surgeon's Certificate G 30952,
15 Respondent.
16

Case No. 02-2008-194534

OAH No. 2011090688

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation.

22 **PARTIES**

23 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
24 California. She brought this action solely in her official capacity and is represented in this matter
25 by Kamala D. Harris, Attorney General of the State of California, by Klint James McKay, Deputy
26 Attorney General.
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1 course would have been approved by the Board or its designee had the course been taken after the
2 effective date of this Decision. Respondent shall submit a certification of successful completion
3 to the Board or its designee not later than 15 calendar days after successfully completing the
4 course, or not later than 15 calendar days after the effective date of the Decision, whichever is
5 later.

6 C. ETHICS COURSE

7 Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a
8 course in ethics, at respondent's expense, approved in advance by the Board or its designee.
9 Failure to successfully complete the course during the first year of probation is a violation of
10 probation. An ethics course taken after the acts that gave rise to the charges in the Accusation, but
11 prior to the effective date of the Decision may, in the sole discretion of the Board or its designee,
12 be accepted towards the fulfillment of this condition if the course would have been approved by
13 the Board or its designee had the course been taken after the effective date of this Decision.
14 Respondent shall submit a certification of successful completion to the Board or its designee not
15 later than 15 calendar days after successfully completing the course, or not later than 15 calendar
16 days after the effective date of the Decision, whichever is later.

17 D. NOTIFICATION

Prior to engaging in the practice of medicine, Respondent shall
18 provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief Executive
19 Officer at every hospital where privileges or membership are extended to Respondent, at any
20 other facility where Respondent engages in the practice of medicine, including all physician and
21 locum tenens registries or other similar agencies, and to the Chief Executive Officer at every
22 insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall
23 submit proof of compliance to the Board or its designee within 15 calendar days.

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

25 E. SUPERVISION OF PHYSICIAN ASSISTANTS

26 During probation, Respondent is prohibited from supervising physician assistants.
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1 F. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules
2 governing the practice of medicine in California, and remain in full compliance with any court
3 ordered criminal probation, payments and other orders.

4 G. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations
5 under penalty of perjury on forms provided by the Board, stating whether there has been
6 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
7 not later than 10 calendar days after the end of the preceding quarter.

8 H. PROBATION UNIT COMPLIANCE Respondent shall comply with the Board's
9 probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business
10 and residence addresses. Changes of such addresses shall be immediately communicated in
11 writing to the Board or its designee. Under no circumstances shall a post office box serve as an
12 address of record, except as allowed by Business and Professions Code section 2021(b).

13 Respondent shall not engage in the practice of medicine in Respondent's place of residence.
14 Notwithstanding the foregoing, Respondent may review charts or perform similar activities which
15 do not involve patient care from his residence. Respondent shall maintain a current and renewed
16 California physician's and surgeon's license.

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

20 I. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall be
21 available in person for interviews either at Respondent's place of business or at the probation unit
22 office, with the Board or its designee, upon request at various intervals, and either with or without
23 prior notice throughout the term of probation.

24 J. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should
25 leave the State of California to reside or to practice, Respondent shall notify the Board or its
26 designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is
27 defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in
28 any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

1 All time spent in an intensive training program outside the State of California which has
2 been approved by the Board or its designee shall be considered as time spent in the practice of
3 medicine within the State. A Board-ordered suspension of practice shall not be considered as a
4 period of non-practice. Periods of temporary or permanent residence or practice outside
5 California will not apply to the reduction of the probationary term. Periods of temporary or
6 permanent residence or practice outside California will relieve Respondent of the responsibility to
7 comply with the probationary terms and conditions with the exception of this condition and the
8 following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and
9 Cost Recovery.

10 Respondent's license shall be automatically cancelled if Respondent's periods of temporary
11 or permanent residence or practice outside California total two years. However, Respondent's
12 license shall not be cancelled as long as Respondent is residing and practicing medicine in
13 another state of the United States and is on active probation with the medical licensing authority
14 of that state, in which case the two year period shall begin on the date probation is completed or
15 terminated in that state.

16 K. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

17 In the event Respondent resides in the State of California and for any reason Respondent
18 stops practicing medicine in California, Respondent shall notify the Board or its designee in
19 writing within 30 calendar days prior to the dates of non-practice and return to practice. Any
20 period of non-practice within California, as defined in this condition, will not apply to the
21 reduction of the probationary term and does not relieve Respondent of the responsibility to
22 comply with the terms and conditions of probation. Non-practice is defined as any period of time
23 exceeding 30 calendar days in which Respondent is not engaging in any activities defined in
24 sections 2051 and 2052 of the Business and Professions Code. Review of patient charts or similar
25 activities shall be considered practice of medicine for this purpose.

26 All time spent in an intensive training program which has been approved by the Board or its
27 designee shall be considered time spent in the practice of medicine. For purposes of this
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1 condition, non-practice due to a Board-ordered suspension or in compliance with any other
2 condition of probation, shall not be considered a period of non-practice.

3 Respondent's license shall be automatically canceled if Respondent resides in California
4 and for a total of two years, fails to engage in California in any of the activities described in
5 Business and Professions Code sections 2051 and 2052.

6 L. COMPLETION OF PROBATION Respondent shall comply with all financial
7 obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior
8 to the completion of probation. Upon successful completion of probation, Respondent's
9 certificate shall be fully restored.

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

17 N. LICENSE SURRENDER Following the effective date of this Decision, if
18 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
19 the terms and conditions of probation, Respondent may request the voluntary surrender of
20 Respondent's license. The Board reserves the right to evaluate Respondent's request and to
21 exercise its discretion whether or not to grant the request, or to take any other action deemed
22 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
23 Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the
24 Board or its designee and Respondent shall no longer practice medicine. Respondent will no
25 longer be subject to the terms and conditions of probation and the surrender of Respondent's
26 license shall be deemed disciplinary action. If Respondent reapplies for a medical license, the
27 application shall be treated as a petition for reinstatement of a revoked certificate.

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O. 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. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Daniel Willick. I understand the Stipulation and the effect it will have on my Physician 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: 4/16/12 William Tice Vicary, MD
WILLIAM TICE VICARY, M.D.,
Respondent

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

DATED: 4/24/12 Daniel Willick
DANIEL WILLICK,
Attorney for Respondent

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ENDORSEMENT

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

DATED: 24 April, 2012

KAMALA D. HARRIS,
Attorney General
of the State of California

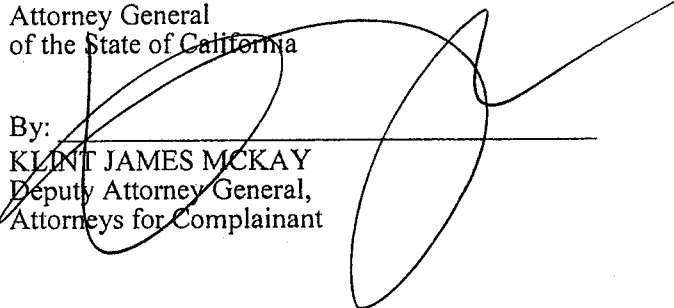
By: 
KLENT JAMES MCKAY
Deputy Attorney General,
Attorneys for Complainant

EXHIBIT A
Accusation No. 02-2008-194534

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Attorney General of California
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 3, 2011
BY: [Signature] ANALYST

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

12 In the Matter of the Accusation Against:
13 WILLIAM TICE VICARY, M.D.
14 3575 Cahuenga Blvd. W., Suite 300
15 Los Angeles, California 90068
16 Physician's and Surgeon's Certificate G 30952,
17 Respondent.

Case No. 02-2008-194534
ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Director of the Medical Board of California ("Board").
23 2. On or about September 26, 1975, the Board issued Physician's and Surgeon's
24 Certificate No. G 30952 to William Tice Vicary, M.D. ("Respondent"). Respondent's license
25 was in full force and effect at all times relevant to the charges brought herein. It will expire on
26 October 31, 2013, unless renewed.

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1 JURISDICTION

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

5 STATUTORY PROVISIONS

6 4. Section 2227 of the Code states:

7 "(a) A licensee whose matter has been heard by an administrative law judge of the
8 Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or
9 whose default has been entered, and who is found guilty, or who has entered into a stipulation for
10 disciplinary action with the division,¹ may, in accordance with the provisions of this chapter:

11 "(1) Have his or her license revoked upon order of the division.

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

14 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
15 order of the division.

16 "(4) Be publicly reprimanded by the division.

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

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

25 _____
26 ¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal.
28 Bus. & Prof. Code, §§2000, et seq.) means the "Medical Board of California," and references to the "Division of
Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the
Board.

1 5. Section 2228 of the Code states:

2 “The authority of the board or a division of the board or the California Board of Podiatric
3 Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to
4 the following:

5 “(a) Requiring the licensee to obtain additional professional training and to pass an
6 examination upon the completion of the training. The examination may be written or oral, or
7 both, and may be a practical or clinical examination, or both, at the option of the board or division
8 or the administrative law judge.

9 “(b) Requiring the licensee to submit to a complete diagnostic examination by one or more
10 physicians and surgeons appointed by the division. If an examination is ordered, the board or
11 division shall receive and consider any other report of a complete diagnostic examination given
12 by one or more physicians and surgeons of the licensee’s choice.

13 “(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including
14 requiring notice to applicable patients that the licensee is unable to perform the indicated
15 treatment, where appropriate.

16 “(d) Providing the option of alternative community service in cases other than violations
17 relating to quality of care, as defined by the Division of Medical Quality.”

18 6. Section 2234 of the Code states:

19 “The Division of Medical Quality shall take action against any licensee who is charged with
20 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct
21 includes, but is not limited to, the following:

22 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
23 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
24 Practice Act].

25 “(b) Gross negligence.

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

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

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

8 “(d) Incompetence.

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

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

12 7. Section 2238 of the Code states:

13 “A violation of any federal statute or federal regulation or any of the statutes or regulations
14 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
15 conduct.”

16 8. Section 2242 of the Code states:

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

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

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

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

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

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

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

9 “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
10 Code.”

11 9. Section 2266 of the Code states:

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

14 10. Section 4022 of the Code states:

15 “'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-
16 use in humans or animals, and includes the following:

17 “(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
18 prescription," "Rx only," or words of similar import.

19 “(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
20 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with
21 the designation of the practitioner licensed to use or order use of the device.

22 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only
23 on prescription or furnished pursuant to Section 4006.”

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FIRST CAUSE FOR DISCIPLINE
(Gross Negligence in the Care of "L.C.")

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2 9. Respondent is subject to disciplinary action for gross negligence under Business and
3 Professions Code sections 2234(b) and 2242 , for the acts and omissions set forth below based on
4 his treatment of L.C.² The facts and circumstances are as follows:

5 A) Respondent knew L.C. because he had worked with him at a clinical counseling
6 center. Around 2002, L.C. approached Respondent for help on personal issues. Respondent
7 initially saw L.C. as a courtesy, providing him with advice and medication, and later began
8 accepting payment for his services. The initial undated office note makes reference to L.C.
9 having symptoms of depression, anxiety and insomnia. Respondent's chart contains 32 progress
10 notes related to visits with the patient starting with the initial entry through the eight year
11 treatment history through January 18, 2010.

12 B) At some point in the relationship, Respondent began serving as a supervisor for L.C.
13 in regard to L.C.'s work as a psychological assistant; this occurred around 2007.

14 C) Respondent failed to obtain a patient history, conduct an initial physical examination
15 or conduct subsequent periodic physical examinations before repeatedly prescribing dangerous
16 drugs as that term is defined in Code section 4022.

17 D) Respondent did not monitor L.C.'s progress, or consult with his other care providers
18 to determine the best way to treat L.C.'s complaints.

19 E) Respondent failed to document L.C.'s complaints, his objective vital and
20 symptomatic signs, his treatment or prescription and, with rare exceptions, examinations
21 Respondent may have performed.

22 F. Respondent failed to separate his role as L.C.'s supervisor from his role as his treating
23 physician.

24 10. Each of the above actions constitutes a discrete act of gross negligence within the
25 meaning of Code section 2234(b).

26 //

27 _____
28 ² The patients' names are abbreviated to protect their privacy.

SECOND CAUSE FOR DISCIPLINE

(Further Acts of Gross Negligence in the Care of "L.C.")

11. Respondent is subject to disciplinary action for gross negligence under Business and Professions Code section 2234(b), for the acts and omissions set forth below based on his treatment of L.C.³ The facts and circumstances are as follows.

A. On April 30, 2010, a Medical Board of California investigator inspected Respondent's office. The investigator found twenty patients' medication bottles were stored there. Many were expired, and some were Schedule IV medications such as Lunesta and alprazolam, one was an amphetamine and one was Prolixin, an injectible antipsychotic medication. During a subsequent interview, Respondent confirmed that he sometimes gave patients medication that had belonged to other patients, and that he didn't believe this was a problem.

B. These medications were in an unsecured, unlocked area accessible to employees and anyone else in the office.

12. The failure to maintain adequate controls, the hoarding of medications, and distribution of medications to patients for whom the prescriptions were not written are each gross negligence and violations of Business and Professions Code section 2234(b).

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts in the Care of "L.C.")

13. Respondent is subject to disciplinary action for repeated negligent acts pursuant to Code section 2234(c) based on the facts set forth in Paragraphs 9 and 11 herein. In addition, Respondent prescribed

A. An erectile dysfunction medication and a testosterone replacement for L.C. without supporting laboratory tests or physical examinations; and

B. Adderall and Provigil to L.C. without documentation or adequate medical support.

Each of these prescriptions was an additional negligent act.

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³ The patients' names are abbreviated to protect their privacy.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

13. Respondent is subject to disciplinary action for incompetence pursuant to Code section 2234(d) based on the facts set forth in Paragraphs 9 and 11 herein.

FOURTH CAUSE FOR DISCIPLINE

(Record Keeping)


14. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code section 2266 due to his failure to maintain adequate and accurate records relating to the provision of services to Patient L.C.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 30952, issued to William Tice Vicary, M.D.;
2. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to Section 3527 of the Code;
3. If placed on probation, ordering him to pay the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

Dated: September 1, 2011.


LINDA K. WHITNEY
Executive Director
Medical Board of California,
Complainant