

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

In the Matter of the Accusation Against:)
)
)
ANDREW ABARBANEL, M.D.) Case No. 03-2009-201966
)
Physician's and Surgeon's)
Certificate No. G21690)
)
Respondent.)
_____)

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 28, 2011.

IT IS SO ORDERED September 29, 2011.

MEDICAL BOARD OF CALIFORNIA

By: *Shelton Duruisseau*
Shelton Duruisseau, Ph.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 KERRY WEISEL
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 03-2009-201966

12 **ANDREW ABARBANEL, M.D.**
13 2820 Daubenbiss Avenue
14 Soquel, CA 95073

15 **Physician's and Surgeon's Certificate No. G-47490**

16 Respondent.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

19 PARTIES

20 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
21 California. She brought this action solely in her official capacity and is represented in this matter
22 by Kamala D. Harris, Attorney General of the State of California, by Kerry Weisel, Deputy
23 Attorney General.

24 2. Respondent Andrew Abarbanel, M.D. (Respondent) is represented in this proceeding
25 by attorney Edward A. Hinshaw of the law firm of Hinshaw, Marsh, Still & Hinshaw, 12901
26 Saratoga Avenue, Saratoga, California 95070.

27 3. On or about June 1, 1982, the Medical Board of California issued Physician's and
28 Surgeon's certificate Number G-47490 to Andrew Abarbanel. The Physician's and Surgeon's

1 certificate was in full force and effect at all times relevant to the charges brought herein and will
2 expire on September 30, 2011, unless renewed.

3 JURISDICTION

4 4. A First Amended Accusation in case No. 03-2009-201966 was filed before the
5 Medical Board of California (Board), Department of Consumer Affairs, and is currently pending
6 against Respondent. An Accusation and all other statutorily required documents were properly
7 served on Respondent on March 24, 2011. Respondent timely filed his Notice of Defense
8 contesting the Accusation. A First Amended Accusation in case No. 03-2009-201966 was
9 properly served on Respondent on May 10, 2011. A copy of the First Amended Accusation in
10 case No. 03-2009-201966 is attached as exhibit A and incorporated in this stipulation by
11 reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in the First Amended Accusation in case No. 03-2009-201966.
15 Respondent has also carefully read, fully discussed with counsel, and understands the effects of
16 this Stipulated Settlement and Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the First Amended Accusation; the right to be
19 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
20 against him; the right to present evidence and to testify on his own behalf; the right to the
21 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
22 the right to reconsideration and court review of an adverse decision; and all other rights accorded
23 by the California Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in the First Amended Accusation in case No. 03-2009-201066, if proven at a hearing, constitute cause for imposing discipline upon his physician's and surgeon's certificate.

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 the First Amended Accusation in case No. 03-2009-201966 and that he has therefore subjected his license to disciplinary action.

10. Respondent agrees to be bound by the Medical Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent in this stipulation 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

12. 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.

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1 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
2 and Disciplinary Order, including facsimile signatures, shall have the same force and effect as the
3 originals.

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that physician's and surgeon's certificate No. G-47490 issued
9 to Respondent Andrew Abarbanel, M.D. is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for three (3) years with the following terms and conditions of
11 probation.

12 1. EDUCATION COURSE Within 60 calendar days of the effective date of
13 this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its
14 designee for its prior approval educational program(s) or course(s) which shall not be less
15 than 40 hours per year, for each year of probation. The educational program(s) or course(s)
16 shall be aimed at correcting any areas of deficient practice or knowledge and shall be
17 Category I certified, limited to classroom, conference, or seminar settings. The educational
18 program(s) or course(s) shall be at Respondent's expense and shall be in addition to the
19 Continuing Medical Education (CME) requirements for renewal of licensure. Following
20 the completion of each course, the Board or its designee may administer an examination to
21 test Respondent's knowledge of the course. Respondent shall provide proof of attendance
22 for 65 hours of continuing medical education each year of which 40 hours were in
23 satisfaction of this condition.

24 2. PRESCRIBING PRACTICES COURSE Within 60 calendar days of the
25 effective date of this Decision, Respondent shall enroll in a course in prescribing practices,
26 at his own expense, approved in advance by the Board or its designee. Failure to
27 successfully complete the course during the first 6 months of probation is a violation of
28 probation unless the Board or its designee agrees in writing to a later time for completion.

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

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

9 3. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of
10 the effective date of this decision, Respondent shall enroll in a course in medical record
11 keeping, at his own expense, approved in advance by the Board or its designee. Failure to
12 successfully complete the course during the first 6 months of probation is a violation of
13 probation unless the Board or its designee agrees in writing to a later time for completion.

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

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

22 4. ETHICS COURSE Within 60 calendar days of the effective date of this
23 decision, Respondent shall enroll in a course of ethics, at his own expense, approved in
24 advance by the Board or its designee. Failure to successfully complete the course during
25 the first year of probation, except for the longitudinal follow-up component, is a violation
26 of probation.

27 An ethics course taken after the acts that gave rise to the charges in the First
28 Amended Accusation, but prior to the effective date of the Decision may, in the sole

1 discretion of the Board or its designee, be accepted towards the fulfillment of this condition
2 if the course would have been approved by the Board or its designee had the course been
3 taken after the effective date of this Decision.

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

7 5. NOTIFICATION Prior to engaging in the practice of medicine,
8 Respondent shall provide a true copy of the Decision and First Amended Accusation to the
9 Chief of Staff or the Chief Executive Officer at every hospital where privileges or
10 membership are extended to Respondent, at any other facility where Respondent engages in
11 the practice of medicine, including all physician and locum tenens registries or other similar
12 agencies, and to the Chief Executive Officer at every insurance carrier which extends
13 malpractice insurance coverage to Respondent. Respondent shall submit proof of
14 compliance to the Board or its designee within 15 calendar days.

15 This condition shall apply to any change in hospitals, other facilities, or insurance
16 carriers.

17 6. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
18 Respondent is prohibited from supervising physician assistants.

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

22 8. QUARTERLY DECLARATIONS Respondent shall submit quarterly
23 declarations under penalty of perjury on forms provided by the Board, stating whether there
24 has been compliance with all the conditions of probation. Respondent shall submit
25 quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

26 9. PROBATION UNIT COMPLIANCE Respondent shall comply with all
27 requirements and requests of the Board's probation unit. Respondent shall, at all times,
28 keep the Board informed of his business and residence addresses. Changes of these

1 addresses shall be immediately communicated in writing to the Board or its designee.
2 Under no circumstances shall a post office box serve as an address of record, except as
3 allowed by Business and Professions Code section 2021(b).

4 Respondent shall not engage in the practice of medicine in his place of residence.
5 Respondent shall maintain a current and renewed California physician's and surgeon's
6 license.

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

10 10. INTERVIEW WITH THE BOARD, OR ITS DESIGNEE Respondent
11 shall be available upon request, with or without prior notice, at various intervals throughout
12 the term of probation for in-person interviews with the Board or its designee, either at
13 Respondent's place of business or at the probation unit office.

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

20 All time spent in an intensive training program outside the State of California
21 which has been approved by the Board or its designee shall be considered as time spent in
22 the practice of medicine within the State. A Board-ordered suspension of practice shall not
23 be considered as a period of non-practice. Periods of temporary or permanent residence or
24 practice outside California will not apply to the reduction of the probationary term. Periods
25 of temporary or permanent residence or practice outside California will relieve Respondent
26 of the responsibility to comply with the probationary terms and conditions with the
27 exception of this condition and the following terms and conditions of probation: Obey All
28 Laws; Probation Unit Compliance; and Probation Monitoring Costs.

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

7 12. FAILURE TO PRACTICE MEDICINE—CALIFORNIA RESIDENT In
8 the event Respondent resides in the State of California and for any reason Respondent stops
9 practicing medicine in California, Respondent shall notify the Board or its designee in
10 writing within 30 calendar days prior to the dates of non-practice and return to practice.
11 Any period of non-practice within California, as defined in this condition, will not apply to
12 the reduction of the probationary term and does not relieve Respondent of the responsibility
13 to comply with the terms and conditions of probation. Non-practice is defined as any
14 period of time exceeding 30 calendar days in which Respondent is not engaging in any
15 activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

24 13. COMPLETION OF PROBATION Respondent shall comply with all
25 financial obligations (e.g., probation costs) not later than 120 calendar days prior to the
26 completion of probation. Upon successful completion of probation, Respondent's
27 certificate shall be fully restored.

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

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

20 16. PROBATION MONITORING COSTS Respondent shall pay the costs
21 associated with probation monitoring each and every year of probation, as designated by the
22 Board, which may be adjusted on an annual basis. These costs shall be payable to the
23 Medical Board of California and delivered to the Board or its designee no later than January
24 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a
25 violation of probation.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Edward A. Hinshaw. I understand the stipulation and the effect it 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: 8-22-11 
ANDREW ABARBANEL, M.D.
Respondent


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

DATED: 8-22-11 
Edward A. Hinshaw
Attorney for Respondent

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: August 29, 2011

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

KERRY WEISEL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
First Amended Accusation No. 03-2009-201966

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 10, 2011
BY: JHELMAN ANALYST

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 03-2009-201966

12 **ANDREW ABARBANEL, M.D.**
13 2820 Daubenbiss Avenue
14 Soquel, CA 95073

FIRST AMENDED ACCUSATION

15 **Physician's and Surgeon's Certificate No. G-47490**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Linda K. Whitney ("Complainant") brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California.
- 21 2. On or about June 1, 1982, the Medical Board of California issued Physician's and
22 Surgeon's certificate Number G-47490 to Andrew Abarbanel ("Respondent"). The Physician's
23 and Surgeon's certificate was in full force and effect at all times relevant to the charges brought
24 herein and will expire on September 30, 2011, unless renewed.

25 **JURISDICTION**

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

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

5 5. Section 2234 of the Code provides in pertinent part that the Board “shall take
6 action against any licensee who is charged with unprofessional conduct. In addition to other
7 provisions of this article, unprofessional conduct includes, but is not limited to, the following:

8 6. “(a) Violating . . . any provision of this chapter.

9 “(b) Gross negligence.

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

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

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

23 “ ”

24 7. Section 725 of the Code provides, in part, that repeated acts of clearly excessive
25 prescribing or administering of drugs or treatment as determined by the standard of the
26 community of licensees is unprofessional conduct for a physician and surgeon.

27 8. Section 2242(a) provides that prescribing, dispensing, or furnishing dangerous
28 drugs as defined in section 4022 without an appropriate prior examination and a medical

1 indication constitutes unprofessional conduct.

2 9. Section 2266 of the Code provides that “[t]he failure of a physician and surgeon to
3 maintain adequate and accurate records relating to the provision of services to their patients
4 constitutes unprofessional conduct.”

5 DRUGS

6 10. Ativan is a trade name for lorazepam, a psychotropic drug for the management of
7 anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as
8 defined in section 4022 and a schedule IV controlled substance as defined by section 11057,
9 subdivision (d) of the Health and Safety Code. It has a central nervous system depressant effect.
10 Lorazepam can produce psychological and physical dependence and it should be prescribed with
11 caution particularly to addiction-prone individuals (such as drug addicts and alcoholics) because
12 of the predisposition of such patients to habituation and dependence.

13 11. Cymbalta is a trade name for Duloxetine. It is used to treat depression and
14 generalized anxiety disorder among other things. Cymbalta is in a class of medications called
15 selective serotonin and norepinephrine reuptake inhibitors and works by increasing the amounts
16 of serotonin and norepinephrine, natural substances in the brain that help maintain mental balance
17 and stop the movement of pain signals in the brain. It is a dangerous drug as defined in section
18 4022.

19 12. Diazepam (trade name Valium) is a psychotropic drug for the management of
20 anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as
21 defined in section 4022 and a Schedule IV controlled substance as defined by section 11057 of
22 the Health and Safety Code. Diazepam can produce psychological and physical dependence and
23 it should be prescribed with caution particularly to addiction-prone individuals (such as drug
24 addicts and alcoholics) because of the predisposition of such patients to habituation and
25 dependence.

26 13. Dilaudid is a trade name for hydromorphone hydrochloride. It is a dangerous drug
27 as defined in section 4022 and a schedule II controlled substance as defined by section 11055,
28 subdivision (d) of the Health and Safety Code. Dilaudid is a narcotic analgesic whose principal

1 therapeutic use is relief of pain. Patients receiving other narcotic analgesics may exhibit an
2 additive central nervous system depression. When such combined therapy is contemplated, the
3 use of one or both agents should be reduced.

4 14. Effexor is a trade name for venlafaxine hydrochloride, a dangerous drug as defined
5 in section 4022. Effexor is indicated for the treatment of depression. It is chemically unrelated to
6 tricyclic, tetracyclic, or other available antidepressant agents.

7 15. Elavil (amitriptyline) is a dangerous drug as defined in section 4022. It is an
8 antidepressant with sedative effects. Lower dosages of amitriptyline are recommended for elderly
9 patients. The manufacturer of Elavil suggests that for elderly patients dosages as low as 10 mg 3
10 times per day with one 20 mg dose at bedtime may be sufficient. The usual maintenance dose of
11 amitriptyline HCl is 50 to 100 mg per day.

12 16. Hydromorphone hydrochloride is sold under various trade names including
13 Dilaudid. See description of hydromorphone hydrochloride under Dilaudid, above.

14 17. Klonopin is a trade name for clonazepam, an anticonvulsant of the benzodiazepine
15 class of drugs. It is a dangerous drug as defined in section 4022 and a schedule IV controlled
16 substance as defined by section 11057 of the Health and Safety Code. It produces central nervous
17 system depression and should be used with caution with other central nervous system depressant
18 drugs. Like other benzodiazepines, it can produce psychological and physical dependence.
19 Withdrawal symptoms similar to those noted with barbiturates and alcohol have been noted upon
20 abrupt discontinuance of Klonopin. The initial dosage for adults should not exceed 1.5 mg. per
21 day divided in three doses.

22 18. Lexapro is a trade name for Escitalopram is used to treat depression and
23 generalized anxiety disorder. Lexapro is in a class of antidepressants called selective serotonin
24 reuptake inhibitors (SSRIs) and it works by increasing the amount of serotonin, a natural
25 substance in the brain that helps maintain mental balance. It is a dangerous drug as defined in
26 section 4022.

27 19. Neurontin, a trade name for gabapentin, is an antiepileptic and is indicated as
28 adjunctive therapy in the treatment of partial seizures with and without secondary generalization

1 in adults with epilepsy. It is a dangerous drug within the meaning of Business and Professions
2 Code section 4022. The most commonly observed adverse events associated with the use of
3 Neurontin in combination with other antiepileptic drugs were somnolence, dizziness, ataxia,
4 fatigue, and nystagmus.

5 20. Opana ER is a trade name for extended-release oxymorphone hydrochloride, a
6 semi-synthetic opioid analgesic. Oxymorphone is a morphine-like opioid agonist, a dangerous
7 drug as defined in section 4022, and a Schedule II controlled substance, with an abuse liability
8 similar to other opioid analgesics. Oxymorphone is indicated for the relief of moderate to severe
9 pain in patients requiring continuous, around-the-clock opioid treatment for an extended period of
10 time. Patients must not consume alcoholic beverages, or prescription or non-prescription
11 medications containing alcohol, while on OPANA ER therapy. The co-ingestion of alcohol with
12 OPANA ER may result in increased plasma levels and a potentially fatal overdose of
13 oxymorphone.

14 21. Oxycontin is a trade name for oxycodone hydrochloride controlled-release tablets.
15 Oxycodone is a white odorless crystalline powder derived from the opium alkaloid, thebaine. It is
16 a pure agonist opioid whose principal therapeutic action is analgesia. Other therapeutic effects of
17 oxycodone include anxiolysis, euphoria, and feelings of relaxation. Oxycodone is a dangerous
18 drug as defined in section 4022 and a schedule II controlled substance and narcotic as defined by
19 section 11055, subdivision (b)(1) of the Health and Safety Code. Oxycontin is a mu-antagonist
20 opioid with an abuse liability similar to morphine. If a broken oxycodone extended-release tablet
21 is ingested, the entire dose of oxycodone is delivered at once, instead of slowly over 12 hours and
22 may cause serious problems, including overdose and death.

23 22. Roxycodone is a trade name for oxycodone hydrochloride. See description of
24 oxycodone under Oxycontin, above.

25 23. Trileptal, a trade name for oxcarbazepine, is an antiepileptic drug that is also used
26 to treat bipolar disorder. It is a dangerous drug within the meaning of Business and Professions
27 Code section 4022.

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1 24. Zoloft, a trade name for sertraline hydrochloride, is a selective serotonin reuptake
2 inhibitor (SSRI) chemically unrelated to other SSRIs, tricyclic, tetracyclic, or other available
3 antidepressant agents. It is a dangerous drug as defined by section 4022. Zoloft is used for the
4 treatment of depression, obsessive compulsive disorder, and panic disorder. Zoloft causes
5 decreased clearance of diazepam (Valium). It has side effects including nausea, diarrhea,
6 dyspepsia, tremor, dizziness, insomnia and somnolence.

7 **FACTS**

8 25. At all times relevant to this matter, Dr. Abarbanel was a general practitioner in and
9 around Soquel, California.

10 **PATIENT P-1¹**

11 26. Dr. Abarbanel first saw Patient P-1, a 16 year old female, on July 21, 2000. P-1's
12 mother accompanied P-1 to her session with Dr. Abarbanel.

13 27. P-1 presented with a long history of depression. She was taking the antidepressant
14 Zoloft but suffered from breakthrough depression and side effects. Dr. Abarbanel's plan was to
15 try Remeron, 30 mg. There is no documentation that Dr. Abarbanel obtained informed consent
16 for this medication from P-1.

17 28. Dr. Abarbanel's progress note for P-1's next visit, September 22, 2000, indicates
18 that she was treated with Effexor, 25 mg twice daily, and Zoloft, 100 mg daily. She was noted to
19 have a good response to Effexor and the plan was to gradually increase Effexor as tolerated and
20 cover side effects with Klonopin while decreasing Zoloft. There is no documentation that Dr.
21 Abarbanel obtained informed consent for these medications from P-1.

22 29. After a discussion with P-1's mother on September 28, 2000, Dr. Abarbanel
23 switched P-1 to Elavil, an antidepressant that had been effective for P-1's mother. Once again,
24 there is no documentation that Dr. Abarbanel obtained informed consent for this medication from
25 P-1.

26 _____
27 ¹ The patients are designated in this document as Patients P-1 through P-4 to protect their
28 privacy. Respondent knows the names of the patients and can confirm their identity through
discovery.

1 30. The next progress note entry is for January 25, 2001. Dr. Abarbanel's progress
2 note reflects that he was prescribing only Elavil, 30 mg, and Klonopin, one half a 0.5 mg tablet
3 intermittently, for P-1. There is no documentation that Dr. Abarbanel obtained informed consent
4 for these medications from P-1.

5 31. P-1's next visit was on July 25, 2001. The progress note reflects that P-1
6 continued with 30 mg Elavil and that her mood was better. Dr. Abarbanel wrote that P-1 was
7 reluctant to raise the dosage of Elavil because "it doesn't work," although he noted that it did
8 seem to provide a safety net. He noted that Celexa would be increased in 5 mg jumps every
9 week. The records do not reflect when Celexa was prescribed or that informed consent was
10 obtained from P-1.

11 32. On September 20, 2001, P-1's next visit, Dr. Abarbanel noted that he was
12 continuing treatment with Elavil, 30 mg, but that her mood was down somewhat. He planned to
13 increase Elavil by 10 mg per week.

14 33. The next progress note is dated May 20, 2002 and reflects that P-1 was receiving
15 60 mg of Elavil daily and was back to the point of wanting to stay in bed. He opined that a lower
16 dose of Elavil may be better and indicated that the dose of Elavil would be decreased from 50 mg
17 to 40 mg to 30 mg and that, at that point, Neurontin and lithium would be added.

18 34. P-1 next saw Dr. Abarbanel on August 10, 2002. She was on 30 mg of Elavil and
19 seemed "'better,' less depressed."

20 35. On October 21, 2002, reflects that P-1 was still on 30 mg of Elavil. Potentiation
21 with a stimulant was considered. The plan was to add Effexor, 37.5 mg XR. There is no
22 documentation that Dr. Abarbanel obtained informed consent for this medication from P-1.

23 36. On P-1's next visit, December 18, 2002, P-1 was still taking 30 mg of Elavil. She
24 had tried Effexor for three or four days but it made her thinking fragmented. She said that she felt
25 that the Elavil was working better and preferred to remain on it.

26 37. P-1's last documented visit was on May 1, 2003. She was still taking 30 mg of
27 Elavil daily. She felt more fatigued over 3 to 4 days but otherwise her mood and daily activities
28 seemed to be going well. The plan was to return in two months and continue on 30 mg of Elavil

1 per day.

2 38. Over the next six years, there are fourteen entries that appear to reflect telephone
3 contact. These records contain no information about P-1's condition. Dr. Abarbanel renewed P-
4 1's prescription for Elavil through August 2009.

5
6 **FIRST CAUSE FOR DISCIPLINE**
(Gross Negligence)

7 39. Respondent's license is subject to disciplinary action for unprofessional conduct in
8 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (b) (gross
9 negligence), in that he failed to provide adequate monitoring with periodic face-to-face visits over
10 the six years from May 2003 to August 2009 when he was prescribing Elavil for P-1 without any
11 office visits.

12 **SECOND CAUSE FOR DISCIPLINE**
13 (Repeated Negligent Acts, Documentation)

14 40. Respondent's license is subject to disciplinary action for unprofessional conduct in
15 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (c) (repeated
16 negligent acts), and section 2266 (documentation) in that he engaged in the conduct set out in the
17 First, Third through Seventh, and Ninth through Eleventh Causes for Discipline and in that he
18 failed to document that he had obtained informed consent from P-1 for the medications he
19 prescribed for her.

20 **PATIENT P-2**

21 41. Patient P-2 first saw Dr. Abarbanel on December 15, 2006. Her chief complaint
22 was depression.

23 42. In Dr. Abarbanel's initial psychiatric evaluation of P-2, he noted that she reported
24 that her mother had a history of Bipolar Disorder and had had manic episodes when P-2 was age
25 7, 8, and a teenager. Her mother was treated with lithium.

26 43. P-2's mental status examination reflected mild anxiety and depression and Dr.
27 Abarbanel's impression was that she had a mood disorder, probably with a bipolar component.
28 He prescribed Trileptal, a medication used to treat bipolar disorder, for P-2 and made a notation

1 that antidepressant treatment would be tried next.

2 44. Dr. Abarbanel saw P-2 again on December 20, 2006. She had been taking
3 Trileptal for four days at that time. Dr. Abarbanel's progress note reflected that P-2's mother had
4 a history of becoming manic from antidepressant treatment.

5 45. When Dr. Abarbanel next saw P-2, on January 24, 2007, she was taking no
6 medication. She reported that the Trileptal had had no effects and that she wanted to try
7 antidepressants.

8 46. Dr. Abarbanel's progress note for February 7, 2007 listed the multiple
9 antidepressants that P-2 had tried in the past. Dr. Abarbanel apparently gave her samples of
10 Lexapro to try 1/4 tablet a day. He prescribed Lexapro for her on her next visit, February 20,
11 2007, with a plan to increase the dose to 1 tablet daily.

12 47. Dr. Abarbanel saw P-2 again on April 4, 2007. She reported that the Lexapro kept
13 her from spiraling but that it led to slower conversation and "obtundation," mental blunting with
14 mild to moderate reduction in alertness. P-2 asked to be switched to Cymbalta in an attempt to
15 avoid obtundation. Dr. Abarbanel says that he wanted to try mood stabilizers before prescribing
16 Cymbalta because of a family history of "manicky response to antidepressants" but that P-2 did
17 not want to take mood stabilizers. This is not reflected in his progress note.

18 48. On April 26, 2007, Dr. Abarbanel's notes reflect that P-2's mother called to report
19 that P-2 had experienced a manic episode and been hospitalized from April 26 to May 4, 2007 as
20 a result. Her discharge diagnosis was Bipolar Disorder, Manic, with Psychotic Features.

21 **THIRD CAUSE FOR DISCIPLINE**
22 (Repeated Negligent Acts; Documentation)

23 49. Respondent's license is subject to disciplinary action for unprofessional conduct in
24 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (c) (repeated
25 negligent acts), and section 2266 (documentation) in that he engaged in the conduct set out in the
26 First, Second, Fourth through Seventh, and Ninth through Eleventh Causes for Discipline and in
27 that he failed to document that he had proposed prescribing mood stabilizers for P-2 before
28 prescribing Cymbalta for her and that she had refused them.

PATIENT P-3

1 50. Patient P-3, a 21 year old man, first saw Dr. Abarbanel on May 28, 2009. On the
2 initial patient information sheet, P-3 described his "medical problems/conditions" as "chronic
3 pain," "anxiety disorder," and "possibilities?"

4 51. The progress note reflects that P-3 told Dr. Abarbanel that some people thought he
5 was bipolar. Dr. Abarbanel noted that P-3 denied depression and was very vivacious. P-3
6 reported that he used Klonopin, 0.5 mg, once a week for social anxiety and that he wanted help
7 with pain management. There is no notation of the source of the pain P-3 wanted managed, no
8 indication of the level of pain, no medical history of P-3's pain, and no documentation of a
9 physical examination. He did not obtain medical records reflecting P-3's prior treatment for the
10 chronic pain.

11 52. Dr. Abarbanel's diagnostic impressions were possible mild bipolar disorder and
12 possible mild social anxiety disorder. He did not document a pain diagnosis. Without obtaining
13 informed consent for the medication, he prescribed 30 tablets of oxycontin, 80 mg, to take 1/2 to
14 1 table at bedtime and 30 tablets of Klonopin, 1 mg, to take daily. His plan was to follow up in
15 one month.

16 53. On June 1, 2009, P-3 returned stating his oxycontin had been stolen. Dr.
17 Abarbanel issued another prescription for 30 tablets of oxycontin, 80 mg.

18 54. On June 8, 2009, P-3 filled prescriptions from Dr. Abarbanel for 30 tablets of
19 Lexapro, 10 mg; 30 tablets of Opana ER, 40 mg; and 12 tablets of Opana ER, 20 mg. There was
20 no entry in his progress note reflecting the prescriptions or that he had obtained informed consent
21 from P-3 before prescribing the drugs.

22 55. P-3's mother called Dr. Abarbanel on June 24, 2009 and advised him that P-3 was
23 an opiate abuser and she and P-3's father came to Dr. Abarbanel's office on June 26, 2009. Dr.
24 Abarbanel telephoned P-3 and advised him of what had happened and that they needed to discuss
25 it. Dr. Abarbanel did not see P-3 again.

26 ///

27 ///

28

1 **FOURTH CAUSE FOR DISCIPLINE**

(Gross Negligence)

2 56. Respondent's license is subject to disciplinary action for unprofessional conduct in
3 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (b) (gross
4 negligence), in that he documented no indication of chronic pain other than "wants help with pain
5 management," failed to examine P-3 or otherwise gather sufficient reliable clinical information to
6 support the prescription of controlled substances, made no mention of the body part or pain levels
7 involved, documented no prior injury or history of prior chronic pain diagnosis or treatment, and
8 failed to formulate a treatment plan or objectives for P-3.

9 **FIFTH CAUSE FOR DISCIPLINE**

(Gross Negligence)

10
11 57. Respondent's license is subject to disciplinary action for unprofessional conduct in
12 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (b) (gross
13 negligence), in that he failed to obtain an informed consent from P-3, either verbal or written, for
14 opioid medication.

15 **SIXTH CAUSE FOR DISCIPLINE**

(Gross Negligence, Documentation)

16
17 58. Respondent's license is subject to disciplinary action for unprofessional conduct in
18 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (b) (gross
19 negligence), and section 2266 (documentation) in that his chart notes were illegible, scant, and
20 difficult to interpret and did not include relevant clinical information including the type, level,
21 and location of the pain treated and diagnoses consistent with chronic pain.

22 **PATIENT P-4**

23 59. Patient P-4, a 20 year old man, first saw Dr. Abarbanel on May 18, 2009, for
24 anxiety. P-4 had been referred by another patient. On the initial patient information sheet, P-4
25 described his "medical problems/conditions" as "depression," "anxiety," and "sleep problems."

26 60. P-4 advised Dr. Abarbanel that he had had anxiety his whole life, that he had
27 "panic attacks" about twice a week, and that he had a history of Posttraumatic Stress Disorder
28 ("PTSD"). P-4 also advised Dr. Abarbanel that he had pain due to an "intrinsically weak back"

1 and sciatic pain. Dr. Abarbanel noted that P-4's sensorium was unclear but there is no indication
2 that Dr. Abarbanel investigated the cause. Dr. Abarbanel diagnosed P-4 with Anxiety Disorder
3 Not Otherwise Specified and possible Pain Syndrome. The documented plan was to treat with
4 Cymbalta and refer to other physicians for pain treatment. Cymbalta was not prescribed. Dr.
5 Abarbanel prescribed 30 tablets of Xanax, 2 mg, one tablet to be taken daily and 30 tablets of
6 Roxicodone, 30 mg, two to three tablets to be taken daily. The prescriptions for Xanax and
7 Roxicodone were not documented in the progress note. There is no indication of the duration,
8 type, intensity, or quality of P-4's pain; no medical history of P-4's pain; no documentation of a
9 physical examination; and no documentation of medical indications for using controlled
10 substances. Dr. Abarbanel did not obtain medical records reflecting P-4's prior treatment for the
11 pain; did not obtain a detailed history of the onset, progression, severity, and nature of P-4's
12 anxiety symptoms; and did not obtain informed consent for the medications he prescribed for P-4.
13 Much of the progress note is illegible.

14 61. P-4 returned to see Dr. Abarbanel on May 26, 2009. Dr. Abarbanel noted that P-4
15 had lower anxiety and an improved mood. They discussed P-4's relationship with his father. P-4
16 reported using two tablets of Roxicodone some days and none at all on others. If P-4's report
17 were correct, he should still have had over half of his earlier prescription available. Nonetheless,
18 only one week after having prescribed 30 tablets of Roxicodone, 30 mg, for P-4, Dr. Abarbanel
19 wrote a new prescription for 30 tablets of Oxycontin, 60 mg, one tablet to be taken at bedtime,
20 and 30 tablets of Oxycontin, 40 mg, one tablet to be taken daily. There is no documentation
21 concerning P-4's pain, no discussion of why the new prescriptions were being written, no
22 documentation of clinical improvement with the current treatment, no plans to treat with any
23 medications other than opioids, no plans for diagnostic evaluations, and no plans for non-
24 medication pain management treatment. Much of this note, as the one of May 18, 2009, is
25 illegible.

26 62. P-4 next saw Dr. Abarbanel on June 1, 2009. The progress note is very brief,
27 stating only "Same meds. Pain M.D. Fight with F[ather]." Dr. Abarbanel did not require P-4 to
28 see a pain specialist on this date or at any other time.

1 63. Between P-4's June 1, 2009 visit and his next visit on September 21, 2009, Dr.
2 Abarbanel wrote numerous prescriptions for P-4 for OxyContin, oxycodone, and Xanax. Starting
3 on August 5, 2009, at P-4's request, Dr. Abarbanel began prescribing Dilaudid for P-4. Dr.
4 Abarbanel's progress note for September 21, 2009, is very brief and virtually illegible. Dr.
5 Abarbanel prescribed both Dilaudid and OxyContin for P-4 on this date.

6 64. P-4's next visit with Dr. Abarbanel was on October 20, 2009. Dr. Abarbanel
7 prescribed 60 tablets of Xanax, 2 mg, and 150 tablets of Dilaudid, 4 mg, one tablet to be taken
8 five times per day. The progress note states "no oxycontin." The progress note is extremely brief
9 with no mention of P-4's clinical condition or his pain.

10 65. On October 29, 2009, Dr. Abarbanel issued another prescription for Dilaudid, 4
11 mg, for P-4, this one for 180 tablets. There is no progress note for this date.

12 66. P-4's last visit with Dr. Abarbanel was on November 1, 2009. The progress note
13 states only "(emergency)" and "AA Oxycontin 60 mg." Dr. Abarbanel reports that "AA" reflects
14 his discussions with P-4 concerning twelve step programs and Narcotics Anonymous and his
15 belief that P-4 was relying on pain medication too much. Dr. Abarbanel prescribed 30 tablets of
16 OxyContin, 60 mg, one tablet a day as needed for "breakthrough" pain. On November 4, 2009,
17 he prescribed an additional 30 tablets of OxyContin, 40 mg, one tablet to be taken daily, and 30
18 tablets of Roxycodone, 30 mg, one tablet to be taken daily.

19 67. Dr. Abarbanel discussed P-4 with another of his patients on November 10, 2009
20 who told him that P-4 was abusing drugs. Dr. Abarbanel had asked that patient and two other
21 patients on several prior occasions whether he was "getting in the way" by prescribing pain
22 medications for P-4 and whether P-4 was abusing drugs.

23 68. Shortly after the patient advised Dr. Abarbanel that P-4 was abusing drugs, P-4
24 called Dr. Abarbanel from a drug treatment program to ask Dr. Abarbanel to continue prescribing
25 pain medication for him. Dr. Abarbanel told him that he would not do so and did not see or hear
26 from P-4 again.

27 69. Although it is not documented in his progress notes, Dr. Abarbanel says that P-4
28 advised him on two occasions in the fall of 2009 that his opioid medication had been stolen and

1 asked for refills which Dr. Abarbanel gave him.

2 **SEVENTH CAUSE FOR DISCIPLINE**
3 (Gross Negligence)

4 70. Respondent's license is subject to disciplinary action for unprofessional conduct in
5 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (b) (gross
6 negligence), in that he failed to get a medical history of P-4, failed to do a physical examination
7 or gather sufficient reliable clinical information to support the use of controlled substances, failed
8 to obtain medical records of prior care, failed to verify his diagnoses with laboratory or imaging
9 studies, and failed to consider treatment other than opioids.

10 **EIGHTH CAUSE FOR DISCIPLINE**
11 (Excessive Prescribing, Prescribing Without Appropriate Prior Examination and Medical
12 Indication)

13 71. Respondent's license is subject to disciplinary action for unprofessional conduct
14 under section 2234 for violating Business and Professions Code sections 725 (excessive
15 prescribing) and 2242, subdivision (a) (prescribing without appropriate prior examination and
16 medical indication), in that he prescribed controlled substances without a physical examination or
17 other sufficient information and without adequate indication, in excessive amounts, and to an
18 individual who was clearly misusing the controlled substance.

19 **NINTH CAUSE FOR DISCIPLINE**
20 (Repeated Negligent Acts)

21 72. Respondent's license is subject to disciplinary action for unprofessional conduct in
22 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (c) (repeated
23 negligent acts), and section 2266 (documentation) in that he engaged in the conduct set out in the
24 First through Seventh and Tenth and Eleventh Causes for Discipline and in that he failed to
25 adequately assess and monitor P-4's complaint of anxiety.

26 **TENTH CAUSE FOR DISCIPLINE**
27 (Gross Negligence, Documentation)

28 73. Respondent's license is subject to disciplinary action for unprofessional conduct in
violation of section 2234; subdivisions (a) (violating provisions of this chapter) and (b) (gross

1 negligence), and section 2266 (documentation) in that his chart notes were illegible, did not
2 include relevant clinical information including the type and level of the pain treated, failed to
3 document informed consent, failed to document current treatment plans, and failed to provide a
4 rationale for the treatment provided.

5 **ELEVENTH CAUSE FOR DISCIPLINE**
6 (Gross Negligence)

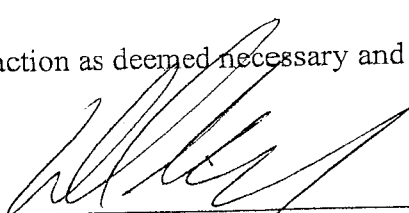
7 74. Respondent's license is subject to disciplinary action for unprofessional conduct in
8 violation of section 2234, subdivisions (a) (violating provisions of this chapter) and (b) (gross
9 negligence), in that he failed to maintain P-4's patient confidentiality by discussing his condition
10 with several of his other patients.

11 **PRAYER**

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

- 14 1. Revoking or suspending Physician's and Surgeon's certificate Number G-47490
15 issued to Andrew Abarbanel, M.D.;
- 16 2. Revoking, suspending, or denying approval of Andrew Abarbanel's authority to
17 supervise physician assistants, pursuant to section 3527 of the Code;
- 18 3. Ordering Andrew Abarbanel, if placed on probation, to pay the costs of probation
19 monitoring; and
- 20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: May 10, 2011.


23 LINDA K. WHITNEY
24 Executive Director
25 Medical Board of California
26 State of California

27 *Complainant*