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

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|---|---|---|
| In the Matter of the Accusation Against: | ) | |
| Henri Eugene Montandon, M.D. | ) | File No. 12-2007-182310 |
| Physician's and Surgeon's Certificate No. G-55626 | ) | |
| 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 August 11, 2010.

IT IS SO ORDERED July 12, 2010.

MEDICAL BOARD OF CALIFORNIA

By: _____
Hedy Chang, Chair
Panel B

EDMUND G. BROWN JR.
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
RUSSELL W. LEE
Deputy Attorney General
State Bar No. 94106
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2217
Facsimile: (510) 622-2121

*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**HENRI EUGENE MONTANDON, M.D.**<br><br>**110 Carrol Place**<br>**Walnut Creek, CA 94595**<br>**Physician and Surgeon No. G 55626**<br><br>Respondent. | Case No. 12 2007 182310<br><br>**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. Linda K. Whitney (hereinafter "complainant") is the Interim Executive Director of the Medical Board of California and is represented herein by Edmund G. Brown Jr., Attorney General of the State of California, by Russell W. Lee, Deputy Attorney General.

2. Respondent Henri Eugene Montandon, M.D., (hereinafter "respondent") is represented herein by Geoffrey A. Mires, Esq., Rankin, Sproat, Mires, Beaty & Reynolds, a Professional Corporation, 1970 Broadway, Suite 1150, Oakland, CA 94612, Telephone: (510) 465-3922.

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JURISDICTION

3. On or about August 5, 1985, the Medical Board of California issued Physician and Surgeon Number G 55626 to respondent. Unless renewed, it will expire on October 31, 2010.

4. On August 6, 2009, then complainant Barbara Johnston, in her official capacity as the Executive Director of the Board, filed Accusation No. 12 2007 182310 against respondent, a true and correct copy of which is attached hereto as Attachment "A" and incorporated by reference as if fully set forth herein.

5. On August 6, 2009, respondent was served with a true and correct copy of Accusation No. 12 2007 182310, together with true and correct copies of all other statutorily required documents, at his address of record then on file with the Board: 110 Carrol Place, Walnut Creek, CA 94595. A timely Notice of Defense was filed on respondent's behalf by his attorney of record, Geoffrey A. Mires, Esq..

ADVISEMENT AND WAIVERS

6. Respondent has carefully read and fully understands the charges and allegations contained in Accusation No. 12 2007 182310, and has fully reviewed and discussed same with his attorney of record, Geoffrey A. Mires, Esq.

7. Respondent has carefully read and fully understands the contents, force, and effect of this Stipulated Settlement and Disciplinary Order, and has fully reviewed and discussed same with his attorney of record, Geoffrey A. Mires, Esq.

8. Respondent is fully aware of his legal rights in this matter including his right to a hearing on the charges and allegations contained in Accusation No. 12 2007 182310, his right to present witnesses and evidence and to testify on his own behalf, his right to confront and cross-examine all witnesses testifying against him, his right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, his right to reconsideration and court review of an adverse decision, and all other rights accorded him pursuant to the California Administrative Procedure Act, the California Code of Civil Procedure, and all other applicable laws, having been fully advised of same by his attorney of record, Geoffrey A. Mires, Esq.

Respondent, having the benefit of counsel, hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every one of the rights set forth and/or referenced above.

CULPABILITY

9. Respondent agrees that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 12 2007 182310, a true and correct copy of which is attached hereto as Attachment "A," and that he has thereby subjected his Physician's and Surgeon's Certificate No. G 55626 to disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member thereof, was

prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

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

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

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

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that respondent Henri Eugene Montandon, M.D., Physician's and Surgeon's Certificate No. G 55626, shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with respondent's care and treatment of Patient A. as set forth in Accusation No. 12 2007 182310, is as follows:

Between in or about March 2006 and March 2007, you failed to provide care and treatment for Patient A. in accordance with the standard of practice in the medical community, by prescribing large doses of Demerol, and failing to maintain adequately detailed medical records justifying such prescribing, as more fully described in Accusation No. 12 2007 182310.

B. PRESCRIBING PRACTICES COURSE

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the

Board or its designee. Failure to successfully complete the course within 180 calendar days of the effective date of this Decision shall constitute unprofessional conduct and grounds for further disciplinary action.

A prescribing practice 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.

C. 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, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course within 180 calendar days of the effective date of this Decision shall constitute unprofessional conduct and grounds for further disciplinary action.

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.

ACCEPTANCE

I, Henri Eugene Montandon, M.D., have carefully read this Stipulated Settlement and Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily,

intelligently, and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No. G 55626.

I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon formal acceptance by the Board, I shall be publically reprimanded by the Board and shall be required to comply with all of the terms and conditions of the Disciplinary Order set forth above. I also fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and will subject my Physician's and Surgeon's Certificate No. G 55626 to disciplinary action.

DATED: 5.20.2010

HENRI EUGENE MONTANDON, M.D.
Respondent

I have read and fully discussed with respondent Henri Eugene Montandon, 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: 6-8-10

GEOFFREY A. MIRES, ESQ.
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: 6-11-10

EDMUND G. BROWN JR., Attorney General
of the State of California

By RUSSELL W. LEE
Deputy Attorney General

Attorneys for Complainant

# Exhibit A

EDMUND G. BROWN JR.
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
RUSSELL W. LEE
Deputy Attorney General
State Bar No. 94106
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2217
Facsimile: (510) 622-2121

*Attorneys for Complainant*



**BEFORE THE**
**MEDICAL BOARD OF CALIFORNIA**
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| In the Matter of the Accusation Against:<br><br>**HENRI EUGENE MONTANDON, M.D.**<br><br>**110 Carrol Place**<br>**Walnut Creek, CA 94595**<br>**Physician and Surgeon No. G 55626**<br><br>Respondent. | Case No. 12 2007 182310<br><br>**ACCUSATION** |

Complainant alleges:

PARTIES

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

2. On or about August 5, 1985, the Medical Board of California issued Physician and Surgeon Number G 55626 to Henri Eugene Montandon, M.D. ("Dr. Montandon" or "Respondent"). Unless renewed, it will expire on October 31, 2010. There is no Board record of previous disciplinary action having been taken against this certificate.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board)[1], 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 Division deems proper.

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[1] The term "board" means the Medical Board of California. "Division of Medical Quality" shall also be deemed to refer to the board. (Bus. & Prof. Code §2002)

6. Section 2234 of the Code states:

"The Division of Medical Quality 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 [Chapter 5, the Medical Practice Act].

"(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."

7. 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."

8. 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.

9. Section 2241[2] 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

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[2] Prior to January 1, 2007, Section 2241 provided: Unless otherwise provided by this section, the prescribing, selling, furnishing, giving away, or administering or offering to prescribe, sell, furnish, give away, or administer any of the drugs or compounds mentioned in Section 2239 to an addict or habitué constitutes unprofessional conduct. If the drugs or compounds are administered or applied by a licensed physician and surgeon or by a registered nurse acting under his or her instruction and supervision, this section shall not apply to any of the following cases:
(a) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, serious accident or injury, or the infirmities attendant upon age.
(b) Treatment of addicts or habitués in state licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.
(c) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

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."

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10. Section 2241.5[3] of the Code states:

"(a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

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[3] Prior to January 1, 2007, Section 2241.5 provided: Administration of controlled substances to person experiencing "intractable pain"

(a) Notwithstanding any other provision of law, a physician and surgeon may prescribe or administer controlled substances to a person in the course of the physician and surgeon's treatment of that person for a diagnosed condition causing intractable pain.

(b) "Intractable pain," as used in this section, means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts, including, but not limited to, evaluation by the attending physician and surgeon and one or more physicians and surgeons specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(c) No physician and surgeon shall be subject to disciplinary action by the board for prescribing or administering controlled substances in the course of treatment of a person for intractable pain.

(d) This section shall not apply to those persons being treated by the physician and surgeon for chemical dependency because of their use of drugs or controlled substances.

(e) This section shall not authorize a physician and surgeon to prescribe or administer controlled substances to a person the physician and surgeon knows to be using drugs or substances for nontherapeutic purposes.

(f) This section shall not affect the power of the board to deny, revoke, or suspend the license of any physician and surgeon who does any of the following:

(1) Prescribes or administers a controlled substance or treatment that is nontherapeutic in nature or nontherapeutic in the manner the controlled substance or treatment that is administered or prescribed or is for a nontherapeutic purpose in a nontherapeutic manner.

(2) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Controlled Substances Act, or of controlled substances scheduled in, or pursuant to, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal of or the dispensing of the drugs to the person nd shall otherwise comply with all state recordkeeping requirements for controlled substances.

(3) Writes false or fictitious prescriptions for controlled substances listed in the California Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(4) Prescribes, administers, or dispenses in a manner not consistent with public health and welfare controlled substances listed in the California Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(5) Prescribes, administers, or dispenses in violation of either Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code or this chapter.

(g) Nothing in this section shall be construed to prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon, as authorized pursuant to Sections 809.05.809.4, and 809.5.

"(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

"(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

"(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

"(2) Violates Section 2241 regarding treatment of an addict.

"(3) Violates Section 2242 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs.

"(4) Violates Section 2242.1 regarding prescribing on the Internet.

"(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

"(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

"(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

"(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

"(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5."

11. 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."

12. Section 2242.1 of the Code states:

"(a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

"(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars ($25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars ($25,000) per occurrence.

"(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

"(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

"(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

"(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242."

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DRUGS

13. The following drugs are classified as follows:

A. Demerol, a trade name for meperidine hydrochloride, is a narcotic analgesic, a dangerous drug as defined in section 4022 of the Code, and a schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code. Demerol can produce drug dependence of the morphine type and therefore has the potential for being abused. Psychic dependence, physical dependence, and tolerance may develop upon repeated administration of Demerol and it should be prescribed and administered with the same degree of caution appropriate to the use of morphine. Because of the potential for interaction with other central nervous system depressants, Demerol should be used with great caution and in reduced dosage in patients who are concurrently receiving other narcotic analgesics, general anesthetics, phenothiazines, other tranquilizers, sedative-hypnotics, and other central nervous system depressants. Respiratory depression, hypotension, seizures, and profound sedation or coma may result. The usual adult dosage for pain relief is 50 mg. to 150 mg. every three or four hours.

B. Fentanyl citrate and droperidol injection includes .5 mg of fentanyl base, 2.5 mg of droperidol, and lactic acid to adjust pH per mL. Fentanyl is a potent narcotic analgesic. It is a dangerous drug as defined in section 4022 of the Code, and a schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code. Fentanyl can produce drug dependence of the morphine type and therefore as the potential for being abused.

C. Morphine sulfate is for use in patients who require a potent opioid analgesic for relief of moderate to severe pain. Morphine is a dangerous drug as defined in section 4022, and a schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code. Morphine can produce drug dependence and has a potential for being abused. Tolerance and psychological and physical dependence may develop upon repeated administration. Abrupt cessation or a sudden reduction in dose after prolonged use may result in withdrawal symptoms. After prolonged exposure to morphine, if withdrawal is necessary, it must be undertaken gradually.

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MEDICAL BOARD INVESTIGATION

14. The Medical Board received an anonymous complaint from an individual claiming to be the "subsequent physician" to an unidentified patient of Henri E. Montandon, M.D. It was alleged that the patient presented to "an (unidentified) emergency room" while seizing. The patient had been prescribed Demerol by Dr. Montandon. The complainant indicated concerns regarding Dr. Montandon's prescribing practices, and that the patient had previously been advised not to take Demerol because of a prior history of seizures caused by toxic amounts of Demerol. The subsequent physician urged the patient to file a complaint with the Medical Board, but the patient was reluctant to do so, so the subsequent physician felt compelled to file the complaint.

15. The Medical Board thereafter conducted an investigation into Dr. Montandon's treatment of the patient, hereinafter referred to as Patient A.[4] .

FIRST CAUSE FOR DISCIPLINE

**(Events Re Patient A)**

16. Respondent is subject to disciplinary action for unprofessional conduct under Business and Professions Code sections: 2234 ( general unprofessional conduct); and/or 2234(b) (gross negligence); and/or 2234(c) (repeated negligent acts) and/or 2234(d) (incompetence); and/or 725 (repeated acts of clearly excessive prescribing); and/or 2241 in conjunction with section 2234(a) (improper prescribing to addict); and/or section 2241.5(d) in conjunction with section 2234(a) (failure to exercise reasonable care); and/or 2266 (failure to maintain adequate and accurate records); in connection with the treatment of Patient A. The circumstances are as set forth in more detail below.

17. The investigation by the Medical Board revealed that Dr. Montandon did prescribe Demerol or other controlled substances to Patient A., including, but not limited to, the following:

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[4] The full name of the patient will be provided upon Request for Discovery.

| | DATE | RX # | QUANT/STRENGTH | DRUG |
|---|---|---|---|---|
| 1. | 05-25-05 | 1524491 | 10-50 mcg/hr | Fentanyl |
| 2. | 11-11-05 | 4389957 | 40-15 mg | Morphine Sulfate |
| 3. | 12-21-05 | 4413518 | 20-100 mg/ml | Demerol Hydro |
| 4. | 02-14-06 | 0148199 | 20-100 mg/ml | Demerol Hydro |
| 5. | 03-02-06 | 0148888 | 20-100 mg/ml | Demerol Hydro |
| 6. | 04-21-06 | 0151193 | 40-100 mg/ml | Demerol |
| 7. | 06-28-06 | 0154288 | 40-100 mg/ml | Demerol |
| 8. | 09-11-06 | 0157263 | 80-100 mg/ml | Demerol |
| 9. | 09-20-06 | 0157713 | 80-100 mg/ml | Demerol |
| 10. | 10-02-06 | 0158246 | 80-100 mg/ml | Demerol |
| 11. | 10-13-06 | 0158803 | 80-100 mg/ml | Demerol |
| 12. | 10-24-06 | 0159262 | 80-100 mg/ml | Demerol |
| 13. | 11-03-06 | 0159748 | 80-100 mg/ml | Demerol |
| 14. | 11-13-06 | 0160131 | 80-100 mg/ml | Demerol |
| 15. | 11-20-06 | 0160487 | 80-100 mg/ml | Demerol |
| 16. | 12-01-06 | 0160955 | 80-100 mg/ml | Demerol |
| 17. | 12-08-06 | 0161344 | 80-100 mg/ml | Demerol |
| 18. | 12-14-06 | 0161650 | 80-100 mg/ml | Demerol |
| 19. | 12-24-06 | 0162041 | 80-100 mg/ml | Demerol |
| 20. | 12-31-06 | 0162282 | 80-100 mg/ml | Demerol |
| 21. | 02-26-07 | 0164982 | 80-100 mg/ml | Demerol |
| 22. | 02-27-07 | 2235086 | 04-100 mg/ml | Meperidine HCL |
| 23. | 02-28-07 | 2235100 | 04-100 mg/ml | Meperidine HCL |
| 24. | 03-01-07 | 2235118 | 80-100 mg/ml | Demerol |
| 25. | 03-07-07 | 2197886 | 60-002 mg | Clonazepam |
| 26. | 03-10-07 | 2235289 | 75-100 mg/ml | Meperidine HCL |

18. As part of its investigation, the Medical Board conducted a Physician Conference with Dr. Montandon on November 15, 2008. Dr. Montandon indicated, in part, the following regarding his care and treatment of Patient A:.

A. Dr. Montandon reported that he first saw Patient A. in May 2000 at the Schuman-Liles Clinic for "Major Depressive Disorder: severe, irretractable." He stated that she would have clinic follow-up visits every three to four weeks. In the "summer of 2003", Dr. Montandon reported he prescribed nortriptyline for Patient A. as she was "severely depressed."

B. Dr. Montandon reported that in the "spring of 2006", he made "efforts to link Patient A. to Primary Care and Pain Management." He also stated: "I took over management of her migraines, with the understanding it would not be the be all and end all of treatment, but until things got squared away with Kaiser." He also stated: "The only thing that worked reliably for her was Demerol" and that Patient A. "was aware of Demerol's tricky use... I began treating her

with Demerol in March 2006." He also stated: "Around that time [March 2006], she got a new primary care physician at Kaiser, and I assumed that they would be very proactive with her."

C. Dr. Montandon reported that Patient A. during the "Spring of 2006" had informed him she had been making "fairly frequent trips to the ER" for nausea, vomiting and dehydration. He also stated that she was having "convulsions," but he had been told by the patient that they were due to her dehydration. In October 2006, Patient A. reported to him that she was pregnant, and that in November 2006, she had stopped the Demerol. In February 2007, Patient A. had reported to him she had pre-eclampsia and HELLP syndrome, and that her baby had died.

D. Dr. Montandon reported that in March 2007, Patient A. had reported to him that she had suffered a witnessed seizure at church and also had a witnessed seizure at home. He stated: "One ER doctor thought it was due to the meperidine... she wanted to continue with the injections, and she was going to get linked up with Dr. Frank at Kaiser." Dr. Montandon stated in March 2007, he had a phone conversation with Dr. Frank and "asked him why it had taken so long, over a year, to get her linked up." He also stated that Dr. Frank had stopped the Demerol injections and started Patient A. on Oxycontin.

E. When asked the nature of psychiatric care provided at the Schuman-Liles Clinic, Dr. Montandon had reported that the clinic contracts with Alameda County to provide "psychopharmacology consultation and management." He also stated: "But the doctors have a wide range ... I'm at the other end, I'm more interested in the 'whole person' approach." When asked about the nature of his psychiatric care of Patient A., Dr. Montandon reported: "It was more supportive psychotherapy at first; when the depression abated, I helped her organize her medical problem list."

F. When asked about his training and background in pain management, Dr. Montandon reported he went to medical school at University of Maryland Medical School in Baltimore, which was more of a "trade school" (as compared to John Hopkins Medical School) and that he had "an astonishing amount of patient contact, from day one." He also reported: "I have always been interested in pain, from a research background" and had completed his Ph.D. in

"measuring pain." He also reported doing "research" in the "whole-brain theory" of consciousness," but had not completed any research studies on the topic, and stated: "It was more thinking about it and writing papers." He also reported: "I completed the required medical education for palliative care and end of life care" and, "I work with the pain management group at Stanford, and try to go to their conferences."

G. When asked his views regarding Patient A.'s seizures and their relationship to meperidine injections, Dr. Montandon reported: "There was one [seizure] in December 2006 and the other in March 2007... I considered this, but looked at Demerol seizures, and they were reported most of the time in really big doses 'de novo' with sickle cell crisis," and "seizures are known to occur to with migraines." Dr. Montandon also stated: "The best bet" for Patient A. was to "offer her some relief' and "hope that Kaiser would pick up the ball ... it certainly was not an ideal situation." He also stated: "It was an ameliorative strategy to prevent the worst of her symptoms, and she was whetted to the idea of Demerol; that's what helped her."

19. Dr. Montandon's treatment of Patient A., (female born 1973), based upon Patient A.'s treatment records, and the Physician Conference, includes, but is not limited to the following:

A. Dr. Montandon had seen Patient A. since year 2000 principally for psychiatric care; however, in 2005, he began treating Patient A. for complaints of pain. Dr. Montandon's medical records (records) and/or Physician Conference statements on Patient A. relating to treatment of her pain indicate migraine headaches, Fibromyalgia, and other painful disorders including irritable bowel syndrome.[5]

B. Patient A. suffered from severe migraine symptoms including pain, nausea and vomiting and diarrhea and had multiple trips to the ER for management of dehydration and pain. The records indicate that Patient A. had seen other physicians at Kaiser who had prescribed opiates or Fiorinal to Patient A. prior to Dr. Montandon prescribing for her pain.

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[5] The medical records obtained from Dr. Montandon regarding Patient A. were limited to records which would reveal all Demerol prescribing, medical indication and basis for such prescribing, and not psychiatric treatment records unrelated to the Demerol prescribing.

C. Dr. Montandon first prescribed Patient A. Fentanyl patches in May 2005.

D. Dr. Montandon prescribed Patient A. Morphine in November 2005 according to pharmacy records. During this time Patient A. was continuing to receive opioid medications from other physicians. A Progress Note dated November 11, 2005 indicated: "Dr. Pinski refused Demerol for fibro; she started argument with her."

E. Dr. Montandon first prescribed Patient A. Demerol in December 2005. Late in 2005, Patient A. sought help with infertility.

F. A Progress Note dated January 20, 2006 indicated: " ...Demerol 100mg/ml 20 ml per vial 1 ml IM or SC Q3-4h prn pain... "

G. In March 2006, Dr. Montandon took over the management of Patient A.'s pain medication. A Progress Note dated March 2, 2006 indicated: "Another Kaiser doc refused to give her an IM in ER...Demerol 100mg/ml 20 ml 1 ml IM or SC Q3-4h prn pain." In the Physician Conference with Dr. Montandon on November 15, 2008, Dr. Montandon indicated that he prescribed Demerol because Patient A. was not able to get access to adequate pain management at Kaiser. However, the records show that Patient A. was still seeing physicians at Kaiser for her pain management before and after this date. At this appointment, Dr. Montandon's notes also indicated that Patient A.'s mother was selling Patient A.'s Demerol.

H. On March 16, 2006, a Progress Note indicated that Patient A. was seeing Dr.Asadulla at Kaiser and indicated some discussion about "drug addiction" but this is not clear from the notes. The note further indicated: " ...Got a new PCP, recommended by Pain Clinic Demerol 100mg/ml 1 ml IM or SC Q3-4h... "

I. A Progress Note dated March 28, 2006 indicated: " ...Demerol 100 mg/ml 1cc 1M or SC Q3-4h..."

J. A Progress Note dated April 11, 2006 indicated: " ...Demerol 20 cc vial #2 100mg/ml SIG: 1.5 cc IM Q4-6 h prn migraine ... "

K. On April 21, 2006, Patient A. sent Dr. Montandon a note requesting that Dr. Montandon prescribe two bottles of Demerol 20cc each for Patient A. to allow Patient A. to have 26.667 doses per month.

L. A Progress Note dated May 17, 2006 indicated: " ...Polycystic ovaries-Demerol 20 cc vial 100/ml 1.5 SC IM q4-6 h prn..."

M. A Patient Note dated June 3, 2006 indicated: "Pt requests refill of her Demerol. Demerol 100mg/ml 20 cc vial, #4 Sig: 1.5 cc IM q 4-6 h prn migraine Syringes 3ml 21 G 1 ½"#6 DAD."

N. A Patient Note dated July 19, 2006 indicated: " ...Two vials of Demerol were destroyed and a new rx was issued for same." (Dr. Montandon refilled Patient A.'s Demerol). Patient A. was also receiving Demerol from another physician at this time.

O. From 6/28/06 to 9/10/06, pharmacy records show Patient A. received 120 ml of Demerol at 100 mg/ml = 12000 mg of Demerol. From 9/11/06 to 10/2/06 Patient A. received 240 ml of Demerol at 100 mg/ml = 24000 mg of Demerol. From 10/3/06 to 11/3/06 Patient A. received 240 ml of Demerol at 100 mg/ml = 24000 mg of Demerol.

P. On October 31, 2006, Dr. Montandon's notes indicate that Patient A. had become pregnant at some point and was not taking the Demerol to sleep in order to protect the baby.

Q. Dr. Montandon continued to prescribe Patient A. Demerol. Between 11/10/06 and 12/1/06, Patient A. received 240 ml of Demerol at 100 mg/ml=24000 mg of Demerol.

R. According to pharmacy records between 12/8/06 and 1/7/07, Patient A. received 40000 mg of Demerol and between 1/14/07 to 2/11/07, Patient A. received 40000 mg of Demerol.

S. In a letter to "Dear/Sir Madam" by Dr. Montandon MD dated December 8, 2006, Dr. Montandon wrote: "I am writing to you with regard to [Patient A.]. I am a physician who has been involved in [Patient A.'s] medical care for three years. [Patient A.] is a 33 year old married mother of one son who suffers from intractable migraine headaches which have not responded [sic] to Depakote, Imitrex, Tegretol, Trileptal, celebrex, propranolol, paroxetine, fluoxetine, sertraline. The patient is now pregnant (and in Kaiser high-risk pregnancy program) and migraines have intensified in frequency (daily) and intensity. IM demerol is requested as the only agent so far which provides some relief from incapacitating pain. Note that this prior

authorization was already approved, but the pharmacy now says there is no trace of that approval in the sywtem [sic]."

T. On December 8, 2006, Dr. Montandon also wrote a letter suggesting hospitalization to help stabilize Patient A.'s migraines and nausea and vomiting because of the severity of Patient A.'s systemic symptoms.

U. In February 2007, as per the Physician Conference, Patient A. suffered pre-eclampsia and had her labor induced and the baby was delivered but died. This was of major distress to Patient A. and Dr. Montandon saw Patient A. for this.

V. From 2/19/07 to 3/10/07, Patient A. received 40000 mg of Demerol from Dr. Montandon. Patient A. continued to receive other opioids from other physicians. The Demerol prescriptions at this point were for Demerol 100 mg/ml 1.5 ml im q 4-6 hours pm. At the dose of 150 mg q 4 hours Patient A. would be prescribed approximately 900 mg of Demerol per day. Dr. Montandon in his Physician Conference indicated that he was prescribing for Patient A. 8 vials per week of 20 ml (100 mg/ml); this would be 8000 mg/week or 1142 mg/day. However, in 2007 Patient A. was receiving 40000 mg in a month or 1333 mg/day.

W. On or about March 4, 2007, Dr. Montandon received a telephone message from an Emergency Room physician (Dr. Aborn) who suggested that Patient A.'s seizures may be due to the Demerol and Dr. Montandon's prescribing practices. Dr. Montandon in the Physician Conference indicated that he was aware of the concern about Demerol and seizures but his research indicated to him that such seizures were due to high dose use in naive users, such as individuals with Sickle Cell Disease.

X. In a letter to Dr. Aborn (Kaiser) by Dr. Montandon dated March 6, 2007, Dr. Montandon indicated: "I am receipt of your message left for me on 4 March 2007 concerning [Patient A.]. In this note you make several disturbing assertions which are not supported by any information that I have... [Patient A.] has a variety of medical conditions as well; 1. migraine headaches; 2. fibromyalgia; 3. sleep apnea; etc.. I assumed treatment of her migraines in the spring of 2006 after two years of her attempts to find a neurologist in your system to treat her or some pain management team to work with her had failed ... Perhaps you are in a position to turn

the key and help [Patient A.] find a neurologist to work with her. In the meantime, you might acquaint yourself with more of her medical history. Her psychiatric status has improved. Now if only the Kaiser system would do its job."

Y. In a letter to Medi-Cal by Dr. Montandon dated March 9, 2007, Dr. Montandon indicated: "I am writing to you with regard to [Patient A.]. I am a psychiatrist who has treated [Patient A.] for ...the last six years. Although she has had improvement in her... , she continues to suffer two to three times per week right sided migraine. She has tried the following without success: Imitrex, Midrin, Inderal, Elavil, Pamelor, Depakote, Neurontin, Tegretol, Delaudid [sic], Demerol. The neurology department at Kaiser Hayware [sic] has been very slow in being able to accommodate her for an adequate evaluation and follow-up."

Z. A Progress Note dated March 9, 2007 indicated: " ...On Sunday had a seizure in church witnessed. She cannot recall what happened... yesterday saw Dr. Frank her pain management doc. Kaiser has placed in her file that she is NOT A DRUG ADDICT. He tells her that she is not, that he has placed in her chart many times and he does not know what to do. In December she had a witnessed seizure at home. But I do not have a decription [sic] of it by rex,, mom, asia, laying on bed, she was talking, she got silent, 'she began to shake allover sys rex' in hospital she was told she had two more grand mal seizures at Kaiser Hayward... demerol relieves but seizures?" Dr. Montandon indicated in the Physician Conference that he understood that Patient A. had been having convulsions prior to the Demerol due to Patient A.'s dehydration and that Dr. Montandon knew seizures could be due to migraines as well. Dr. Montandon also stated in the Physician Conference that Patient A. was aware of the risks of seizures but wanted to continue the current course of care.

AA. A Patient Note dated March 21, 2007 indicated: "Dr. Frank TC he will take over her migraine management and her pain management. He states she is taking multipole [sic] injectsn [sic] of demerol daily. Also that she was in a neurological five day a week program in October 05. shw [sic] was in much better shape after the program, she was involved in life agazin [sic] ... "

BB. In a letter to Dr. Frank (Kaiser) by Dr. Montandon dated March 22, 2007, Dr. Montandon indicated: " ... She states that she has spent 15 years on and off with various neurologists looking for pharmacological relief from these torturous migraines. She has tried with little effect: imitrex, various ergots, Depakote, Pamelor, Elavil, Dilaudid, Midrin, Neurontin, and Tegretol. She has used Demerol as the only agent offering relief during this same time frame. She now appears to have developed seizures following her injections of Demerol on perhaps six occasions. There are anecdotal reports in the literature of seizures in the context of high dose Demerol (e.g post-operatively; during sickle cell crisis). As a chronic pain patient, she has experienced the common effect of having her pain ratchet upwards when she feels that she will not be able to get adequate medical attention. Now that you are managing her chronic pain, and have agreed to take over treatment of her migraine headaches as well, this escalation factor should be reduced. With the above in mind, I will no longer be playing a role in treating [Patient A.'s] migraines as she will now have ready access to you when she needs to ... "

CC. A Progress Note dated March 23, 2007 indicated: " ... she saw Dr. Frank last week; he sd Kaiser policy is one pain IM per week... "

DD. In March 2007, the care of the Patient A.'s pain management was turned over to Dr. Frank at Kaiser Pain Clinic. However, Dr. Montandon continued to prescribe Demerol for Patient A.'s migraines after receiving the letter from the Emergency Room physician.

EE. Throughout the care of Patient A., Dr. Montandon's notes provided minimal information about Patient A.'s response to treatment, complications and functional status. Patient A. continued to be maintained on opioids other than Demerol by the Kaiser Pain Clinic after they took over from Dr. Montandon.

**Standard of Practice re Patient A.**

20. Treatment of migraine. The standard of care for the treatment of migraine is to document a thorough history and physical and list of the symptoms to confirm the diagnosis and then provide abortive treatments if headaches are less than 2-3 times per month and to provide preventive treatment if the headaches occur at least weekly. When migraines are not responding to the practitioner's treatment, referral to a neurologist or headache specialist is indicated.

21. The standard of care for Fibromyalgia treatment also requires a thorough history and physical examination and a thorough psychiatric history, because there is often co-morbid psychiatric illness. It is necessary to note the status of mood disorders as well as co-morbid medical conditions which can cause pain and fatigue. It is then important to review the results of previous treatments. There are only two FDA approved drugs for the treatment of Fibromyalgia (Concerta and Lyrica) but these approvals are relatively recent.

22. The standard of care for prescribing chronic opiates for pain is that one has to be sure that the condition requires opiates for pain management. Once this is ascertained, the doctor and the patient have an agreement, usually written down, which outlines the responsibilities of the patient. One of the principle standards for such agreements is that there is only one prescriber of opiates. If another physician is prescribing opiates for a patient, then that physician needs to be notified that the patient now has a new doctor prescribing opiates.

23. For any patient who is pregnant and on opiates, the standard of care is for the prescriber of opiates to be in communication with the obstetrician and to discuss the medication management plan.

24. Physicians prescribing any medication should be knowledgeable about the appropriate doses and frequency of the medication and major side effects of the medication. All medications should be prescribed after an appropriate prior examination.

25. The standard of care for medical record documentation for patients prescribed opiates for chronic pain includes appropriate documentation of the medication being utilized, the results of such medication (both for pain and function), and any adverse effects of the medication.

26. The standard of care for the treatment of seizures or syncope is to investigate the cause of such disorders, including consultation with a neurologist and/or a cardiologist.

**Acts or Omissions re Patient A.**

27. Dr. Montandon committed the following acts or omissions in the treatment of Patient A.:

A. On 5/25/05 Dr. Montandon prescribed Fentanyl 50 ug/hr #10; however, there was no notation made as to the rationale; and/or

B. On 11/11/05, morphine 15 mg #40 was prescribed according to pharmacy records. While Dr. Montandon was aware of Patient A. going to the ER, there was no indication in the record that Dr. Montandon was familiar with Patient A.'s regular pain management regimen. The information provided in the records did not allow a reviewing health practitioner to understand what was being treated with the morphine and there was no indication in the record that Dr. Montandon tried to communicate with Patient A.'s current prescribers; and/or

C. On 12/8/05, Dr. Montandon listed a variety of diagnoses which can cause pain. He was advised that there was an MRI from Kaiser in 11/05/05. He prescribed Demerol 100 mg/ml 20 ml w/ refills. The record still did not indicate what Demerol was prescribed for, nor prior medications that have worked or not worked; and/or

D. On 12/30/05, a handwritten note indicated that Patient A. had daily migraines and that IM Demerol relieved this. Dr. Montandon was informed that Dr. Frank was working with Patient A. in pain management and that there was a history of 2 syncopal episodes, (which could indicate a severe complication from the use of the medications or from another disorder). A hand written note of 1/20/06 indicated that Patient A. was on Demerol 100 mg/ml q 3-4 hour prn. The next Demerol prescription was written by Dr. Montandon on 2/14/06 as per pharmacy records. Dr. Montandon's notes continued to fail to document a review of Patient A.'s prior treatment for migraine at these appointments. Later, letters indicated that Dr. Montandon was aware of prior treatment efforts but there was still no documentation in the record that he received information from other treating physicians about what treatments had been attempted and Patient A.'s response; and/or

E. On 3/2/06, Dr. Montandon noted that Patient A.'s mother was selling Patient A.'s Demerol. He continued to prescribe Demerol that day to Patient A., without any further documentation or action to inform Patient A. of the legal aspects of the diversion by her mother, or to attempt to discuss and/or document this problem with anyone else including the physicians who were currently prescribing pain medication to Patient A. at Kaiser. In particular on 3/16/06, a handwritten note (partially illegible) appears to have written on it something about drug addiction. Dr. Montandon failed to formally review or document review of a pain management

contract with Patient A. and/or to contact or document contact with the other pain medication prescribers and/or to discuss the situation with them given the prior history of syncope, the mother's selling Demerol, and the question about addiction; and/or

F. On 4/21/06, Patient A. sent a note to Dr. Montandon regarding her condition, indicating, in part, that the other doctors would only allow her one injection per week and she requested that Dr. Montandon prescribe her Demerol to allow her to have 26.667 doses per month. Dr. Montandon prescribed for the additional Demerol. It was at this time that Dr. Montandon began to regularly prescribe Patient A. Demerol. There was still no documentation of an agreement and no indication of a review of prior treatment failures. Dr. Montandon improperly took control of the prescription of injectable Demerol without consulting or documenting consultation with the previous prescribers, but just in response to a request note by Patient A. to increase the dose from once a week to nearly daily. The result was that Dr. Montandon and another physician were prescribing IM Demerol to Patient A. and another physician was prescribing methadone; and/or

G. On 8/9/06, a note indicated that Patient A. was trying to go to Stanford, but there was no documentation that Dr. Montandon was part of this process; and/or

H. Throughout Patient A.'s medical record, the patient notes provided insufficient if any information regarding the results of the treatment and/or adverse effects; and/or

I. On 10/1/06, the patient notes indicated that Patient A. was attempting to minimize her medications to protect the baby. However, there was no documentation of referral to or coordinating with an OB/GYN at this point. Dr. Montandon failed to communicate and/or document his current course of treatment with the Patient A.'s OB/GYN as soon as he found out that she was pregnant; and/or

J. In late 2006, Patient A. was receiving prescribed doses of Demerol in the neighborhood of 40,000 mg/month or about 1300 mg per day. This is twice the recommended safe level (less than 600 mg/day) even for relatively short term exposure. In his Physician Conference, Dr. Montandon indicated that he was giving Patient A. 4 vials per week (20 ml of 100 mg/ml) and he thought she was getting about 1000 mg/day. However, Demerol is not

recommended for chronic pain due to the accumulation of certain metabolites, and there is increased risk of seizures if given over 600 mg/24 hours or a duration of more than 48 hours. Dr. Montandon prescription of Demerol far exceeded safe doses and time periods and/or he failed to document an adequate justification for such prescribing; and/or

K. Dr. Montandon, as per the Physician Conference, indicated that he thought that the risk of seizures was anecdotal. Dr. Montandon lacked knowledge or familiarity with the toxicity of large and chronic daily doses of Demerol while treating Patient A.; and/or

L. On or about 3/4/07, Dr. Montandon received a message from Dr. Aborn (Kaiser) regarding his prescribing of excessive amounts of Demerol to Patient A. and her seizures. On 3/6/07, in a letter to Dr. Aborn, Dr. Montandon indicated that the Kaiser system had failed to provide Patient A. with adequate treatment of her migraines either with a neurologist or pain management specialist. However, Dr. Montandon failed to obtain or document in the record the receipt of information from pain management at Kaiser or from a Kaiser neurologist as to Patient A.'s management prior to Dr. Montandon's taking over the case. Dr. Montandon represented himself in his letter and in previous letters as a patient advocate for adequate pain management, however, he has acted alone, rather than in conjunction with other physicians; and/or

M. On 3/9/07, Dr. Montandon indicated in his note that Patient A. was having seizures in the past week "and had one in December and she had some grand mal seizures at Kaiser Hayward." On 3/9/07 he followed up with a letter to Medi-Cal that Kaiser Hayward had been slow in being able to provide an adequate evaluation and follow up. Dr. Montandon's office note from 3/9/07 indicated that the Patient A. has told him that Dr. Frank did not know what to do but had said she is not a drug addict. Dr. Montandon noted in his record that "Demerol relieves but seizures?" Nevertheless, Dr. Montandon continued to prescribe Demerol after this visit and after the next one on 3/17/07, notwithstanding that he was now made aware of multiple seizures, and was aware that Demerol may cause seizures. In addition, Dr. Montandon failed to contact or document contact with Dr. Frank or the pain management group at Kaiser to discuss Patient A.'s

management and alternatives or to talk with her primary care physician about other causes of seizures; and/or

N. In general, Dr. Montandon failed to adequately create or document a treatment plan, including the indication for treatment, the anticipated duration of treatment, under what conditions Patient A. should be referred to a pain specialist, and/or failed to perform or document adequate monitoring and documentation of Patient A.'s usage; and/or

O. In general, Dr. Montandon failed to perform or document an adequate review any of Patient A.'s prior medical records regarding her past history of treatment with Demerol, which would have given him a documented review of prior side-effects, efficacy, and possible concerns with injectable Demerol, including any prior concerns by physicians regarding possible opiate abuse or dependence; and/or

P. In general, Dr. Montandon failed to provide or document adequate informed consent that he had discussed the risks and benefits of Demerol injections, including seizures and potential for dependence, with Patient A. In addition, although Dr. Montandon reported in the Physician Conference that he was aware of seizures for Patient A., he made reference to his review that reported seizures with Demerol injections were most commonly reported with "big doses, de novo." However, there was no documentation of how much Patient A. was injecting daily or in single doses; therefore, Dr. Montandon was not adequately documenting his monitoring of whether Patient A. was using "big doses," and therefore increasing her seizure risk; and/or

Q. Dr. Montandon also reported in the Physician Conference that the primary role of contracted psychiatrists in the Schuman-Liles was to provide "psychopharmacology consultation and management." Demerol injections are not considered psychopharmacological management. In addition, he stated that his psychiatric care for Patient A. included helping her "organize her medical problem list." However, the prescription of Demerol injections goes beyond merely helping a patient "organize" a problem list.

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**Violations re Patient A**

28. Dr. Montandon's conduct as set forth on the Events and Acts or Omissions as set forth hereinabove constitutes grounds for disciplinary action as follows:

A. Dr. Montandon's conduct constitutes general unprofessional conduct and is cause for disciplinary action pursuant to section 2234 of the Code.

B. Dr. Montandon's conduct constitutes gross negligence and is cause for disciplinary action pursuant to section 2234(b) of the Code.

C. Dr. Montandon's conduct constitutes repeated negligent acts and is cause for disciplinary action pursuant to section 2234(c) of the Code.

D. Dr. Montandon's conduct constitutes incompetence and is cause for disciplinary action pursuant to section 2234(d) of the Code.

E. Dr. Montandon's conduct constitutes unprofessional conduct in that he failed to maintain adequate and accurate records relating to the provision of services to Patient A. and is cause for discipline pursuant to section 2266 of the Code.

F. Dr. Montandon's conduct constitutes repeated acts of clearly excessive prescribing or administering of drugs or treatment as determined by the standard of the community of licensees and is cause for disciplinary action pursuant to section 725 of the Code .

G. Dr. Montandon's conduct constitutes the failure to exercise reasonable care in consulting with and/or referring Patient A. to addiction specialists and/or pain management specialists, and therefore is cause for disciplinary action pursuant to section 2234(a) in conjunction with section 2241.5(d) of the Code.

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 and Surgeon Certificate Number G 55626, issued to Henri Eugene Montandon, M.D.;

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

3. Ordering Henri Eugene Montandon, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and

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

DATED: August 6, 2009

BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*