

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

In the Matter of the Accusation)
Against:)
)
)
NATHAN B. KUEMMERLE, M.D.)
)
Physician's and Surgeon's)
Certificate No. A-89368)
)
Respondent)

)

Case No. 17-2009-197899

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 February 1, 2013.

IT IS SO ORDERED: January 3, 2013.

MEDICAL BOARD OF CALIFORNIA



Barbara Yaroslavsky, Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA L. CASTRO
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 17-2009-197899

11 **NATHAN B. KUEMMERLE, M.D.**
12 **43851 Via Montalban**
Temecula, CA 92592-3983
13 **Physician's and Surgeon's Certificate No. A**
89368

OAH No. 2012090468
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 Respondent.
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16
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 Vladimir Shalkevich,
23 Deputy Attorney General.

24 2. Respondent NATHAN B. KUEMMERLE, M.D. (Respondent) is representing
25 himself in this proceeding and has chosen not to exercise his right to be represented by counsel.
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1 2. CONTROLLED SUBSTANCES - TOTAL RESTRICTION. Respondent shall not
2 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in
3 the California Uniform Controlled Substances Act.

4 Respondent shall not issue an oral or written recommendation or approval to a patient or a
5 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
6 purposes of the patient within the meaning of Health and Safety Code section 11362.5.

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

22 3. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain
23 completely from the personal use or possession of controlled substances as defined in the
24 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
25 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
26 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
27 illness or condition.

28 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent

1 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
2 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
3 telephone number.

4 If Respondent has a confirmed positive biological fluid test for any substance (whether or
5 not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall
6 receive a notification from the Board or its designee to immediately cease the practice of
7 medicine. The Respondent shall not resume the practice of medicine until final decision on an
8 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
9 probation shall be filed by the Board within 15 days of the notification to cease practice. If the
10 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
11 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent
12 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or
13 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
14 shall not apply to the reduction of the probationary time period.

15 If the Board does not file an accusation or petition to revoke probation within 15 days of the
16 issuance of the notification to cease practice or does not provide Respondent with a hearing
17 within 30 days of a such a request, the notification of cease practice shall be dissolved.

18 4. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
19 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
20 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
21 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
22 practicing medicine, Respondent shall contract with a laboratory or service approved in advance
23 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
24 testing. The contract shall require results of the tests to be transmitted by the laboratory or
25 service directly to the Board or its designee within four hours of the results becoming available.
26 Respondent shall maintain this laboratory or service contract during the period of probation.

27 A certified copy of any laboratory test result may be received in evidence in any
28 proceedings between the Board and Respondent.

1 If Respondent fails to cooperate in a random biological fluid testing program within the
2 specified time frame, Respondent shall receive a notification from the Board or its designee to
3 immediately cease the practice of medicine. The Respondent shall not resume the practice of
4 medicine until final decision on an accusation and/or a petition to revoke probation. An
5 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the
6 notification to cease practice. If the Respondent requests a hearing on the accusation and/or
7 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30
8 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be
9 received from the Administrative Law Judge or the Board within 15 days unless good cause can
10 be shown for the delay. The cessation of practice shall not apply to the reduction of the
11 probationary time period.

12 If the Board does not file an accusation or petition to revoke probation within 15 days of the
13 issuance of the notification to cease practice or does not provide Respondent with a hearing
14 within 30 days of a such a request, the notification of cease practice shall be dissolved.

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

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

1 this Decision.

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

5 6. CLINICAL TRAINING PROGRAM. Within 60 calendar days of the effective date
6 of this Decision, Respondent shall enroll in a clinical training or educational program equivalent
7 to the Physician Assessment and Clinical Education Program (PACE) offered at the University of
8 California - San Diego School of Medicine ("Program"). Respondent shall successfully complete
9 the Program not later than six (6) months after Respondent's initial enrollment unless the Board
10 or its designee agrees in writing to an extension of that time.

11 The Program shall consist of a Comprehensive Assessment program comprised of a two-
12 day assessment of Respondent's physical and mental health; basic clinical and communication
13 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to
14 Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum,
15 a 40 hour program of clinical education in the area of practice in which Respondent was alleged
16 to be deficient and which takes into account data obtained from the assessment, Decision(s),
17 Accusation(s), and any other information that the Board or its designee deems relevant.
18 Respondent shall pay all expenses associated with the clinical training program.

19 Based on Respondent's performance and test results in the assessment and clinical
20 education, the Program will advise the Board or its designee of its recommendation(s) for the
21 scope and length of any additional educational or clinical training, treatment for any medical
22 condition, treatment for any psychological condition, or anything else affecting Respondent's
23 practice of medicine. Respondent shall comply with Program recommendations.

24 At the completion of any additional educational or clinical training, Respondent shall
25 submit to and pass an examination. Determination as to whether Respondent successfully
26 completed the examination or successfully completed the program is solely within the program's
27 jurisdiction.

28 Respondent shall not practice medicine until Respondent has successfully completed the

1 Program and has been so notified by the Board or its designee in writing, except that Respondent
2 may practice in a clinical training program approved by the Board or its designee. Respondent's
3 practice of medicine shall be restricted only to that which is required by the approved training
4 program.

5 7. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of
6 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
7 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
8 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
9 consider any information provided by the Board or designee and any other information the
10 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
11 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
12 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
13 psychiatric evaluations and psychological testing.

14 Respondent shall comply with all restrictions or conditions recommended by the evaluating
15 psychiatrist within 15 calendar days after being notified by the Board or its designee.

16 Respondent shall not engage in the practice of medicine until notified by the Board or its
17 designee that Respondent is mentally fit to practice medicine safely. The period of time that
18 Respondent is not practicing medicine shall not be counted toward completion of the term of
19 probation.

20 8. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
21 Respondent shall submit to the Board or its designee for prior approval the name and
22 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
23 has a doctoral degree in psychology and at least five years of postgraduate experience in the
24 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
25 undergo and continue psychotherapy treatment, including any modifications to the frequency of
26 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

27 The psychotherapist shall consider any information provided by the Board or its designee
28 and any other information the psychotherapist deems relevant and shall furnish a written

1 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
2 psychotherapist any information and documents that the psychotherapist may deem pertinent.

3 Respondent shall have the treating psychotherapist submit quarterly status reports to the
4 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
5 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
6 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
7 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
8 period of probation shall be extended until the Board determines that Respondent is mentally fit
9 to resume the practice of medicine without restrictions.

10 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

11 9. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the
12 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
13 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
14 who shall consider any information provided by the Board or designee and any other information
15 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
16 designee. Respondent shall provide the evaluating physician any information and documentation
17 that the evaluating physician may deem pertinent.

18 Following the evaluation, Respondent shall comply with all restrictions or conditions
19 recommended by the evaluating physician within 15 calendar days after being notified by the
20 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
21 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
22 Board or its designee for prior approval the name and qualifications of a California licensed
23 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
24 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
25 further notice from the Board or its designee.

26 The treating physician shall consider any information provided by the Board or its designee
27 or any other information the treating physician may deem pertinent prior to commencement of
28 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or

1 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
2 Respondent shall provide the Board or its designee with any and all medical records pertaining to
3 treatment, the Board or its designee deems necessary.

4 If, prior to the completion of probation, Respondent is found to be physically incapable of
5 resuming the practice of medicine without restrictions, the Board shall retain continuing
6 jurisdiction over Respondent's license and the period of probation shall be extended until the
7 Board determines that Respondent is physically capable of resuming the practice of medicine
8 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

9 Respondent shall not engage in the practice of medicine until notified in writing by the
10 Board or its designee of its determination that Respondent is medically fit to practice safely.

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

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

28 Within 60 calendar days of the effective date of this Decision, and continuing throughout

1 probation. Respondent's practice and billing shall be monitored by the approved monitor.
2 Respondent shall make all records available for immediate inspection and copying on the
3 premises by the monitor at all times during business hours and shall retain the records for the
4 entire term of probation.

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

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

16 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
17 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
18 name and qualifications of a replacement monitor who will be assuming that responsibility within
19 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
20 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
21 notification from the Board or its designee to cease the practice of medicine within three (3)
22 calendar days after being so notified Respondent shall cease the practice of medicine until a
23 replacement monitor is approved and assumes monitoring responsibility.

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

1 Respondent's expense during the term of probation.

2 11. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
3 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
4 where: 1) Respondent merely shares office space with another physician but is not affiliated for
5 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
6 location.

7 If Respondent fails to establish a practice with another physician or secure employment in
8 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
9 Respondent shall receive a notification from the Board or its designee to cease the practice of
10 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
11 practice until an appropriate practice setting is established.

12 If, during the course of the probation, the Respondent's practice setting changes and the
13 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
14 shall notify the Board or its designee within 5 calendar days of the practice setting change. If
15 Respondent fails to establish a practice with another physician or secure employment in an
16 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
17 shall receive a notification from the Board or its designee to cease the practice of medicine within
18 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
19 appropriate practice setting is established.

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

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

1 13. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
2 prohibited from supervising physician assistants.

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

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

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

11 16. GENERAL PROBATION REQUIREMENTS.

12 Compliance with Probation Unit

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

15 Address Changes

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

21 Place of Practice

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

25 License Renewal

26 Respondent shall maintain a current and renewed California physician's and surgeon's
27 license.

28 Travel or Residence Outside California

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

4 In the event Respondent should leave the State of California to reside or to practice
5 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
6 departure and return.

7 17. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
8 available in person upon request for interviews either at Respondent's place of business or at the
9 probation unit office, with or without prior notice throughout the term of probation.

10 18. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
11 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
12 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
13 defined as any period of time Respondent is not practicing medicine in California as defined in
14 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
15 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
16 time spent in an intensive training program which has been approved by the Board or its designee
17 shall not be considered non-practice. Practicing medicine in another state of the United States or
18 Federal jurisdiction while on probation with the medical licensing authority of that state or
19 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
20 not be considered as a period of non-practice.

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

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

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

27 Periods of non-practice will relieve Respondent of the responsibility to comply with the
28 probationary terms and conditions with the exception of this condition and the following terms

1 and conditions of probation: Obey All Laws: and General Probation Requirements.

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

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

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

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

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. 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: 12/5/12 
NATHAN B. KUEMMERLE, M.D.
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: 12/5/12 
Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
GLORIA L. CASTRO
Supervising Deputy Attorney General

VLADIMIR SHALKEVICH
Deputy Attorney General
Attorneys for Complainant

LA2012603548
Stipulation.rtf

Exhibit A

Accusation No. 17-2009-197899

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2 GLORIA L. CASTRO
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 17-2009-197899

12 **NATHAN B. KUEMMERLE, M.D.**
13 **8235 Santa Monica, Suite 311**
West Hollywood, CA 90046

ACCUSATION

14 **Physician's and Surgeon's Certificate**
15 **No. A 89368**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

22 2. On or about November 17, 2004, the Medical Board of California issued Physician's
23 and Surgeon's Certificate Number A 89368 to NATHAN B. KUEMMERLE, M.D. (Respondent).
24 The Physician's and Surgeon's Certificate expired on June 30, 2010, and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 2227 of the Code states:

2 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
3 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
4 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
5 action with the division¹, may, in accordance with the provisions of this chapter:

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

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

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

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

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

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

20 5. Section 2234 of the Code states:

21 "The Division of Medical Quality shall take action against any licensee who is charged with
22 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct
23 includes, but is not limited to, the following:
24

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

1 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
3 Practice Act].

4 "(b) Gross negligence.

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

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

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

15 "(d) Incompetence.

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

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

19 6. Section 2236 of the Code states:

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

24 "(b) The district attorney, city attorney, or other prosecuting agency shall notify the
25 Division of Medical Quality of the pendency of an action against a licensee charging a felony or
26 misdemeanor immediately upon obtaining information that the defendant is a licensee. The
27 notice shall identify the licensee and describe the crimes charged and the facts alleged. The
28 prosecuting agency shall also notify the clerk of the court in which the action is pending that the

1 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds
2 a license as a physician and surgeon.

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

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

11 7. Section 2237 of the Code states:

12 “(a) The conviction of a charge of violating any federal statutes or regulations or any statute
13 or regulation of this state, regulating dangerous drugs or controlled substances, constitutes
14 unprofessional conduct. The record of the conviction is conclusive evidence of such
15 unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo
16 contendere is deemed to be a conviction within the meaning of this section.

17 “(b) Discipline may be ordered in accordance with section 2227 or the Division of
18 Licensing may order the denial of the license when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
21 section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and
22 to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
23 complaint, information or indictment.

24 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
25 revoke a license on the ground that the licensee has been convicted of a crime substantially
26 related to the qualifications, functions, or duties of the business or profession for which the
27 license was issued.

28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Crime)

3 9. Respondent is subject to disciplinary action under sections 490 and 2236 of the Code
4 in that Respondent was convicted of a crime substantially related to the practice of medicine. The
5 circumstances are as follows:

6 10. On or about January 27, 2011, in a United States District Court, Central District of
7 California, in a matter entitled *U.S.A. vs. Nathan Kuemmerle*, case number 2:10-cr-00417-DMG,
8 Respondent was convicted, upon plea of guilty to violating Title 21, United States Code, section
9 841(a)(1), (Unlawful Distribution of a Controlled Substance) whereby Respondent admitted that
10 he knowingly and intentionally distributed a controlled substance, knowing that it was a
11 controlled substance; that Respondent's distribution of the controlled substance was outside the
12 usual course of professional practice and without a legitimate medical purpose; and that
13 Respondent acted with the intent to distribute the controlled substance outside the usual course of
14 professional practice and without a legitimate medical purpose.

15 11. Respondent was sentenced on May 23, 2011, to the custody of the Bureau of Prisons
16 for a term of Time served, followed by supervised release for three years with various terms and
17 conditions.

18 12. The circumstances of the crime that resulted in the conviction are as follows: In or
19 about August, 2009, the Drug Enforcement Administration, (DEA), a federal agency that enforces
20 federal controlled substance laws and regulations, was informed by Detective Carlborg from Redondo
21 Beach Police Department (RBPD) that he was investigating Respondent based on information
22 received from an informant. An RBPD officer had encountered the informant while working in an
23 undercover capacity. The informant had posted an advertisement on Craglist.com regarding
24 Adderall² and an undercover officer responded to the advertisement via text message. On August 12,
25 2009, the informant met the undercover officer in person and was arrested after he sold Adderall to

26 _____
27 ² Adderall, a combination of dextroamphetamine and amphetamine, is also known as
28 "amphetamine salts combo." The highest commercially available dose of this drug is dispensed in
30 mg. tablets.

1 the undercover officer. The informant agreed to cooperate with the authorities in investigating
2 Respondent's activities.

3 13. Subsequent police investigation revealed that Respondent was selling numerous
4 prescriptions for controlled substances to the informant, which were issued in the name of the
5 informant, as well as names of other individuals who were never Respondent's patients and never met
6 Respondent in person. Respondent prescribed controlled substances to the informant and wrote
7 fictitious prescriptions for controlled substances in the names of other individuals, supplied to him by
8 the informant. The controlled substance prescriptions were issued for no medical need or reason
9 whatsoever, and without any prior medical examination, or taking of a medical history. Respondent
10 instructed individuals who bought controlled substance prescriptions from him to visit pharmacies a
11 long distance away from his office location in order to avoid detection. Some of the prescriptions
12 were issued in order to obtain controlled substances for illegal sale, as was the fact with Adderall that
13 the informant attempted to sell to the undercover RBPB officer. Controlled substances that were
14 prescribed in this manner included Adderall, a Schedule II controlled substance, a combination of
15 dextroamphetamine and amphetamine; and Xanax, a Schedule IV controlled substance
16 (alprazolam).

17 14. In October of 2009, police officers in Arizona arrested a second informant for
18 possession and sale of marijuana, possession of dangerous drugs and prescription fraud. The
19 second informant also agreed to cooperate with the authorities in investigating Respondent's
20 activities.

21 15. Subsequent police investigation revealed that Respondent was selling numerous
22 prescriptions for controlled substances to the second informant, which were issued in the name of the
23 second informant, as well as names of other individuals who were never Respondent's patients and
24 never met Respondent in person. Respondent prescribed controlled substances to the second
25 informant and wrote fictitious prescriptions for controlled substances in the names of other
26 individuals, supplied to him by the second informant. The controlled substance prescriptions were
27 issued for no medical need or reason whatsoever, and without any prior medical examination, or
28 taking of a medical history. Respondent instructed individuals who bought controlled substance

1 prescriptions from him to visit pharmacies a long distance away from his office location in order to
2 avoid detection. Some of the prescriptions were issued in order to obtain controlled substances for
3 sale. Controlled substances that were prescribed in this manner included Adderall, a Schedule II
4 controlled substance, Xanax, a Schedule IV controlled substance (alprazolam) and Norco, a
5 Schedule III controlled substance (a combination of hydrocodone and acetaminophen.)

6 16. Through the informants, three law enforcement officers, acting in undercover capacity,
7 were introduced to Respondent. Respondent prescribed controlled substances to the undercover
8 officers and to one of the informants in the presence of an undercover officer, on numerous
9 occasions, as detailed in sub-paragraphs a through ee herein, for no medical need or reason
10 whatsoever, and without any prior medical examination, or taking of their medical histories.
11 Respondent was paid cash for each prescription he wrote. Respondent also repeatedly sold post-dated
12 prescriptions to the undercover officers. Respondent also sold fictitious prescriptions in the names of
13 other individuals that were supplied to him by the undercover officers. The following controlled
14 substance prescriptions were sold by the Respondent to undercover officers in the manner set forth
15 herein:

- 16 a. On August 18, 2009, Respondent issued a prescription dated August 18, 2009, for 60 tablets
17 of Adderall, 30mg. to Detective Green, acting in undercover capacity.
 - 18 b. On August 18, 2009, Respondent issued a prescription dated August 18, 2009, for 60 tablets
19 of Xanax, 2mg. with two refills to Detective Green, who was acting in undercover capacity.
 - 20 c. On August 18, 2009, Respondent issued a post-dated prescription, dated September 17,
21 2009, for 60 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
 - 22 d. On August 18, 2009, Respondent issued a post-dated prescription, dated October 16, 2009,
23 for 60 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
 - 24 e. On September 3, 2009, Respondent issued a prescription dated September 3, 2009, for 60
25 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
 - 26 f. On September 3, 2009, Respondent issued a post-dated prescription, dated October 1, 2009,
27 for 60 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
- 28

- 1 g. On September 3, 2009, Respondent issued a post-dated prescription, dated October 2, 2009,
2 for 60 tablets of Xanax, 2mg. with two refills to Detective Green, who was acting in
3 undercover capacity.
- 4 h. On September 3, 2009, Respondent issued a post-dated prescription, dated November 1,
5 2009, for 60 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
- 6 i. On September 3, 2009, Respondent issued and gave to Detective Green, acting in
7 undercover capacity, a prescription dated September 3, 2009, for 60 tablets of Adderall,
8 30mg. Respondent issued a prescription in the name of "R.J." a person who Detective
9 Green, acting in undercover capacity, told Respondent was his relative. R.J., being a
10 fictitious individual, was not present at the time when Respondent issued this prescription,
11 was never examined, never had his or her history taken by the Respondent and had no
12 medical need for the medication.
- 13 j. On September 3, 2009, Respondent issued and gave to Detective Green, acting in
14 undercover capacity, a prescription dated September 3, 2009, for 30 tablets of Xanax, 2mg.
15 Respondent wrote this prescription again in the name of "R.J." the fictitious person who
16 Detective Green, acting in undercover capacity told Respondent was his relative. R.J.,
17 being a fictitious individual, was not present at the time when Respondent issued this
18 prescription, was never examined, never had his or her history taken by the Respondent and
19 had no medical need for the medication.
- 20 k. On October 12, 2009, Respondent issued a prescription dated October 12, 2009, for 60
21 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
- 22 l. On October 12, 2009, Respondent issued a prescription dated October 12, 2009, for 45
23 tablets of Xanax, 2mg. to Detective Green, acting in undercover capacity.
- 24 m. On December 16, 2009, Respondent issued a prescription dated December 16, 2009, for 60
25 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
- 26 n. On December 16, 2009, Respondent issued a prescription dated December 16, 2009, for 30
27 tablets of Xanax, 2mg., with two refills, to Detective Green, acting in undercover capacity.
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- 1 o. On December 16, 2009, Respondent issued a post-dated prescription, dated January 15,
2 2010, for 60 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
- 3 p. On December 16, 2009, Respondent issued a post-dated prescription, dated February 15,
4 2010, for 60 tablets of Adderall, 30mg. to Detective Green, acting in undercover capacity.
- 5 q. On December 16, 2009, Respondent issued and gave to Detective Green, acting in
6 undercover capacity, a prescription dated December 16, 2009, for 60 tablets of Adderall, 30
7 mg. The prescription was issued again in the name of "R.J." the fictitious person who
8 Detective Green, acting in undercover capacity, told Respondent was his relative. R.J.,
9 being a fictitious individual, was not present at the time when Respondent issued this
10 prescription, was never examined, never had his or her history taken by the Respondent and
11 had no medical need for the medication.
- 12 r. On February 12, 2010, the second informant introduced Special Agent Graetz, acting in her
13 undercover capacity, to Respondent. On that date, Respondent issued a prescription dated
14 February 9, 2010, for 60 tablets of Adderall, 30 mg. to Special Agent Graetz, acting in
15 undercover capacity.
- 16 s. On February 12, 2010, Respondent issued a prescription dated February 9, 2010, for 60
17 tablets of Xanax, 2 mg, with two refills, to Special Agent Graetz, acting in undercover
18 capacity.
- 19 t. On February 12, 2010, Respondent issued a post-dated prescription, dated March 10, 2010,
20 for 60 tablets of Adderall, 30 mg. to Special Agent Graetz, acting in undercover capacity.
- 21 u. On February 12, 2010, Respondent issued a post-dated prescription, dated April 10, 2010,
22 for 60 tablets of Adderall, 30 mg. to Special Agent Graetz, acting in undercover capacity.
- 23 v. On February 12, 2010, Respondent issued a prescription dated February 9, 2010 for 60
24 tablets of Xanax, 2 mg, with two refills, to the second informant in the presence of Special
25 Agent Graetz.
- 26 w. On February 12, 2010, Respondent issued a prescription dated February 9, 2010 for 60
27 tablets of Adderall, 30 mg, to the second informant in the presence of Special Agent Graetz.
28

- 1 x. On February 12, 2010, Respondent issued a post-dated prescription dated March 10, 2010
2 for 60 tablets of Adderall, 30 mg, to the second informant in the presence of Special Agent
3 Graetz.
- 4 y. On February 12, 2010, Respondent issued a post-dated prescription dated March 29, 2010
5 for 60 tablets of Adderall, 30 mg, to the second informant in the presence of Special Agent
6 Graetz.
- 7 z. On February 24, 2010, Respondent issued a prescription dated February 24, 2010, for 60
8 tablets of Adderall, 30 mg. to Special Agent Graetz, acting in undercover capacity.
- 9 aa. On February 24, 2010, Respondent issued a prescription dated February 24, 2010, for
10 30 tablets of Xanax, 2 mg., with two refills, to Special Agent Graetz, acting in undercover
11 capacity.
- 12 bb. On February 24, 2010, Respondent issued a post-dated prescription dated March 22,
13 2010, for 60 tablets of Adderall, 30 mg. to Special Agent Graetz, acting in undercover
14 capacity.
- 15 cc. On February 24, 2010, Respondent issued a post-dated prescription dated April 22, 2010,
16 for 60 tablets of Adderall, 30 mg. to Special Agent Graetz, acting in undercover capacity.
- 17 dd. On March 19, 2010, Respondent issued a prescription for 60 tablets of Adderall, 30 mg.
18 to Special Agent Gardner, acting in undercover capacity.
- 19 ee. On March 19, 2010, Respondent issued a prescription for 30 tablets of Xanax, 2 mg.
20 with 1 refill to Special Agent Gardner, acting in undercover capacity.

21 17. Respondent issued more 30 mg. amphetamine salts (Adderall) prescriptions in the
22 year 2009 than any other doctor in California. In 2009 Respondent ranked first in the State of
23 California for practitioners prescribing 30 mg. amphetamine salts. The highest dosage of
24 amphetamine salts commercially available is 30 mg. According to CURES, Respondent wrote 2,382
25 prescriptions for 30 mg. amphetamine salts combo in 2009, which is approximately three and a half
26 times as much as the number two prescriber of 30 mg. amphetamine salts in California. In 2009,
27
28

1 Respondent's prescriptions composed approximately 43% of all 30 mg. amphetamine salts prescribed
2 by the top ten prescribers of Adderall in California, combined.

3 SECOND CAUSE FOR DISCIPLINE

4 (Violation of Drug Laws)

5 18. Respondent is subject to disciplinary action under section 2237 in that Respondent
6 was convicted of violation of federal drug laws. The circumstances are as follows:

7 19. Allegations of paragraphs 10 through 17 are incorporated herein by reference.

8 THIRD CAUSE FOR DISCIPLINE

9 (Gross Negligence)

10 20. Respondent is subject to disciplinary action under section 2234, subdivision (b), in
11 that his prescribing in the manner alleged in paragraphs 12 through 17 herein, and incorporated
12 here by reference in this paragraph, constituted extreme departures from the standard of care in
13 each instance alleged.

14 FOURTH CAUSE FOR DISCIPLINE

15 (Repeated Negligent Acts)

16 21. Respondent is subject to disciplinary action under section 2234, subdivision (c), in
17 that his prescribing in the manner alleged in paragraphs 12 through 17 herein, and incorporated
18 here by reference, constituted repeated departures from the standard of care.

19 FIFTH CAUSE FOR DISCIPLINE

20 (Corrupt and Dishonest Acts)

21 22. Respondent is subject to disciplinary action under section 2234, subdivision (e), in
22 that his prescribing in the manner alleged in paragraphs 12 through 17 herein, and incorporated
23 here by reference, constituted the commission of acts involving dishonesty or corruption which is
24 substantially related to the qualifications, function or duties of a physician and surgeon.
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PRAYER

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

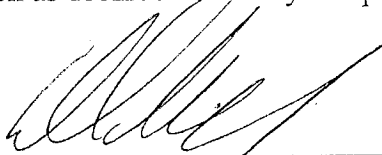
1. Revoking or suspending Physician's and Surgeon's Certificate Number A 89368, issued to NATHAN B. KUEMMERLE, M.D.

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

3. If placed on probation, ordering Nathan B. Kuemmerle, M.D. to pay the Medical Board of California the costs of probation monitoring;

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

DATED: July 24, 2012



LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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