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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 28 2019
BY K. Vong ANALYST

BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **GENNADY NOSOVITSKY, P.A.** **12520 Palm Drive** **Desert Hot Springs, CA 92240-4559** **Physician Assistant License No. PA 23278,** Respondent.	Case No. 950-2016-000963 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board (Board), Department of Consumer Affairs.

2. On or about September 27, 2013, the Physician Assistant Board issued Physician Assistant License No. PA 23278 to Gennady Nosovitsky, P.A. (Respondent). Physician Assistant License No. PA 23278 was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2021, unless renewed.

JURISDICTION

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

4. Section 3527 of the Code states, in pertinent part:

"(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"...

"(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

"..."

5. Section 3528 of the Code states any proceedings involving the denial, suspension or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

6. Section 2227 of the Code states, in pertinent part:

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

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

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

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

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

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

"..."

7. Section 2234 of the Code states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"...

"(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.

"..."

8. 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."

COST RECOVERY

9. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

10. Respondent has subjected his Physician Assistant License No. PA 23278 to disciplinary action under sections 3527, 2227 and 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patients A and B,[1] as more particularly alleged hereinafter:

Patient A

11. On or about March 20, 2015, Respondent saw Patient A, a thirty-two-year old female, for treatment for Attention Deficit Hyperactivity Disorder (ADHD). Respondent and Patient A, a medical assistant, were coworkers at the same practice. Patient A's reported symptoms included distractibility, impulsivity, and poor concentration that had started in grade school. Respondent documented that Patient A filled out an ADHD screener which showed that she was symptomatic. Respondent's written assessment was that he suspected Patient A had untreated ADHD secondary to co-existing General Anxiety Disorder (GAD). He and Patient A agreed that she would start a trial of Vyvanse[2] with the possibility of prescribing Klonopin[3] in the future if Patient A's anxiety

[1] To protect the patients' privacy, their names have been omitted from this pleading. Respondent is aware of their identities.

[2] Vyvanse, brand name for lisdexamfetamine dimesylate, is a stimulant and contains amphetamine, which is a Schedule II controlled substance pursuant to Health and Safety Code section 11055.

[3] Klonopin, brand name for clonazepam, is a benzodiazepine and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057.

symptoms continued. Respondent gave Patient A two prescriptions for Vyvanse with the instructions to take 40 mg in the morning and 20 mg in the afternoon. Respondent prescribed a one-month supply.

12. On or about March 31, 2015, Patient A saw Respondent for a follow up. Patient A reported that she was doing significantly better after taking Vyvanse, but that she was anxious. Respondent discussed Patient A's treatment options and they opted for a trial of Klonopin. Respondent gave Patient A a prescription for Klonopin. He also gave her a refill for Lexapro, a medication Patient A had been taking prior to seeing Respondent.

13. On or about April 17, 2015, Patient A saw Respondent for a follow up. According to the progress note, Patient A reported that her ADHD and GAD symptoms had significantly improved. Respondent's plan was to continue prescribing Vyvanse and Klonopin. Respondent noted that care would be transferred to Patient A's private psychiatrist in the future. Respondent gave Patient A a three-month supply of two Vyvanse prescriptions, one for 70 mg capsules, and another for 20 mg capsules. Patient A was to take a 70 mg capsule in the morning, and a 20 mg capsule in the afternoon. Respondent failed to document why he increased Patient A's daily Vyvanse dose from 60 mg to 90 mg, and why he was prescribing 20 mg over the maximum recommended dose.

14. On or about June 11, 2015, Patient A returned to see Respondent. Patient A told Respondent that she was waiting to see her psychiatrist in three or four weeks, and was experiencing extreme anxiety over an upcoming exam. Respondent gave Patient A a three-week prescription for Klonopin.

15. On or about August 10, 2015, Patient A saw Respondent for a follow up. Respondent noted that Patient A was between insurances and doctor's visits. Respondent gave Patient A a three-month refill for Klonopin. Respondent also gave Patient A a three-month prescription for guanfacine.[4] Respondent failed to document why he prescribed guanfacine to Patient A rather than Vyvanse.

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[4] Guanfacine is a medication used to treat ADHD and high blood pressure.

16. On or about September 24, 2015, Patient A saw Respondent for an ADHD follow up. Respondent noted that Patient A was unable to get an appointment with psychiatry for months. He also noted that Patient A's symptoms were re-assessed at this visit and that she was "doing great with the current dose." Nevertheless, Respondent gave Patient A two prescriptions increasing her Vyvanse medications. Patient A was to take a 70 mg capsule in the morning and a 60 mg capsule in the afternoon. Respondent failed to document why he switched Patient A back to Vyvanse from guanfacine, and why he increased Patient A's daily dose from 90 mg to 130 mg, which was 60 mg over the maximum recommended dose.

17. On or about November 2, 2015, Patient A saw Respondent for a follow up. Patient A told Respondent that she had stopped taking Vyvanse a week and a half prior. She was experiencing significant sleep deprivation from pain associated with a ruptured ovarian cyst. Respondent documented that "it had been reported by patient's peers that she has expressed some irregular behavior." Respondent noted that he had conferred with another physician at the practice, and that he "strongly recommended [Patient A] discontinue [V]yvanse altogether, pending a follow-up with [Patient A]'s psychiatrist."

18. Respondent committed negligence his care and treatment of Patient A which includes, but is not limited to, the following: (1) Respondent failed to document why he increased Patient A's Vyvanse dose despite her reports that her symptoms were being effectively managed; and (2) Respondent prescribed Patient A Vyvanse over the maximum recommended dose of 70 mg daily.

Patient B

19. On or about April 16, 2015, Respondent saw Patient B, a fifty-nine year old male, for a follow up visit. At that time, Patient B had already established care at the clinic where Respondent worked. Patient B was being treated for multiple problems including, but not limited to, depression, human immunodeficiency virus (HIV), type 2 diabetes mellitus, and chronic obstructive pulmonary disease (COPD). Patient B was taking anti-retroviral medications, hypertension medications, medications to manage his diabetes, anti-depressants, and a benzodiazepine. Patient B was a former methamphetamine user. In this visit's progress note, Respondent wrote that Patient B had been diagnosed with ADHD in childhood, but had not yet

been treated by the clinic. Respondent wrote that Patient B was experiencing ADHD symptoms, but did not document what those symptoms were, other than saying that Patient B had to drop out of a graduate school class mid-term. Respondent diagnosed Patient B with ADHD and prescribed Vyvanse starting at a 20 mg daily dose. Patient B filled the prescription for 30 capsules of 20 mg Vyvanse on or about April 21, 2015.

20. On or about May 14, 2015, Respondent saw Patient B for a medication review and follow up. Patient B reported that he had started taking Vyvanse and that he felt somewhat irritable, but he was also more aware of what was going on around him. Respondent increased Patient B's Vyvanse dose to 40 mg daily.

21. On or about May 21, 2015, Respondent saw Patient B for a medication review and follow up. Respondent documented that Patient B was taking 20 mg of Vyvanse in the morning, in contradiction to his previous prescribing instructions to take 40 mg. Respondent wrote that Patient B felt that his focus was improved, but that it was not lasting throughout the day. Once again, Respondent prescribed Vyvanse at a 40 mg daily dose. Patient B filled the prescription for 60 capsules of 20 mg Vyvanse on or about May 22, 2015.

22. On or about June 4, 2015, Respondent saw Patient B for a follow up. Respondent documented that Patient B was taking 40 mg of Vyvanse in the morning, and that his irritability had decreased. Patient B reported that the effects of the medication wore off around noon to 2 p.m., when he noticed he was getting easily distracted. Respondent increased Patient B's daily Vyvanse dose to 40 mg in the morning and 20 mg at 11:30 a.m. or 12:30 p.m.

23. On or about June 23, 2015, Respondent saw Patient B for a follow up. Patient B reported that he was doing well on Vyvanse and that he was better able to focus on his homework. Respondent reviewed Patient B's recent visit with an ophthalmologist, in which the ophthalmologist diagnosed Patient B with an amaurosis fugax[5] in the left eye, which might have resulted from cardiovascular disease. Respondent noted that Patient B was being treated by a cardiologist. Respondent gave Patient B prescriptions for Vyvanse with the instruction to take 40

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[5] Amaurosis fugax is a transient loss of vision.

mg in the morning and 20 mg in the afternoon. These prescriptions for a one-month supply were filled on or about June 23, 2015 and June 26, 2015.

24. On or about August 4, 2015, Patient B filled a prescription for 30 capsules of 40 mg Vyvanse which was written by Respondent. Respondent's records do not include this prescription.

25. On or about August 13, 2015, Respondent saw Patient B for a follow up visit. Respondent gave Patient B a 30-day refill for 20 mg Vyvanse, which Patient B filled on or about the same day.

26. On or about September 4, 2015, Patient B filled a prescription for 30 capsules of 40 mg Vyvanse that was written by Respondent. Respondent's records do not include this prescription.

27. On or about September 17, 2015, Patient B filled a prescription for 30 capsules of 20 mg Vyvanse that was written by Respondent. Respondent's records do not include this prescription.

28. On or about October 21, 2015, Respondent saw Patient B for a follow up. Patient B reported that he was only taking 20 mg of Vyvanse in the morning. Respondent documented that he gave Patient B prescriptions for Vyvanse to last until November 5, 2015, which was when he was receiving his next order of medications. Patient B was to let Respondent know in seven to ten days whether he would take 60 mg or 40 mg daily. Patient B filled prescriptions for 15 capsules each of 20 mg and 40 mg Vyvanse on or about the same day.

29. On or about November 2, 2015, Patient B filled a prescription for 30 capsules of 60 mg Vyvanse that was written by Respondent. Respondent's records do not include this prescription.

30. On or about December 2, 2015, Respondent saw Patient B for a follow up. Respondent noted that Patient B was "doing excellent[ly]" on Vyvanse, and was taking 60 mg in the morning and 20 mg at 3:00 p.m. Respondent provided no medical indication or justification for increasing Patient B's daily Vyvanse dose to 80 mg, which is 10 mg above the drug

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manufacturer's maximum daily dose. Patient B filled prescriptions for 30 capsules each of 60 mg and 20 mg Vyvanse on or about the same day.

31. On or about December 23, 2015, Respondent saw Patient B for a follow up. Respondent documented that Patient B was taking 80 mg of Vyvanse in the morning, occasionally 20 mg at noon, and 20 mg at 4:00 p.m. for a total of 120 mg per day. Respondent adjusted Patient B's use to 70 mg in the morning and 40 mg at noon. Once again, Respondent provided no medical indication of justification for prescribing 110 mg of Vyvanse daily, which is 40 mg above the drug manufacturer's maximum daily dose. Respondent gave Patient B prescriptions for 30 capsules each of 70 mg and 40 mg Vyvanse.

32. On or about December 28, 2015, Patient B filled the prescription for 30 capsules of 70 mg Vyvanse that was written by Respondent.

33. On or about January 6, 2016, Patient B filled the prescription for 30 capsules of 40 mg Vyvanse that was written by Respondent.

34. On or about February 3, 2016, Patient B filled the prescription for 30 capsules of 70 mg Vyvanse that was written by Respondent.

35. On or about February 5, 2016, Patient B filled the prescription for 30 capsules of 40 mg Vyvanse that was written by Respondent.

36. On or about February 12, 2016, Respondent saw Patient B for a follow up. Respondent documented that Patient B's ADHD was "well controlled on current dose of [V]yvanse." Once again, Respondent provided no medical indication of justification for prescribing 110 mg of Vyvanse daily, which is 40 mg above the drug manufacturer's maximum daily dose. He noted that the Vyvanse prescriptions were out of sync by 10 to 14 days. Respondent gave Patient B two prescriptions dated February 14, 2016 for 30 capsules of 70 mg and 40 mg Vyvanse.

37. On or about March 4, 2016, April 2, 2016, and May 5, 2016, Patient B continued to fill monthly prescriptions for 30 capsules each of 70 mg and 40 mg Vyvanse, which were written by Respondent.

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38. Respondent committed negligence his care and treatment of Patient B which includes, but is not limited to, the following: (1) Respondent failed to document why he increased Patient B's Vyvanse dose to 110 mg per day; and (2) Respondent prescribed Patient B Vyvanse over the maximum recommended dose of 70 mg daily.

SECOND CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

39. Respondent has subjected his Physician Assistant License No. PA 23278 to disciplinary action under sections 3527, 2227 and 2266, of the Code, in that he has failed to maintain adequate and accurate records for Patients A and B, as more particularly alleged in paragraphs 11 through 38, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician Assistant License No. PA 23278, issued to Respondent Gennady Nosovitsky, P.A.;

2. Ordering Respondent Gennady Nosovitsky, P.A., to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Ordering Respondent Gennady Nosovitsky, P.A., if placed on probation, to pay the Board the costs of probation monitoring pursuant to section 3527, subdivision (f), of the Code; and

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

DATED: June 28, 2019

MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant