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

In the Matter of the Accusation Against: Oliver Strong Osborn, M.D. Physician's & Surgeon's Certificate No G78700 Respondent	Case No. 800-2017-036221

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 March 10, 2021.

IT IS SO ORDERED February 8, 2021

MEDICAL BOARD OF CALIFORNIA

By: Richard E. Thorp MD

Richard E. Thorp, M.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **OLIVER STRONG OSBORN, M.D.** **1100 Larkspur Landing Circle** **Suite 10** **Larkspur CA 94939** **Physician's and Surgeon's Certificate No. G 78700** Respondent.	Case No. 800-2017-036221 OAH No. 2020070541 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). This matter was brought and maintained in the official capacity of the Board's Executive Director, who is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Mary Cain-Simon, Supervising Deputy Attorney General.

2. Respondent Oliver Strong Osborn, M.D. (Respondent) is represented in this proceeding by attorney Marc G. Cowden, whose address is: 1033 Willow Street, San Jose, California 95125.

3. On April 20, 1994, the Board issued Physician's and Surgeon's Certificate No. G 78700 to Oliver Strong Osborn, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-036221, and will expire on March 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-036221 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 13, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-036221 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

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

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

CULPABILITY

8. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-036211. 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. 800-2017-036211 and that he has thereby subjected

his Physician's and Surgeon's Certificate 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

9. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

10. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. issued to Respondent Oliver Strong Osborn, M.D., shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2266. This Public Reprimand is issued in connection with Respondent's record keeping in regard to prescribing to two patients as set forth in Accusation No. 800-2017-036221 (exhibit A).

1. 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 approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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. Failure to enroll in, participate in , or successfully complete the medical record course within the designated time period shall constitute unprofessional conduct and grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Marc Cowden. 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: 11/13/2020

OLIVER STRONG OSBORN, M.D.
Respondent

I have read and fully discussed with Respondent Oliver Strong Osborn, 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: 11/13/20

MARC COWDEN
Attorney for Respondent

ENDORSEMENT

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

DATED: 12.28.2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

/s/ Mary Cain-Simon

MARY CAIN-SIMON
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-036221

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

In the Matter of the Accusation Against: **Oliver Strong Osborn, M.D.** **1100 Larkspur Landing Circle** **Suite 10** **Larkspur CA 94939** **Physician's and Surgeon's Certificate No. G 78700,** Respondent.	Case No. 800-2017-036221 **ACCUSATION**

PARTIES

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

2. On April 20, 1994, the Medical Board issued Physician's and Surgeon's Certificate Number G 78700 to Oliver Strong Osborn, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2020, unless renewed.

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JURISDICTION

3. This 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 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 Board deems proper.

5. Section 2234 of the Code, states:

"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:

"(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.

"(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 that would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. Section 2242 of the Code states, in pertinent part:

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

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."

DEFINITIONS

PERTINENT CONTROLLED SUBSTANCES/DANGEROUS DRUGS

8. Alprazolam (Xanax) is a psychotropic triazolo-analogue of the benzodiazepine class of central nervous system-active compounds. Xanax is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a Schedule IV controlled substance and narcotic as defined by section 11057, subdivision (d) of the Health and Safety Code, and a Schedule IV controlled substance as defined by Section 1308.14 (c) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022. Xanax has a central nervous system depressant effect and patients should be cautioned about the simultaneous ingestion of alcohol and other CNS depressant drugs during treatment with Xanax.

9. Diazepam (Valium) is a psychotropic drug for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a dangerous drug as defined in

section 4022 and a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. Diazepam can produce psychological and physical dependence and it should be prescribed with caution particularly to addiction-prone individuals (such as drug addicts and alcoholics) because of the predisposition of such patients to habituation and dependence. Valium is available in 5 mg. and 10 mg. tablets. The recommended dosage is 2 to 10 mg. 2 to 4 times daily.

10. Hydrocodone w/APAP (hydrocodone with acetaminophen) tablets are produced by several drug manufacturers under trade names such as Vicodin, Norco or Lortab. Hydrocodone bitartrate is a semisynthetic narcotic analgesic, a dangerous drug as defined in section 4022 of the Business and Professions Code, and a schedule II controlled substance and narcotic as defined by section 11055, subdivision (e) of the Health and Safety Code. Repeated administration of hydrocodone over a course of several weeks may result in psychic and physical dependence. The usual adult dosage is one tablet every four to six hours as needed for pain. The total 24 hour dose should not exceed 6 tablets.

11. Indomethacin is used as an analgesic, antipyretic, and anti-inflammatory drug to treat a wide range of pain and inflammatory conditions such as gout, pericarditis and several arthritis conditions. Side effects include constipation as well as vasodilatory and natriuretic effects in the kidney that can lead to salt and water retention, and renal failure. Indomethacin is a dangerous drug as defined in section 4022 of the Business and Professions Code.

12. Lisinopril is an angiotensin-converting enzyme (ACE) inhibitor that prevents the conversion of angiotensin I to angiotensin II which results in decreased vasopressor activity and aldosterone secretion. It is used in the treatment of hypertension, congestive heart failure, diabetic nephropathy, and post-myocardial infarction. Indomethacin has a serious drug interaction with lisinopril. Coadministration may result in significant decrease in renal function. These two medications should not be prescribed simultaneously. Lisinopril is a dangerous drug as defined in section 4022 of the Business and Professions Code.

13. Trazodone hydrochloride, a triazolopyridine derivative antidepressant, sometimes marketed under the trade name Desyrel, may enhance the response to alcohol and other CNS

depressants. Trazodone is a dangerous drug within the meaning of Business and Professions Code section 4022.

14. Zolpidem tartrate (Ambien), is a non-benzodiazepine hypnotic of the imidazopyridine class. It is a dangerous drug as defined in section 4022 and a schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. It is indicated for the short-term treatment of insomnia. It is a central nervous system depressant and should be used cautiously in combination with other central nervous system depressants. Any central nervous system depressant could potentially enhance the CNS depressive effects of zolpidem. It should be administered cautiously to patients exhibiting signs or symptoms of depression because of the risk of suicide. Because of the risk of habituation and dependence, individuals with a history of addiction to or abuse of drugs or alcohol should be carefully monitored while receiving zolpidem. The recommended dosage for adults is 10 mg. immediately before bedtime.

FACTS

At all times relevant to this matter, Respondent was licensed and practicing medicine in California.

PATIENT 1[1]

15. Between 2015 and 2017, Respondent served as primary care physician for Patient 1, a 65+ year-old man, and saw him around six times. During that time, Patient 1 suffered chronic neck and back pain, and took hydrocodone with acetaminophen and Celebrex. Respondent prescribed him:

- Hydrocodone/acetaminophen for pain;
- Zolpidem for insomnia; and
- Alprazolam, for unclear reasons.

16. Respondent wrote hand-written prescriptions to Patient 1 for hydrocodone 5 mg/acetaminophen 325 mg, 60 pills, about every month, beginning in January 2015 through June 2018. Respondent did not obtain, or document that he obtained, informed consent from Patient 1

[1] The patients are designated in this document as Patients 1 and 2 to protect their privacy. Respondent knows the names of the patients and can confirm their identities through discovery.

regarding the risks of opioid medications, at any time during the period when Respondent prescribed opioids to Patient 1. Respondent did not document each monthly prescription for hydrocodone in the electronic medical records.

17. Respondent prescribed alprazolam to Patient 1, .5 mg., 30 pills, about once per month from January 28, 2015 through October 8, 2015, and on January 28, 2016, August 15, 2016, April 24, 2017 and November 8, 2017. These prescriptions were not documented in the electronic medical records.

18. Respondent gave hand-written prescriptions for zolpidem 10 mg., 30 pills, to Patient 1, on September 11, 2015 and February 26, 2016. These prescriptions were not documented in the electronic medical records.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts and/or Incompetence and/or Prescribing without Appropriate Prior Exam/Medical Indication Regarding Patient 1, and Inadequate Medical Recordkeeping)

19. Respondent, Oliver Strong Osborn, M.D., is subject to disciplinary action for unprofessional conduct under sections 2234(c), and/or 2234(d), and/or 2242, and/or 2266, in that Respondent's overall conduct, acts and omissions, with regard to Patient 1 constitute repeated acts of negligence and/or incompetence and/or prescribing without an appropriate prior examination or medical indication, and inadequate medical recordkeeping, as more fully described herein below.

20. Complainant incorporates paragraphs 15-18 as though fully set forth.

21. The standard of care for prescribing opioid medication to a patient requires that a physician must inform the patient of the risks of opioid medication and obtain the patient's informed consent. The standard of care requires that a physician maintain accurate and complete medical records documenting, among other things, that informed consent has been obtained regarding the risks and benefits of a treatment plan involving opioid medication, and that the prescriptions be documented in the medical records.

22. From 2015-2017, Respondent failed to inform or document that he discussed the risks of opioid medication with Patient 1.

23. Respondent failed to discuss or document that he had obtained informed consent from Patient 1, in regard to the risks and benefits of opioid medication.

24. From 2015-2018, Respondent wrote monthly handwritten prescriptions to Patient 1 for hydrocodone without documenting them in the electronic medical records.

25. The standard of care for safe benzodiazepine and sedative-hypnotic prescribing includes having an adequate history and physical examination, an assessment and treatment plan with objectives, informed consent regarding the risks and benefits of the treatment plan and accurate medical records documenting these elements.

26. Respondent did not take or document an adequate history regarding the need for Patient 1 to take benzodiazepine and sedative-hypnotic medications. Respondent did not have or document an assessment and treatment plan for either anxiety or insomnia. Respondent did not obtain informed consent from Patient 1 regarding the risks of simultaneous prescriptions for zolpidem and alprazolam.

27. Respondent failed to document the refills of alprazolam and zolpidem in the medical records.

PATIENT 2

28. Patient 2 was a retired 63+ year-old gentleman, who used to drive a truck, delivering newspapers. Respondent was Patient 2's primary care physician and saw him around nine times between April 2015 and November 2017. Respondent prescribed Patient 2 medications including hydrocodone/acetaminophen and indomethacin. Patient 2 had a history of alcoholism, anemia since 2006, hypertension (on lisinopril), hyperlipidemia, prostate cancer, epileptic disorder on Depakote, gout, and arthritis. Patient 2 smoked 2 packs of cigarettes per day.

29. Patient 2 used the indomethacin episodically for gout. In November 2015 Respondent warned Patient 2 that indomethacin was fine for occasional use but not for regular chronic use. In 2016 Respondent tapered Patient 2 off hydrocodone with acetaminophen and prescribed Patient 2 more indomethacin than previously for pain.

30. In July 2016 Patient 2 was seen in an emergency department for acute renal failure. He was hypotensive. His serum transaminases and alkaline phosphatase were elevated, and his magnesium level was low. A past history of alcohol abuse was noted but blood alcohol level was non-detectable. Patient 2 however reported a recent "two day EtOH bender."

31. Respondent increased the amount of indomethacin he prescribed to Patient 2, so that from late 2015 through July 2017, Respondent was prescribing at least 60 pills per month. In June and July of 2017, Respondent prescribed 60 indomethacin pills every 2 weeks. Respondent's last prescription for indomethacin to Patient 2 was on July 18, 2017.

32. In February of 2017, Respondent recommended that Patient 2 take Aleve[2] for cervical nerve root pain. At that time, Patient 2 was also taking indomethacin.

33. In June of 2017 Respondent "escribed" trazodone, after Patient 2 had called and asked for a prescription for something to help with sleep. The trazodone dose was increased from 50 mg to 100 mg at bedtime later in June, 2017. Insomnia was never listed as an active problem for Patient 2 in the Respondent's electronic medical records, and the record contains no assessment or evaluation of the patient's complaint of insomnia

34. On August 14, 2017 Respondent saw Patient 2 for a chief complaint of constipation, but Respondent wrote that Patient 2 was not feeling well overall. Patient 2's blood pressure was extremely elevated at 210/110. Respondent ordered labs, and told Patient 2 to stop using indomethacin. Respondent wrote in the records that he warned Patient 2, regarding the indomethacin: "it's going to kill you if you stay on it."

35. In November of 2017 Patient 2 had severe stress and Respondent prescribed him a small amount of diazepam for 3 months. The first prescription for diazepam was a telephone order with instructions to take "1-2 tabs BID prn anxiety." The second prescription for diazepam was a typed prescription signed by Respondent with instructions to take "1-2 tabs BID prn anxiety." The third prescription for diazepam was a typed prescription signed by Respondent

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[2] Aleve is an over-the-counter non-steroidal anti-inflammatory medication, the generic name for which is naproxen sodium. Naproxen is used to relieve pain from conditions such as headache, muscle aches, and tendonitis. It also reduces pain, swelling, and joint stiffness caused by arthritis, bursitis, and gout attacks.

with the following instructions: "Take 1 tab daily if needed for anxiety. 30 pills must last 30 days."

36. Respondent wrote the first trazodone prescription to Patient 2 in June, 2017 for 50 mg at bedtime. Prescriptions for trazodone later in 2017 provided Patient 2 with up to a 90-day supply at a time, with instructions to take two 50 mg tablets at bedtime.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence and/or Incompetence and/or Prescribing without Appropriate Prior Exam/Medical Indication Regarding Patient 2, and Inadequate Medical Recordkeeping)

37. Respondent, Oliver Strong Osborn, M.D., is subject to disciplinary action for unprofessional conduct under sections 2234(c), and/or 2234(d), and/or 2242, and/or 2266, in that Respondent's overall conduct, acts and omissions, with regard to Patient 2 constitute repeated acts of negligence and/or incompetence and/or prescribing without an appropriate prior examination or medical indication, and inadequate medical recordkeeping, as more fully described herein below.

38. Complainant incorporates paragraphs 28-36 as though fully set forth.

39. The standard of care requires that physicians prescribe drugs safely, while being aware of potential interactions between drugs and side effects. The standard of care also requires that physicians warn patients of the risks of prescribed medications with their patients.

40. Prescribing indomethacin in combination with lisinopril showed a lack of knowledge on the part of Respondent.

41. During 2016-2017, Respondent failed to inform Patient 2 of the risks of chronic indomethacin use, including renal failure.

42. During 2016-2017, Respondent did not inform, or did not document having informed, Patient 2 of the risks of combining indomethacin and lisinopril.

43. During 2016-2017, Respondent did not inform or document any discussion with Patient 2 about the risks of combining Aleve with indomethacin.

44. During 2016-2017, Respondent prescribed Patient 2 trazodone without obtaining or documenting informed consent regarding possible side effects of trazodone.

45. During 2016-2017, Respondent issued ongoing prescriptions of trazodone without periodic review regarding the need for, effectiveness or occurrence of side effects with, the medication.

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's and Surgeon's Certificate Number G 78700, issued to Oliver Strong Osborn, M.D.;

2. Revoking, suspending or denying approval of Oliver Strong Osborn, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Oliver Strong Osborn, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED:
August 13, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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