

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

**In the Matter of the First Amended
Accusation Against:**

Clara Lucy Polak, M.D.

**Physician's and Surgeon's
Certificate No. A 66649**

Case No.: 800-2018-047958

Respondent.

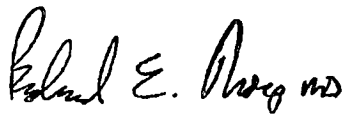
DECISION

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

This Decision shall become effective at 5:00 p.m. on August 24, 2022.

IT IS SO ORDERED: July 25, 2022.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 KEITH C. SHAW
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8 *Attorneys for Complainant*

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10
11 **BEFORE THE**
12 **MEDICAL BOARD OF CALIFORNIA**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

15 In the Matter of the First Amended Accusation
Against:

16 **CLARA LUCY POLAK, M.D.**
17 480 4th Ave., Ste. 202
Chula Vista, CA 91910

18 **Physician's and Surgeon's Certificate**
19 **No. A 66649**

20 Respondent.

Case No. 800-2018-047958

OAH No. 2021100094

21 **STIPULATED SETTLEMENT AND**
22 **DISCIPLINARY ORDER**

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

24 **PARTIES**

25 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
26 California (Board). He brought this action solely in his official capacity and is represented in this
27 matter by Rob Bonta, Attorney General of the State of California, by Keith C. Shaw, Deputy
28 Attorney General.

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in First Amended
3 Accusation No. 800-2018-047958, if proven at a hearing, constitute cause for imposing discipline
4 upon her Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent gives up her right to contest that, at a hearing, Complainant
7 could establish a *prima facie* case with respect to the charges and allegations contained in the
8 First Amended Accusation.

9 11. Respondent agrees that if she ever petitions for early termination or modification of
10 probation, or if an accusation and/or petition to revoke probation is filed against her before the
11 Medical Board of California, all of the charges and allegations contained in First Amended
12 Accusation No. 800-2018-047958 shall be deemed true, correct and fully admitted by Respondent
13 for purposes of any such proceeding or any other licensing proceeding involving Respondent in
14 the State of California.

15 12. Respondent agrees that her Physician's and Surgeon's Certificate is subject to
16 discipline and she agrees to be bound by the Board's probationary terms as set forth in the
17 Disciplinary Order below.

18 CONTINGENCY

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

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

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 66649 issued
9 to Respondent Clara Lucy Polak, M.D., is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for four (4) years from the effective date of the Decision on
11 the following terms and conditions:

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

23 2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective
24 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
25 advance by the Board or its designee. Respondent shall provide the approved course provider
26 with any information and documents that the approved course provider may deem pertinent.
27 Respondent shall participate in and successfully complete the classroom component of the course
28 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully

1 complete any other component of the course within one (1) year of enrollment. The prescribing
2 practices course shall be at Respondent's expense and shall be in addition to the Continuing
3 Medical Education (CME) requirements for renewal of licensure.

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

9 Respondent shall submit a certification of successful completion to the Board or its
10 designee not later than 15 calendar days after successfully completing the course, or not later than
11 15 calendar days after the effective date of the Decision, whichever is later.

12 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
13 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
14 advance by the Board or its designee. Respondent shall provide the approved course provider
15 with any information and documents that the approved course provider may deem pertinent.
16 Respondent shall participate in and successfully complete the classroom component of the course
17 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
18 complete any other component of the course within one (1) year of enrollment. The medical
19 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
20 Medical Education (CME) requirements for renewal of licensure.

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

26 Respondent shall submit a certification of successful completion to the Board or its
27 designee not later than 15 calendar days after successfully completing the course, or not later than
28 15 calendar days after the effective date of the Decision, whichever is later.

1 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
2 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
3 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
4 Respondent shall participate in and successfully complete that program. Respondent shall
5 provide any information and documents that the program may deem pertinent. Respondent shall
6 successfully complete the classroom component of the program not later than six (6) months after
7 Respondent's initial enrollment, and the longitudinal component of the program not later than the
8 time specified by the program, but no later than one (1) year after attending the classroom
9 component. The professionalism program shall be at Respondent's expense and shall be in
10 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

11 A professionalism program taken after the acts that gave rise to the charges in the First
12 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
13 the Board or its designee, be accepted towards the fulfillment of this condition if the program
14 would have been approved by the Board or its designee had the program been taken after the
15 effective date of this Decision.

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

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

28 The Board or its designee shall provide the approved monitor with copies of the Decision(s)

1 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
2 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
3 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
4 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
5 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
6 signed statement for approval by the Board or its designee.

7 Within 60 calendar days of the effective date of this Decision, and continuing throughout
8 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
9 make all records available for immediate inspection and copying on the premises by the monitor
10 at all times during business hours and shall retain the records for the entire term of probation.

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

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

22 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar
23 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,
24 the name and qualifications of a replacement monitor who will be assuming that responsibility
25 within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within
26 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
27 notification from the Board or its designee to cease the practice of medicine within three (3)
28 calendar days after being so notified. Respondent shall cease the practice of medicine until a

1 replacement monitor is approved and assumes monitoring responsibility.

2 In lieu of a monitor, Respondent may participate in a professional enhancement program
3 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
4 review, semi-annual practice assessment, and semi-annual review of professional growth and
5 education. Respondent shall participate in the professional enhancement program at Respondent's
6 expense during the term of probation.

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

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

16 7. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
17 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
18 advanced practice nurses.

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

22 9. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
23 ordered to reimburse the Board its costs of investigation and enforcement, including, but not
24 limited to, expert review, amended accusations, legal reviews, joint investigations, and subpoena
25 enforcement, as applicable, in the amount of \$3,655.00. Costs shall be payable to the Medical
26 Board of California. Failure to pay such costs shall be considered a violation of probation.

27 Any and all requests for a payment plan shall be submitted in writing by respondent to the
28 Board.

1 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
2 repay investigation and enforcement costs.

3 10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
4 under penalty of perjury on forms provided by the Board, stating whether there has been
5 compliance with all the conditions of probation.

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

8 11. GENERAL PROBATION REQUIREMENTS.

9 Compliance with Probation Unit

10 Respondent shall comply with the Board's probation unit.

11 Address Changes

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

17 Place of Practice

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

21 License Renewal

22 Respondent shall maintain a current and renewed California physician's and surgeon's
23 license.

24 Travel or Residence Outside California

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

28 In the event Respondent should leave the State of California to reside or to practice

1 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
2 departure and return.

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

6 13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
7 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
8 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
9 defined as any period of time Respondent is not practicing medicine as defined in Business and
10 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
11 patient care, clinical activity or teaching, or other activity as approved by the Board. If
12 Respondent resides in California and is considered to be in non-practice, Respondent shall
13 comply with all terms and conditions of probation. All time spent in an intensive training
14 program which has been approved by the Board or its designee shall not be considered non-
15 practice and does not relieve Respondent from complying with all the terms and conditions of
16 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
17 on probation with the medical licensing authority of that state or jurisdiction shall not be
18 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
19 period of non-practice.

20 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
21 months, Respondent shall successfully complete the Federation of State Medical Board's Special
22 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
23 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
24 Disciplinary Orders and 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 for a Respondent residing outside of California will relieve
28 Respondent of the responsibility to comply with the probationary terms and conditions with the

1 exception of this condition and the following terms and conditions of probation: Obey All Laws;
2 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
3 Controlled Substances; and Biological Fluid Testing..

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

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

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

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

1 18. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
2 a new license or certification, or petition for reinstatement of a license, by any other health care
3 licensing action agency in the State of California, all of the charges and allegations contained in
4 First Amended Accusation No. 800-2018-047958 shall be deemed to be true, correct, and
5 admitted by Respondent for the purpose of any Statement of Issues or any other proceeding
6 seeking to deny or restrict license.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
9 discussed it with my attorney, Robert W. Frank, Esq. I understand the stipulation and the effect it
10 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
11 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
12 Decision and Order of the Medical Board of California.

13
14 DATED: 5/24/2022 Clara Lucy Polak MD
15 CLARA LUCY POLAK, M.D.
16 Respondent

17 I have read and fully discussed with Respondent Clara Lucy Polak, M.D., the terms and
18 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
19 I approve its form and content.

20
21 DATED: 5-25-22 Robert W. Frank
22 ROBERT W. FRANK, ESQ.
23 Attorney for Respondent
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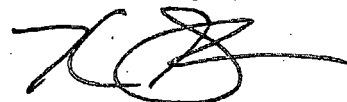
ENDORSEMENT

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

DATED: May 25, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General



KEITH C. SHAW
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-047958

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14 In the Matter of the First Amended Accusation
Against:

Case No. 800-2018-047958

FIRST AMENDED ACCUSATION

15 **CLARA LUCY POLAK, M.D.**
16 **480 4th Ave., Ste. 202**
17 **Chula Vista, CA 91910**

18 **Physician's and Surgeon's Certificate**
No. A 66649

19 Respondent.

20
21 **PARTIES**

22 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
23 official capacity as the Executive Director of the Medical Board of California, Department of
24 Consumer Affairs (Board).

25 2. On or about October 2, 1998, the Board issued Physician's and Surgeon's
26 Certificate No. A 66649 to Clara Lucy Polak, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on June 30, 2022, unless renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Medical Board of California, Department of Consumer Affairs, 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 states:

“(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:

“(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.

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

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1 5. Section 2234 of the Code, states:

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

5 “... .

6 “(b) Gross negligence.

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

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

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

17 “... .”

18 6. Section 725 of the Code states:

19 “(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or
20 administering of drugs or treatment, repeated acts of clearly excessive use of
21 diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or
22 treatment facilities as determined by the standard of the community of licensees is
23 unprofessional conduct for a physician and surgeon, dentist, podiatrist,
24 psychologist, physical therapist, chiropractor, optometrist, speech-language
25 pathologist, or audiologist.

26 “(b) Any person who engages in repeated acts of clearly excessive
27 prescribing or administering of drugs or treatment is guilty of a misdemeanor and
28 shall be punished by a fine of not less than one hundred dollars (\$100) nor more

1 than six hundred dollars (\$600), or by imprisonment for a term of not less than 60
2 days nor more than 180 days, or by both that fine and imprisonment.

3 “(c) A practitioner who has a medical basis for prescribing, furnishing,
4 dispensing, or administering dangerous drugs or prescription controlled substances
5 shall not be subject to disciplinary action or prosecution under this section.

6 “(d) No physician and surgeon shall be subject to disciplinary action pursuant to this
7 section for treating intractable pain in compliance with Section 2241.5.”

8 7. Section 2266 of the Code states:

9 “The failure of a physician and surgeon to maintain adequate and accurate records
10 relating to the provision of services to their patients constitutes unprofessional conduct.”

11 8. Section 2229 of the Code states that the protection of the public shall be the highest
12 priority for the Board in exercising their disciplinary authority. While attempts to rehabilitate a
13 licensee should be made when possible, Section 2229, subdivision (c), states that when
14 rehabilitation and protection are inconsistent, protection shall be paramount.

15 COST RECOVERY

16 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licensee found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
20 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
21 included in a stipulated settlement.

22 PERTINENT DRUGS

23 10. **Clonazepam**, known by the trade name Klonopin, is a centrally acting hypnotic-
24 sedative and benzodiazepine that is a Schedule IV controlled substance pursuant to Health and
25 Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and
26 Professions Code section 4022. When properly prescribed and indicated, it is used to treat seizure
27 disorders and panic disorders. Concomitant use of clonazepam with opioids “may result in
28 profound sedation, respiratory depression, coma, and death.” The Drug Enforcement

1 Administration (DEA) has identified benzodiazepines, such as clonazepam, as a drug of abuse.
2 (Drugs of Abuse, DEA Resource Guide (2011 Edition), at p. 53.)

3 11. **Hydrocodone APAP** (Vicodin, Lortab, and Norco) is a hydrocodone combination of
4 hydrocodone bitartrate and acetaminophen and is a Schedule II controlled substance pursuant to
5 Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to
6 Business and Professions Code section 4022. Schedule II controlled substances are substances
7 that have a currently accepted medical use in the United States, but also have a high potential for
8 abuse, and the abuse of which may lead to severe psychological or physical dependence. When
9 properly prescribed and indicated, HCP's are used for the treatment of moderate to severe pain.
10 In addition to the potential for psychological and physical dependence, there is also the risk of
11 acute liver failure which has resulted in a black box warning being issued by the Federal Drug
12 Administration (FDA).

13 12. **Lorazepam**, known by the trade name Ativan, is used for anxiety and sedation in the
14 management of anxiety disorder for short-term relief from the symptoms of anxiety or anxiety
15 associated with depressive symptoms. It is a dangerous drug as defined in section 4022 and a
16 Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code.
17 Lorazepam is not recommended for use in patients with primary depressive disorders. Sudden
18 withdrawal from lorazepam can produce withdrawal symptoms including seizures.

19 13. **Oxycodone** (Percocet), an opioid analgesic, is a Schedule II controlled substance
20 pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug
21 pursuant to Business and Professions Code section 4022. When properly prescribed and
22 indicated, it is used for the management of moderate to moderately severe pain. The DEA has
23 identified oxycodone, as a drug of abuse. (Drugs of Abuse, A DEA Resource Guide (2011
24 Edition), at p. 41.) The FDA has issued a black box warning for Percocet which warns about,
25 among other things, addiction, abuse and misuse, and the possibility of "life-threatening
26 respiratory distress."

27 14. **Tramadol** is used for the management of moderate to moderately severe pain. It can
28 slow respiration so patients should not use alcohol or other drugs while taking this medication. "It

1 is a Schedule IV controlled substance and narcotic as defined by section 11057 of the Health and
2 Safety Code, and is a dangerous drug as defined in Business and Professions Code section 4022.

3 15. Zolpidem, known by the trade name Ambien, is a Schedule IV controlled substance,
4 and a sedative primarily used to treat insomnia. It is an addictive substance and users should
5 avoid alcohol as serious interactions may occur.

6 FIRST CAUSE FOR DISCIPLINE

7 (Gross Negligence)

8 16. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
9 by section 2234, subdivision (b), of the Code, in that she committed gross negligence in her care
10 and treatment of patients A and B,¹ as more particularly alleged hereinafter:

11 PATIENT A

12 17. Respondent provided primary care treatment for Patient A, a then 37-year-old female,
13 since at least 2009.² The patient presented with numerous medical conditions, including chronic
14 back pain, migraines, obesity, sciatic neuropathy and hypertension. Patient A frequently saw
15 Respondent for pain management and medication renewal. Respondent began prescribing regular
16 prescriptions for tramadol (400 mg daily) on or about October 8, 2015, which continued until on
17 or about August 20, 2018. Respondent also prescribed oxycodone (10 mg) and hydrocodone (7.5
18 mg), each on a single occasion in 2017, and oxycodone on three occasions in 2018, which were in
19 addition to Patient A's regular tramadol prescriptions. The records did not specify the reason
20 oxycodone and hydrocodone were prescribed. ned

21 18. On or about May 29, 2019, Respondent switched Patient A from tramadol to Norco³
22 (40 mg daily) due to her complaints of worsening pain, which continued on a regular basis
23 through approximately August 2020. On the same date, Respondent also started lorazepam due
24

25 ¹ The patients listed in this document are unnamed to protect their privacy. Respondent
26 knows the name of the patients and can confirm their identity through discovery.

27 ² Conduct occurring more than seven years from the filing date of this Accusation is for
28 informational purposes only and is not alleged as a basis for disciplinary action.

1 to Patient A's complaint of stress and anxiety, even though a thorough assessment of her anxiety
2 disorder was not performed.³ Patient A eventually left the practice in early 2021.

3 19. At no time did Respondent conduct a risk stratification for Patient A regarding her
4 risk of drug addiction and aberrancy during treatment with long-term opioid therapy. Moreover,
5 Respondent did not provide proper informed consent discussing the risks and benefits of long-
6 term opioid treatment, nor enter into a signed pain care agreement outlining treatment goals and
7 objectives. Further, Respondent failed to conduct a single urine drug test or CURES query⁴ for
8 Patient A. Respondent also failed to document regular opioid assessments of Patient A that
9 included analgesia, activities of daily life, adverse side effects, aberrant behaviors, and the
10 patient's affect. Lastly, Respondent did not advise Patient A of the increased health risks
11 involved in the concurrent use of opiates and benzodiazepines, nor prescribe appropriate
12 medication in the event of an accidental overdose.⁵

13 20. Respondent committed gross negligence in her care and treatment of Patient A which
14 included, but was not limited to, the following:

- 15 (a) Respondent failed to properly conduct patient risk stratification, er
16 urine toxicology testing, and CURES queries; Respondent
17 prescribed two short-acting narcotics concurrently, and lacked
18 proper documentation of opiate monitoring.

19 **PATIENT B**

20 21. Respondent started primary care treatment for Patient B, a then 42-year-old female, in
21 approximately October 2015 for management of chronic lower back pain, chronic abdominal
22 pain, recurrent headaches, and dental pain. Patient B also suffered from depression and anxiety.

23 ³ Safer medications, like serotonergic antidepressants (SSRI), were not documented as a
24 consideration to treat Patient A's anxiety.

25 ⁴ Beginning October 2, 2018, state law requires all California physicians to consult with
26 CURES before prescribing a Schedule II, III or IV controlled substance to a patient for the first
27 time and at least every four months thereafter if the substance remains part of the treatment. Prior
28 to this date, it was still prudent for physicians to consult CURES to assess for aberrant behavior.

⁵ Naloxone, an antidote to opioid overdose, should have been prescribed to Patient A to
reduce the risk of accidental opioid overdose.

1 Respondent began prescribing Norco (30 mg hydrocodone daily) on or about November 29, 2015,
2 on a recurring monthly basis. While Respondent provided non-opiate recommendations,
3 including nonsteroidal anti-inflammatory drugs and heating pads, she did not offer safer, non-
4 opioid medication such as muscle relaxants or tricyclic antidepressants. Additionally, a referral to
5 physical therapy or chiropractor spine manipulation did not occur, nor did a surgical or pain
6 management consultation.

7 22. In approximately November 2015, Respondent began prescribing lorazepam (2 mg
8 daily) on a recurring monthly basis. Respondent did not document an anxiety or depression
9 screening questionnaire, nor a detailed functional assessment. The progress notes did not include
10 that Patient B was already taking sertraline⁶ for depression and anxiety. Additionally,
11 Respondent began to prescribe regular prescriptions for Ambien (10 mg) soon after at the
12 maximum daily dosage. Between approximately November 2015 and October 2016, Respondent
13 prescribed lorazepam 17 times, including multiple early refills due to Patient B claiming she had
14 "misplaced" her prescription bottles. Due to Respondent failing to check CURES, she missed
15 that Patient B was also receiving regular monthly prescriptions for clonazepam, another
16 benzodiazepine, from a different physician during this same time period. In fact, Respondent
17 began prescribing clonazepam to Patient B concurrent to lorazepam in approximately August
18 2016, further placing her at risk.

19 23. In approximately June 2016, Respondent refused a Norco refill due to her suspicion
20 of narcotic dependency and abuse following Patient B's frequent requests for early refills.
21 Respondent failed to make a referral to drug addiction treatment and mental health experts once
22 she became aware of the patient's drug dependency. Moreover, Respondent shortly resumed
23 monthly Norco prescriptions until Patient B left Respondent's practice in approximately
24 November 2016 due to her inability to obtain even more narcotics.

25 24. During the time that Respondent treated Patient B, she did not conduct a risk
26 stratification, and was thereby unaware of her high risk of drug addiction. Respondent failed to
27 conduct a single urine drug test or CURES review for Patient B, despite evidence of aberrant drug

28 ⁶ Sertraline, better known by the trade name Zoloft, is an SSRI anti-depressant.

1 behavior, including multiple early refill requests. Further, Respondent also failed to documentⁱⁿ
2 regular opioid assessments of Patient B that included analgesia, activities of daily life, adverse
3 side effects, aberrant behaviors, and the patient's affect. Respondent also did not refer Patient B^{medic}
4 to mental health for treatment of her increasing anxiety and tapering off benzodiazepine therapy.

5 25. At no time did Respondent provide Patient B with proper informed consent
6 discussing the risks and benefits of long-term opioid treatment, nor enter into a signed pain care
7 agreement outlining treatment goals and objectives. Respondent did not advise Patient B of the
8 increased health risks involved in the concurrent use of opiates and benzodiazepines, nor
9 prescribe naloxone in the event of an accidental overdose. In a later interview, Respondent
10 admitted that she did not document the daily morphine equivalent dosage (MED) and admitted
11 that she was unfamiliar in calculating the MED, which contributes to the safe prescribing of
12 opiates.

13 26. Respondent committed gross negligence in her care and treatment of Patient B which
14 included, but was not limited to, the following:

- 15 (a) Respondent failed to properly conduct patient risk stratification,
16 urine toxicology testing, and CURES queries; Respondent failed
17 to recognize the patient's elevated addiction risks and refer for
18 drug treatment; Respondent failed to prescribe naloxone antidote,
19 and lacked proper documentation of opiate monitoring; and
20 (b) Respondent failed to conduct a thorough evaluation for anxiety, failed
21 to prescribe safer psychotropic medications, failed to make a mental
22 health referral for anxiety, failed to recognize the patient's
23 benzodiazepine addiction and that prescribing two benzodiazepines
24 concurrently significantly increased the risk of fatal overdose.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 27. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
4 defined by section 2234, subdivision (c), of the Code, in that she committed repeated negligent
5 acts in her care and treatment of patients A and B, as more particularly alleged herein.

6 **PATIENT A**

7 28. Respondent committed repeated negligent acts in her care and treatment of Patient A
8 which included, but was not limited to, the following:

- 9 (a) Paragraphs 16 through 26, above, are hereby incorporated by reference
10 and realleged as if fully set forth herein;
- 11 (b) Respondent failed to perform an adequate anxiety assessment and
12 prescribe safer anti-anxiety medications;
- 13 (c) Respondent improperly prescribed an opiate and benzodiazepine
14 concurrently that exposed the patient to unnecessary risk, and failed to
15 consider a safer medication; and
- 16 (d) Respondent failed to provide informed consent regarding long-term
17 opiate treatment, and failed to have Patient A enter into a pain care
18 agreement.

19 **PATIENT B**

20 29. Respondent committed repeated negligent acts in her care and treatment of Patient B
21 which included, but was not limited to, the following:

- 22 (a) Paragraphs 16 through 26, above, are hereby incorporated by reference
23 and realleged as if fully set forth herein;
- 24 (b) Respondent failed to offer additional non-opiate medications and
25 treatment;
- 26 (c) The concurrent prescription of opiates, benzodiazepines and sedatives
27 placed the patient at risk of fatal accidental overdose;
- 28

- 1 (d) Respondent failed to start Patient B on a lower dose of Ambien and
2 increased the health risks by combining it with an opiate and
3 benzodiazepine; and
4 (e) Respondent failed to provide informed consent regarding long-term
5 opiate treatment, and failed to have Patient B enter into a pain care
6 agreement.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Repeated Acts of Clearly Excessive Prescribing)**

9 30. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
10 defined by section 725, of the Code, in that she has committed repeated acts of clearly excessive
11 prescribing of drugs or treatment to patients A and B, as determined by the standard of the
12 community of physicians, as more particularly alleged in paragraphs 16 through 29, above, which
13 are hereby incorporated by reference and realleged as if fully set forth herein.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Maintain Adequate and Accurate Records)**

16 31. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
17 defined by section 2266, of the Code, in that she failed to maintain adequate and accurate records
18 regarding her care and treatment of patients A and B, as more particularly alleged in paragraphs
19 16 through 30, above, which are hereby incorporated by reference and realleged as if fully set
20 forth herein.

21 **PRAYER**

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

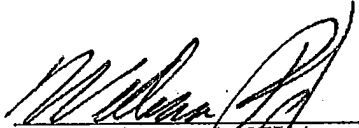
- 24 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 66649, issued^{which}
25 to Clara Lucy Polak, M.D.;
26 2. Revoking, suspending or denying approval of Clara Lucy Polak, M.D.'s authority to
27 supervise physician assistants and advanced practice nurses;

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1 3. Ordering Clara Lucy Polak, M.D., to pay the Board the costs of the investigation and
2 enforcement of this case, and if placed on probation, to pay the Board the costs of probation
3 monitoring; and

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

5
6 DATED: APR 22 2022



WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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