

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

In the Matter of the Accusation
Against:

Kenneth Warren Carr, M.D.

Physician's and Surgeon's
Certificate No. G 40398

Case No.: 800-2020-072117

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 February 23, 2024.

IT IS SO ORDERED: January 26, 2024.

MEDICAL BOARD OF CALIFORNIA



Lauri Rose Lubiano, J.D. , Chair
Panel A

1 ROB BONTA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 TESSA L. HEUNIS
Deputy Attorney General
4 State Bar No. 241559
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9403
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

14 **KENNETH WARREN CARR, M.D.**
15 **6653 Thrasher Pl**
Carlsbad, CA 92011-2639

16 **Physician's and Surgeon's Certificate No. G**
17 **40398**

18 Respondent.

Case No. 800-2020-072117

OAH No. 2023080704

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

21 **PARTIES**

22 1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Tessa L. Heunis, Deputy
25 Attorney General.

26 2. Respondent Kenneth Warren Carr, M.D. (Respondent) is represented in this
27 proceeding by attorney Earll M. Pott, Esq., whose address is: 501 West Broadway, Ste. 600,
28 San Diego, CA 92101.

3. On or about August 3, 1979, the Board issued Physician's and Surgeon's Certificate No. G 40398 to 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. 800-2020-072117, and will expire on January 31, 2025, unless renewed.

JURISDICTION

4. On June 15, 2023, Accusation No. 800-2020-072117 was filed before the Board and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on June 15, 2023. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2020-072117 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2020-072117. Respondent has also carefully read, fully discussed with his counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

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. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2020-072117.

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9. Respondent agrees that his Physician's and Surgeon's Certificate No. G 40398 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. 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.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2020-072117 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

12. 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.

13. 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

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 40398 issued to Respondent Kenneth Warren Carr, M.D. is revoked. However, the revocation is stayed and

Respondent is placed on probation for thirty-five (35) months from the effective date of the Decision and Order on the following terms and conditions:

1. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

2. 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.

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

A professionalism program 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 program would have been approved by the Board or its designee had the program 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 program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and *locum tenens* registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to

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Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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

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

7. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, legal review, investigation, as applicable, in the amount of \$24,541.80 (twenty-four thousand five hundred forty-one and 80/100 dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within eighteen (18) months of the effective date of the Order and by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs, including expert review costs.

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

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

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1 9. GENERAL PROBATION REQUIREMENTS.

2 Compliance with Probation Unit

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

4 Address Changes

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

10 Place of Practice

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

14 License Renewal

15 Respondent shall maintain a current and renewed California physician's and surgeon's
16 license.

17 Travel or Residence Outside California

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

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

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

27 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
28 its designee in writing within 15 calendar days of any periods of non-practice lasting more than

1 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
2 defined as any period of time Respondent is not practicing medicine as defined in Business and
3 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
4 patient care, clinical activity or teaching, or other activity as approved by the Board. If
5 Respondent resides in California and is considered to be in non-practice, Respondent shall
6 comply with all terms and conditions of probation. All time spent in an intensive training
7 program which has been approved by the Board or its designee shall not be considered non-
8 practice and does not relieve Respondent from complying with all the terms and conditions of
9 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
10 on probation with the medical licensing authority of that state or jurisdiction shall not be
11 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
12 period of non-practice.

13 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
14 months, Respondent shall successfully complete the Federation of State Medical Boards' Special
15 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
16 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
17 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

20 Periods of non-practice for a Respondent residing outside of California will relieve
21 Respondent of the responsibility to comply with the probationary terms and conditions with the
22 exception of this condition and the following terms and conditions of probation: Obey All Laws;
23 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
24 Controlled Substances; and Biological Fluid Testing..

25 12. COMPLETION OF PROBATION. Respondent shall comply with all financial
26 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
27 completion of probation. This term does not include cost recovery, which is due within eighteen
28 (18) months of the effective date of the Order, by a payment plan approved by the Medical Board,

1 and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be
2 fully restored.

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

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

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

25 16. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
26 a new license or certification, or petition for reinstatement of a license, by any other health care
27 licensing action agency in the State of California, all of the charges and allegations contained in
28 Accusation No. 800-2020-072117 shall be deemed to be true, correct, and admitted by

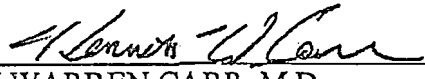
Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Earll M. Pott, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate G 40398. Having the benefit of counsel, 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:

November 24, 2023



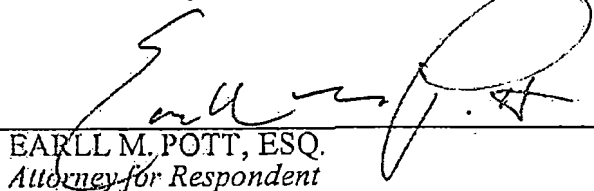
KENNETH WARREN CARR, M.D.

Respondent

I have read and fully discussed with Respondent Kenneth Warren Carr, 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:

11/15/2023



EARLL M. POTT, ESQ.

Attorney for Respondent

ENDORSEMENT

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

DATED: November 16, 2023

Respectfully submitted,

ROB BONTA

Attorney General of California

MATTHEW M. DAVIS

Supervising Deputy Attorney General



TESSA L. HEUNIS

Deputy Attorney General

Attorneys for Complainant

1 ROB BONTA
Attorney General of California
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Supervising Deputy Attorney General
3 TESSA L. HEUNIS
Deputy Attorney General
4 State Bar No. 241559
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P.O. Box 85266
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10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
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13 In the Matter of the Accusation Against:

Case No. 800-2020-072117

14 **Kenneth Warren Carr, M.D.**
15 **6653 Thrasher Pl**
Carlsbad, CA 92011-2639

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. G 40398,**

18 Respondent.

19
20 **PARTIES**

21 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
22 the Interim Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about August 3, 1979, the Medical Board issued Physician's and Surgeon's
25 Certificate No. G 40398 to Kenneth Warren Carr, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on January 31, 2025, 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 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

...

5. Section 2220 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes ...

6. 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.

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

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

5 ...

6 STATUTORY PROVISIONS

7 7. Section 2234 of the Code states:

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

10 (a) Violating or attempting to violate, directly or indirectly, assisting in or
11 abetting the violation of, or conspiring to violate any provision of this chapter.

12 (b) Gross negligence.

13 (c) Repeated negligent acts. To be repeated, there must be two or more
14 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.

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

17 (2) When the standard of care requires a change in the diagnosis, act, or
18 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
19 licensee's conduct departs from the applicable standard of care, each departure
constitutes a separate and distinct breach of the standard of care.

20 ...

21 8. Section 2266 of the Code states:

22 The failure of a physician and surgeon to maintain adequate and accurate
23 records relating to the provision of services to their patients constitutes unprofessional
conduct.

24 9. Section 4021 of the Code states:

25 "Controlled substance" means any substance listed in Chapter 2 (commencing
26 with Section 11053) of Division 10 of the Health and Safety Code.

27 ////

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10. Section 4022 of the Code states:

“Dangerous drug” ... means any drug ... unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.

...

(c) Any other drug ... that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DEFINITIONS

12. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.¹

13. As used herein, the terms below will have the following meanings:

13.1. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. The Drug Enforcement Administration (DEA) has identified oxycodone as a drug of abuse. (Drugs of Abuse, A DEA Resource Guide (2020 Edition), at p. 59.) The risk of respiratory depression and overdose is increased with the concomitant use of benzodiazepines or when prescribed to patients with pre-existing respiratory depression.

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¹ *Shea v. Board of Medical Examiners*, (1978) 81 Cal.App.3d 564, 575.

1 13.2. Oxycodone HCL is sold under the brand name Oxycontin®, among others. It is a
2 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
3 (b), and a dangerous drug pursuant to Business and Professions Code section 4022. When
4 properly prescribed and indicated, Oxycodone HCL is used for the management of pain severe
5 enough to require daily, around-the-clock, long term opioid treatment for which alternative
6 treatment options are inadequate.

7 13.3. Percocet® and Endocet® are brand names for opioid analgesics containing
8 acetaminophen and oxycodone, a Schedule II controlled substance pursuant to Health and Safety
9 Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions
10 Code section 4022. When properly prescribed and indicated, it is used for the management of
11 moderate to moderately severe pain. The Federal Drug Administration (FDA) has issued a black
12 box warning for Percocet® which warns about, among other things, addiction, abuse and misuse,
13 and the possibility of “life-threatening respiratory distress.”

14 13.4. Tapentadol is sold under the brand name Nucynta ER®, among others. It is a
15 centrally acting opioid analgesic of the benzenoid class, a Schedule II controlled substance
16 pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous drug
17 pursuant to Business and Professions Code section 4022. Tapentadol is used for the treatment of
18 moderate to severe pain for both acute and chronic musculoskeletal pain. It is also specifically
19 indicated for controlling the pain of diabetic neuropathy when around-the-clock opioid
20 medication is required.

21 13.5. Fentanyl transdermal patches are sold under the brand names Duragesic® and
22 Ionsys®. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code
23 section 11055, subdivision (c), and a dangerous drug pursuant to Business and Professions Code
24 section 4022. The DEA has identified fentanyl as a drug of abuse. (Drugs of Abuse, A DEA
25 Resource Guide (2020 Edition), at p. 100.) When properly prescribed and indicated, fentanyl
26 transdermal patches are indicated for the management of pain in opioid-tolerant patients, severe
27 enough to require daily, around-the-clock, long term opioid treatment and for which alternative
28 treatment options are inadequate. The FDA has issued several black box warnings about fentanyl

1 transdermal patches including, but not limited to, the risks of addiction, abuse and misuse; life
2 threatening respiratory depression; accidental exposure; neonatal opioid withdrawal syndrome;
3 and the risks associated with the concomitant use with benzodiazepines or other CNS depressants.

4 13.6. Hydrocodone polistirex is a narcotic cough suppressant. It is a Schedule II controlled
5 substance pursuant to Health and Safety Code section 11055, subdivision (c), and a dangerous
6 drug pursuant to Business and Professions Code section 4022. The DEA has identified
7 hydrocodone as a drug of abuse. (Drugs of Abuse, A DEA Resource Guide (2020 Edition), at p.
8 48.)

9 13.7. Benzodiazepines belong to the group of medicines called central nervous system
10 (CNS) depressants (medicines that slow down the nervous system). The DEA has identified
11 benzodiazepines, such as clonazepam and alprazolam, as drugs of abuse. (Drugs of Abuse, DEA
12 Resource Guide (2020 Edition), at p. 71.) Concomitant use of benzodiazepines and opioids “may
13 result in profound sedation, respiratory depression, coma, and death.”

14 13.8. Clonazepam, a benzodiazepine, is sold under the brand name Klonopin®. It is a
15 centrally acting hypnotic-sedative that is a Schedule IV controlled substance pursuant to Health
16 and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and
17 Professions Code section 4022. When properly prescribed and indicated, it is used to treat seizure
18 disorders and panic disorders.

19 13.9. Alprazolam, a benzodiazepine, is sold under the brand name Xanax®, among others.
20 It is a centrally acting hypnotic-sedative that is a Schedule IV controlled substance pursuant to
21 Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to
22 Business and Professions Code section 4022. When properly prescribed and indicated, it is used
23 for the management of anxiety disorders.

24 13.10. Zolpidem Tartrate is sold under the brand name Ambien®, among others. It is
25 a centrally acting hypnotic-sedative, a Schedule IV controlled substance pursuant to Health and
26 Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and
27 Professions Code section 4022. When properly prescribed and indicated, it is used for the short-
28 term treatment of insomnia characterized by difficulties with sleep initiation.

1 13.11 Lunesta® is a brand name for zopiclone, a sedative. It is a Schedule IV controlled
2 substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous
3 drug pursuant to Business and Professions Code section 4022. When properly prescribed and
4 indicated, it is used to treat insomnia.

5 13.12. Tramadol, an opioid analgesic, is sold under the brand name Ultram®, among
6 others. It is a Schedule IV controlled substance pursuant to Health and Safety Code section
7 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section
8 4022. When properly prescribed and indicated, it is used for the treatment of moderate to severe
9 pain.

10 13.13. Benadryl® is a trade name for diphenhydramine hydrochloride, an antihistamine
11 drug with drying and sedative effects. It has an atropine-like action and should therefore be used
12 with caution in patients with a history of lower respiratory disease. In addition, Benadryl has
13 additive effects with alcohol and other central nervous system depressants.

14 13.14. Transcranial Magnetic Stimulation (TMS) is a noninvasive form of brain
15 stimulation in which a changing magnetic field is used to induce an electric current at a specific
16 area of the brain through electromagnetic induction. An electric pulse generator, or stimulator, is
17 connected to a magnetic coil connected to the scalp. The stimulator generates a changing electric
18 current within the coil which creates a varying magnetic field, inducing a current within a region
19 in the brain itself.

20 **FACTUAL ALLEGATIONS**

21 14. At all relevant times, Respondent was a licensed physician and surgeon, practicing as
22 a cardiologist.

23 15. Respondent shared a home with Patient 1² and Patient 2 from at least 2007³ until
24 approximately November 2016 (when he moved out), and then again from roughly June 2019
25 until June 2020. Patient 3 also lived in the shared home from 2015 through August 2019.

26 _____
27 ² The identity of the patients is known to all parties but not disclosed for privacy reasons.

28 ³ Conduct occurring more than seven (7) years from the filing date of this Accusation is
for informational purposes only and is not alleged as a basis for disciplinary action.

16. At various times, Respondent provided care and treatment to Patient 1, Patient 2, and Patient 3, as more fully described below. Respondent is unable to produce a set of medical records prepared and/or maintained by him, documenting his care and treatment of Patient 1, Patient 2, and/or Patient 3.

Patient 1:

17. Patient 1 suffered from chronic, severe pain. From at least March 2014 through June 2020, Patient 1 was prescribed opiates (and other medications) by successive treating physician(s) to help control her pain.

18. During the period March 2014 through June 2015, rheumatologist R.A. prescribed Patient 1 eight (8) oxycodone HCL-acetaminophen 10/325 mg per day. Patient 1 was discharged from R.A.'s practice due to repeatedly arriving late to her appointments and asking for early refills of Percocet.

19. In June 2015, Patient 1 started seeing pain medicine specialist N.P. On or about June 25, 2015, N.P. discussed with Patient 1 that her use of Percocet was excessive and erratic, that short-acting medications need to be taken only as prescribed; however, it appeared that Patient 1 had been exceeding the prescribed Percocet, often taking more than eight (8) per day. N.P. noted that this led to Patient 1 running out of her medications early and that she had received prescriptions from Respondent for a 'bridge' on four separate occasions. N.P. "went into great detail [in explaining] that this cannot continue to happen."

20. On or about June 25, 2015, Patient 1 signed a "Consent for Opioid Therapy" and an "Opioid Agreement" with N.P. The latter agreement included the undertaking that "all controlled pain medication" would come from N.P., unless specific authorization was obtained for an exception. In addition, pain medication prescriptions were contingent on keeping scheduled appointments.

21. In June 2015, N.P. started Patient 1 on a pain management regiment of two (2) Nucynta ER and four (4) oxycodone HCL-acetaminophen 10/325 mg per day.

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1 22. On or about November 23, 2015, a urine sample was collected from Patient 1 that
2 tested positive for tramadol, which was not in any of the medications prescribed by N.P. When
3 confronted, Patient 1 said that she had taken tramadol prescribed for her dog by a veterinarian.

4 23. On or about May 2, 2017, N.P. discharged Patient 1 from his practice due to her
5 "frequent tardiness to appointments or missing and rescheduling appointments," despite multiple
6 counseling efforts.

7 24. On or about July 10, 2017, Patient 1 entered into a pain contract with her new pain
8 management physician, B.B. Included in the terms of that agreement was Patient 1's undertaking
9 that she would make her medications last for the full intended period, and that she would not
10 obtain medicines from anywhere other than B.B.'s clinic. Patient 1 also agreed to show up on
11 time for all appointments.

12 25. From July 2017 through December 2018, B.B. prescribed Patient 1 two (2) Nucynta
13 ER 150 mg and four (4) to six (6) oxycodone HCL-acetaminophen 10/325 mg per day.

14 26. On or about May 11, 2018, Respondent prescribed Patient 1 eight (8) each of Nucynta
15 50 mg and Nucynta ER 100 mg. On the same date, Patient 1 filled her monthly prescription from
16 B.B. for sixty (60) Nucynta ER 150 mg tablets.

17 27. On or about October 8, 2018, B.B. discharged Patient 1 from his clinic due to her
18 repeatedly missing and showing up excessively late for appointments despite multiple warnings.
19 The final prescription written by B.B. for Patient 1 was filled on or about December 8, 2018.

20 28. From in or around January 2019 through March 2020, Respondent regularly
21 prescribed Patient 1 Nucynta ER 150 mg (two per day) and oxycodone HCL-acetaminophen
22 10/325 mg (in increasing doses: five per day in January 2019, increasing to six per day in March,
23 eight per day in November, twelve per day in December 2019, and nine per day in March 2020).

24 29. In or around April 2020, Respondent referred Patient 1 to pain medicine specialist,
25 J.P. On or about April 17, 2020, Patient 1 presented to J.P. for an initial evaluation. J.P. recorded

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1 in his office note for this date that he had spoken with the Respondent who “affirmed no aberrant
2 behaviors” for Patient 1.⁴

3 30. At the time of prescribing the Schedule II controlled substance, Nucynta (/ER) to
4 Patient 1, Respondent had no familiarity with that medication nor a numeric sense of its morphine
5 equivalent dose. He did not prescribe it to any other patient. At an interview in April 2022 (the
6 subject interview), Respondent said he “just tried to keep the same amount going [as were
7 prescribed by people in pain medicine], but basically it was two Nucynta and six Percocet a day.”
8 Respondent wrote the prescriptions to keep Patient 1 “functional.”

9 31. Respondent did not establish a formal treatment plan for Patient 1 or have measurable
10 goals that could be assessed.

11 32. Respondent did not request any urine drug screens on Patient 1. At the subject
12 interview, he explained that he “would just see whether she was functional or not or in active
13 pain.”

14 33. Respondent did not ever obtain a CURES printout on Patient 1. In late June 2020, a
15 toxicology report revealed that Patient 1 had taken Benadryl and also fentanyl. At the subject
16 interview, Respondent stated that Patient 1 “had about twenty different pill bottles lined up” in
17 her bedroom and that he “was not aware of what she was taking at that time.”

18 34. Respondent did not obtain from Patient 1 her written informed consent to opioid
19 treatment.

20 35. Respondent did not employ a pain management agreement with Patient 1.

21 36. Respondent did not provide Patient 1 with a naloxone prescription or counsel her on
22 the risk of overdose.

23 37. Respondent did not create, keep and/or properly protect medical records for Patient 1.

24 Patient 2:

25 38. On or about October 4, 2016, Patient 2 started filling prescriptions written by primary
26 care physician, S.B., for lorazepam .5 mg (one per day) and tramadol HCL 50 mg (three per day).

27
28 ⁴ When interviewed by the Board, Respondent stated that he had mentioned to J.P. that Patient 1 had been discharged by other pain management doctors.

After about three months, S.B. substituted the lorazepam with clonazepam .5 mg (one per day). S.B. continued to prescribe clonazepam and tramadol to Patient 2 until November 2017.

39. Patient 2 filled a prescription from S.B. for thirty (30) clonazepam .5 mg tablets on or about January 30, 2017.

40. On or about February 2, 2017, Respondent started prescribing oxycodone HCL 10 mg to Patient 2. Between February 2017 and November 2017, Patient 2 filled prescriptions from S.B. for opiates and benzodiazepines, and also from Respondent for opiates. From November 2017 through August 2020, Respondent prescribed both opiates and benzodiazepines to Patient 2.

41. Between February 2, 2017, and August 28, 2020, Patient 2 filled the following prescriptions written for him by Respondent:

DATE FILLED	MEDICATION	QUANTITY/ NO. OF DAYS
February 2, 2017	oxycodone HCL 10 mg	60 / 10 days
February 28, 2017	oxycodone HCL 10 mg	50 / 12 days
April 24, 2017	oxycodone HCL 10 mg	60 / 15 days
August 30, 2017	oxycodone HCL 10 mg	60 / 10 days
October 20, 2017	oxycodone HCL 10 mg	120 / 30 days
January 22, 2018	oxycodone HCL 10 mg	12 / 3 days
January 22, 2018	oxycodone HCL 10 mg	28 / 7 days
March 12, 2018	oxycodone HCL 10 mg	60 / 15 days
September 7, 2018	oxycodone HCL 10 mg	60 / 15 days
October 23, 2018	oxycodone HCL 10 mg	60 / 15 days
November 28, 2018	oxycodone HCL 10 mg	60 / 14 days
February 22, 2019	oxycodone HCL 10 mg	60 / 15 days
May 21, 2019	oxycodone HCL 10 mg	120 / 30 days
August 9, 2019	oxycodone HCL 10 mg	60 / 10 days
August 20, 2019	alprazolam .5 mg	90 / 30 days
September 5, 2019	oxycodone HCL 10 mg	8 / 2 days

DATE FILLED	MEDICATION	QUANTITY/ NO. OF DAYS
September 7, 2019	oxycodone HCL 10 mg	60 / 10 days
September 13, 2019	alprazolam .5 mg	60 / 30 days
October 1, 2019	alprazolam .5 mg	90 / 30 days
November 16, 2019	alprazolam .5 mg	60 / 20 days
November 20, 2016	oxycodone HCL 10 mg	90 / 30 days
December 13, 2019	temazepam 15 mg	60 / 30 days
December 26, 2019	oxycodone HCL- acetaminophen 10/325 mg	60 / 15 days
January 9, 2020	temazepam 15 mg	60 / 30 days
January 30, 2020	zolpidem tartrate 10 mg	30 / 30 days
April 14, 2020	oxycodone HCL 10 mg	30 / 30 days
May 20, 2020	clonazepam 1 mg	45 / 30 days
July 8, 2020	clonazepam 1 mg	45 / 30 days
August 7, 2020	clonazepam 1 mg	45 / 30 days
August 28, 2020	clonazepam 1 mg	45 / 30 days

42. Respondent did not prescribe clonazepam to patients other than Patient 2.

43. Respondent did not provide Patient 2 with a naloxone prescription or counsel him on the risks of overdose.

44. Respondent did not establish a formal treatment plan for Patient 2 or have measurable goals that could be assessed.

45. Respondent did not employ a pain management agreement with Patient 2.

46. Respondent did not request any urine drug screens on Patient 2.

47. Respondent did not ever obtain a CURES printout on Patient 2.

48. Respondent did not create, keep and/or properly protect medical records for Patient 2.

Patient 3:

49. Patient 3 received treatment from Respondent for insomnia and asthma.

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50. Respondent prescribed hydrocodone polistirex-chlorphenira, a narcotic cough suppressant, to Patient 3 on or about December 12 and 23, 2017, February 25 and March 26, 2018, and February 1, 2019. During the period June 15, 2018, through February 22, 2019, Respondent prescribed 420 x .25 mg alprazolam tablets and 360 x .5 mg alprazolam tablets.

51. Respondent did not create, keep and/or properly protect medical records for Patient 3.

52. Respondent did not employ a written informed consent and medication agreement with Patient 3.

53. Respondent did not request any urine drug screens on Patient 3.

54. Respondent did not ever obtain a CURES printout on Patient 3.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

55. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient 1, Patient 2, Patient 3, as more fully set out in paragraphs 12 through 54 above, which are hereby realleged and incorporated by this reference as if fully set forth herein, and that include, but are not limited to:

Patient 1:

56. Respondent did not employ a pain management agreement with Patient 1.

57. Respondent did not hold Patient 1 accountable for the narcotics he prescribed and/or monitor her compliance with his prescribing and/or any pain management plan.

Patient 2:

58. Respondent did not employ a pain management agreement with Patient 2.

59. Respondent did not hold Patient 2 accountable for the narcotics and other controlled substances he prescribed and/or monitor his compliance with his prescribing and/or any pain management plan.

60. Respondent prescribed an opioid and a benzodiazepine sedative concurrently to Patient 2 without properly documenting the medical justification and patient consent for this combination therapy in the medical chart and/or properly maintaining this record.

1 Patient 3:

2 61. Respondent did not hold Patient 3 accountable for the narcotics and other controlled
3 substances he prescribed and/or monitor her compliance with his prescribing and/or any pain
4 management plan.

5 62. Respondent prescribed an opioid cough suppressant and a benzodiazepine sedative
6 concurrently to Patient 3 without properly documenting the medical justification and patient
7 consent for this combination therapy in the medical chart and/or properly maintaining this record.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Repeated Acts of Negligence)**

10 63. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
11 defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent
12 acts in his care and treatment of Patient 1, Patient 2, and/or Patient 3, as more fully set out in
13 paragraphs 12 through 54 above, which are hereby realleged and incorporated by this reference as
14 if fully set forth herein, and that include, but are not limited to:

15 Patient 1:

16 64. Paragraphs 56 and 57, above, are hereby realleged and incorporated by this reference
17 as if fully set forth herein.

18 65. Respondent prescribed narcotic medications to Patient 1 when she was under the care
19 of a pain management physician.

20 66. Respondent did not have measurable goals for treating Patient 1's chronic pain.

21 67. Respondent did not establish a formal treatment plan for Patient 1.

22 68. Respondent did not create, keep and/or properly protect medical records for Patient 1.

23 69. Respondent did not counsel Patient 1 on the risks of overdose or provide her with a
24 prescription for naloxone.

25 Patient 2:

26 70. Paragraphs 58 through 60, above, are hereby realleged and incorporated by this
27 reference as if fully set forth herein.

28 71. Respondent did not have measurable goals for treating Patient 2's chronic pain.

72. Respondent did not establish a formal treatment plan for Patient 2.

73. Respondent did not create, keep and/or properly protect medical records for Patient 2.

74. Respondent did not counsel Patient 2 on the risks of overdose or provide him with a prescription for naloxone.

Patient 3:

75. Paragraphs 61 and 62, above, are hereby realleged and incorporated by this reference as if fully set forth herein.

76. Respondent did not create, keep and/or properly protect medical records for Patient 3.

77. Respondent did not employ a written informed consent and medication agreement with Patient 3.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

78. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records of his care and treatment of Patient 1, Patient 2, and/or Patient 3, as more particularly alleged in paragraphs 12 through 54, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

79. Respondent is further subject to disciplinary action under section 2234 of the Code in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct that is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 12 through 78, above, which are hereby realleged and incorporated by this reference 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 Medical Board of California issue a decision:

1 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 40398,
2 issued to Respondent Kenneth Warren Carr, M.D.;

3 2. Revoking, suspending or denying approval of Respondent Kenneth Warren Carr,
4 M.D.'s authority to supervise physician assistants and advanced practice nurses;

5 3. Ordering Respondent Kenneth Warren Carr, M.D., to pay the Board the costs of the
6 investigation and enforcement of this case, and if placed on probation, the costs of probation
7 monitoring; and

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

9
10 DATED: JUN 15 2023



REJI VARGHESE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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