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

In the Matter of the Accusation Against: Martha Viviana Martinez, M.D. Physician's and Surgeon's Certificate No. A 120647 Respondent.	Case No.: 800-2021-076679

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 May 29, 2025.

IT IS SO ORDERED: April 29, 2025.

MEDICAL BOARD OF CALIFORNIA

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

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General
CHRISTINE FRIAR WALTON
Deputy Attorney General
State Bar No. 228421
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6472
Facsimile: (916) 731-2117
E-mail: Christine.Walton@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: **MARTHA VIVIANA MARTINEZ, M.D.** **300 N. San Antonio Road** **Santa Barbara, CA 93110** **Physician's and Surgeon's Certificate No. A 120647,** Respondent.	Case No. 800-2021-076679 OAH No. 2024060851 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Reji Varghese (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Christine Friar Walton, Deputy Attorney General.

2. Respondent Martha Viviana Martinez, M.D. (Respondent) is represented in this proceeding by attorney Shannon V. Baker of Rothschild Wishek & Sands LLP, located at 765 University Avenue, Sacramento, California 95825.

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3. On or about March 23, 2012, the Board issued Physician's and Surgeon's Certificate No. A 120647 to Respondent. That Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2021-076679, and will expire on July 31, 2025, unless renewed.

JURISDICTION

4. Accusation No. 800-2021-076679 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 16, 2024. Respondent timely filed her Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2021-076679 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2021-076679. Respondent has also carefully read, fully discussed with her counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her 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 her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2021-076679, if proven at a hearing, constitute cause for imposing discipline upon her Physician's and Surgeon's Certificate.

9. Respondent does not contest that, at an administrative hearing, Complainant could

establish a *prima facie* case with respect to the charges and allegations in Accusation No. 800-2021-076679, a true and correct copy of which is attached hereto as Exhibit A, and that she has thereby subjected her Physician's and Surgeon's Certificate No. A 120647 to disciplinary action.

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

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceeding in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. 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 her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreement of the parties in this above entitled matter.

14. Respondent agrees that if she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the Board, all of the charges and allegations contained in Accusation No. 800-2021-076679 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.

15. 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.

16. 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. A 120647 issued to Respondent Martha Viviana Martinez, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months 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. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours

per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

3. PRESCRIBING PRACTICES COURSE – CONDITION PRECEDENT. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices 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. Respondent's successful completion of the prescribing practices course shall be a condition precedent to her prescribing of any controlled substances. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices 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.

4. 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.

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

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role

of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

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

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

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

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

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart

review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

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

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

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

7. 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 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.

8. 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.

9. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement in the amount of $32,772.78 (Thirty-two thousand seven hundred seventy-two dollars and seventy-eight cents). 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 30 calendar days of the effective date of the Order, or 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.

10. 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.

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no

circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-

practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

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

14. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. This term does not include cost recovery, which is due within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be fully restored.

15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the

Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

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

18. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2021-076679 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.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Shannon V. Baker. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 01/09/25

MARTHA VIVIANA MARTINEZ, M.D.
Respondent

I have read and fully discussed with Respondent Martha Viviana Martinez, 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: Jan. 9, 2025

SHANNON V. BAKER
Attorney for Respondent

ENDORSEMENT

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

DATED: January 9, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General

Christine Friar Walton
Digitally signed by Christine Friar Walton
Date: 2025.01.09 16:04:49 -08'00'

CHRISTINE FRIAR WALTON
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2021-076679

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General
State Bar No. 195729
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Los Angeles, CA 90013
Telephone: (213) 269-6000
Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: **Martha Viviana Martinez, M.D.** **300 N. San Antonio Road** **Santa Barbara, CA 93110** **Physician's and Surgeon's Certificate No. A 120647,** Respondent.	Case No. 800-2021-076679 **ACCUSATION**

PARTIES

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

2. On or about March 23, 2012, the Board issued Physician's and Surgeon's Certificate Number A 120647 to Martha Viviana Martinez, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2025, unless renewed.

JURISDICTION

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

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 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 including, but not limited to:
>
> (a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.
>
> (b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars ($30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.
>
> (c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

STATUTORY PROVISIONS

6. Section 2234 of the Code, states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

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

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

. . .

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

. . . .

7. Section 741 of the Code, states:

(a) Notwithstanding any other law, when prescribing an opioid or benzodiazepine medication to a patient, a prescriber shall do the following:

(1) Offer the patient a prescription for naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid-induced respiratory depression when one or more of the following conditions are present:

(A) The prescription dosage for the patient is 90 or more morphine milligram equivalents of an opioid medication per day.

(B) An opioid medication is prescribed within a year from the date a prescription for benzodiazepine has been dispensed to the patient.

(C) The patient presents with an increased risk for opioid overdose, including a patient with a history of opioid overdose, a patient with a history of opioid use disorder, or a patient at risk for returning to a high dose of opioid medication to which the patient is no longer tolerant.

(2) Consistent with the existing standard of care, provide education to the patient on opioid overdose prevention and the use of naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid-induced respiratory depression.

(3) Consistent with the existing standard of care, provide education on opioid overdose prevention and the use of naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid-induced respiratory depression to one or more persons designated by the patient, or, for a patient who is a minor, to the minor's parent or guardian.

(b) A prescriber is not required to provide the education specified in paragraphs (2) or (3) of subdivision (a) if the patient receiving the prescription declines the education or has received the education within the past 24 months.

(c) This section does not apply to a prescriber under any of the following circumstances:

(1) When prescribing to an inmate or a youth under the jurisdiction of the Department of Corrections and Rehabilitation or the Division of Juvenile Justice within the Department of Corrections and Rehabilitation.

(2) When ordering medications to be administered to a patient while the patient is in either an inpatient or outpatient setting.

(3) When prescribing medications to a patient who is terminally ill, as defined in subdivision (c) of Section 11159.2 of the Health and Safety Code.

COST RECOVERY

8. 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

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

"Acetaminophen" is a widely used over-the-counter analgesic (pain reliever) and antipyretic (fever reducer). It is also known as paracetamol, or APAP. It is typically used for mild to moderate pain relief, such as relief of headaches. It is a major ingredient in numerous cold and flu remedies. In combination with opioid analgesics, paracetamol can also be used in the management of more severe pain such as post-surgical pain and providing palliative care in advanced cancer patients. Acute overdoses of paracetamol can cause potentially fatal liver damage and, in rare individuals, a normal dose can do the same; the risk is heightened by alcohol consumption. It is sold in varying forms, including under the brand name Tylenol®.

"Alprazolam" is a benzodiazepine drug used to treat anxiety disorders, panic disorders, and anxiety caused by depression. Alprazolam has a central nervous system depressant effect and patients should be cautioned about the simultaneous ingestions of alcohol and other central nervous system depressant drugs during treatment with it. Addiction prone individuals should be under careful surveillance when receiving alprazolam because of the predisposition of such patients to habituation and dependence. The usual starting dose of alprazolam is 0.25 mg to 0.5 mg, three times per day (for a maximum 1.5 mg per day). It is also sold under various brand names including, Intensol®, Xanax®, and Xanax XR®. It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(1), and a dangerous drug as defined in Code section 4022. It is also a Schedule IV controlled substance as defined by the Code of Federal Regulations Title 21, section 1308.14 (c). The Drug Enforcement Administration (DEA) has identified benzodiazepines, such as Xanax, as a drug of abuse. The general maximum daily dosage for Xanax® is 4 mg per day.

"Aplenzin" is a trade name for bupropion hydrobromide, and is generally used to treat major depressive disorder, and for the prevention of autumn-winter seasonal depression (seasonal affective disorder).

"Atenolol" is a drug used to treat high blood pressure (hypertension). Lowering high blood pressure helps prevent strokes, heart attacks, and kidney problems. This medication is also used to treat chest pain (angina) and to improve survival after a heart attack. Atenolol belongs to a class of drugs known as beta blockers.

"Benzodiazepines" are a class of drugs that produce central nervous system (CNS) depression. They are used therapeutically to produce sedation, induce sleep, relieve anxiety and muscle spasms, and to prevent seizures. In general, benzodiazepines act as hypnotics in high doses, anxiolytics in moderate doses, and sedatives in low doses, and are used for a limited time period. Benzodiazepines are commonly misused and taken in combination with other drugs of abuse. Commonly prescribed benzodiazepines include alprazolam (Xanax®), lorazepam (Ativan®), clonazepam (Klonopin®), diazepam (Valium®), and temazepam (Restoril®). Risks associated with use of benzodiazepines include: 1) tolerance and dependence, 2) potential interactions with alcohol and pain medications, and 3) possible impairment of driving. Benzodiazepines can cause dangerous deep unconsciousness. When combined with other CNS depressants such as alcoholic drinks and opioids, the potential for toxicity and fatal overdose increases. Before initiating a course of treatment, patients should be explicitly advised about the following: the goal and duration of benzodiazepine use; its risks and side effects, including risk of dependence and respiratory depression; and alternative treatment options.

"Bupropion" is an antidepressant medication used to treat major depression and to assist with smoking cessation. It is also sold under various brand names including, Wellbutrin®, Zyban®, Voxra®, Aplenzin® and Budeprion®, among others. It is a dangerous drug as defined in Code section 4022.

"Chlordiazepoxide" is a sedative and hypnotic benzodiazepine medication used to treat anxiety, insomnia and withdrawal symptoms from alcohol and/or drug abuse. It is sold under the brand name Librium®. Chlordiazepoxide is a drug that is very frequently involved in drug intoxication, including overdose. Chlordiazepoxide overdose is considered a medical emergency and, in general, requires the immediate attention of medical personnel. It is a Schedule IV controlled substance and narcotic as defined by Health and Safety Code section 11057, subdivision (d)(5), and a dangerous drug as defined in Code section 4022.

"Citalopram hydrobromide" is a selective serotonin reuptake inhibitor (SSRI). The primary FDA-approved clinical use for citalopram hydrobromide is for the treatment of depression in adults. Non-FDA-approved uses include alcohol use disorder, coronary arteriosclerosis, obsessive-compulsive disorder, panic disorder, postmenopausal flushing, and premenstrual dysphoric disorder.

"Dexedrine" is a trade name for dextroamphetamine sulfate, an amphetamine, which is a dangerous drug as defined in section 4022 and a Schedule II controlled substance as defined by section 11055, subdivision (d) of the Health and Safety Code. When properly prescribed and indicated, Dexedrine is generally used to treat narcolepsy and attention deficit disorder with hyperactivity. The black box warning for Dexedrine states, "Amphetamines have a high potential for abuse. Administration of amphetamines for prolonged periods of time may lead to drug dependence and must be avoided. Particular attention should be paid to the possibility of subjects obtaining amphetamines for non-therapeutic use or distribution to others, and the

drugs should be prescribed or dispensed sparingly. Misuse of amphetamines may cause sudden death and serious cardiovascular adverse events." The general maximum daily dosage for Dexedrine is 40 mg per day.

"Diazepam" is a benzodiazepine psychotropic drug used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. It can produce psychological and physical dependence and should be prescribed with caution particularly to addiction-prone individuals (such as drug addicts and alcoholics) because of the predisposition of such patients to habituation and dependence. It is sold under the brand name Valium®. It is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug as defined in Code section 4022.

"Omeprazole" is typically used to treat excess stomach acid in conditions such as non-cancerous stomach ulcers, gastroesophageal reflux disease (GERD), active duodenal ulcer, Zollinger-Ellison syndrome and erosive esophagitis. Omeprazole works by blocking gastric acid production and is from the group of medicines called proton pump inhibitors.

"Hydrocodone" is a semisynthetic opioid analgesic similar to but more potent than codeine. It is used as the bitartrate salt or polistirex complex, and as an oral analgesic and antitussive. Hydrocodone also has a high potential for abuse. It is marketed, in its varying forms, under a number of brand names, including Vicodin®, Hycodan® (or generically Hydromet®), Lorcet®, Lortab®, Norco®, and Hydrokon®, among others. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(I), and a dangerous drug pursuant to Code section 4022.

"Norco" see oxycodone.

"Oxycodone" is an opioid analgesic medication that has a high potential for abuse. It is commonly prescribed for moderate to severe chronic pain. It is a semi-synthetic narcotic analgesic with multiple actions quantitatively similar to those of morphine. Repeated administration of oxycodone may result in psychic and physical dependence. It is sold in its various forms under several brand names, including OxyContin® (a time-release formula) and Roxicodone®. It is also available in combination with other drugs and sold under brand names including, acetaminophen (Endocet®, Percocet®, Roxicet®, and Tylox® among others); aspirin (Endodan®, Percodan® and Roxiprin® among others); and ibuprofen (Combunox®). It is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug as defined in Code section 4022.

"Percocet®" is a brand name for a combination medication that contains oxycodone and acetaminophen that is used to help relieve moderate to severe pain.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2334, subdivision (b), of the Code, in regard to her care and treatment of Patient A[1], as

[1] The Patients actual names are not used in this Accusation to maintain patient confidentiality. The patient identities are known to Respondent or will be disclosed to

more particularly alleged hereinafter:

PATIENT A

10. On or about July 7, 2017, Respondent first started treating Patient A, a 41- year-old male with a chief complaint of depression and anxiety and a prior history of cardiac and depression issues.[2] The progress note for the initial visit documented that Patient A wanted to "establish care and discuss depression." Patient A's depression was documented as "progressive depression" with a loss of motivation, isolation, using alcohol to cope with anxiety and depression, and suicidal ideation "but no plan [to injure himself] and [he] can assure his safety." Respondent completed a Patient Health Questionnaire (PHQ-9) assessment to assess the severity of Patient A's depression which was listed as "moderately severe." The progress note documented a past medical history of elevated blood pressure with no diagnosed hypertension, alcohol abuse, and obesity. Review of symptoms was positive for complaints of difficulty breathing at night, shortness of breath, and "anxiety, thoughts of suicide and depression." Respondent's documented impressions were elevated blood pressure, obesity, depression and anxiety, and alcohol abuse. Respondent's treatment plan included laboratory testing, a recommendation to stop drinking alcohol, prescriptions for Citalopram Hydrobromide 10 mg (1 tab daily) and valium (Diazepam) 10 mg 1 to 1.5 tablets every 6-8 hours (with tapering instructions) and return to clinic (follow up).

11. On or about July 14, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, depression, alcohol abuse, and other medical issues were monitored, Citalopram was increased to 10 mg, and there was a discussion about treating alcohol withdrawal symptoms with Valium®.

12. On or about August 11, 2017, Respondent had a follow up visit with Patient A.

Respondent upon a duly issued request for discovery and in accordance with Government Code section 11507.6.

[2] Patient A's Medical History Statement was marked "yes" for "heart palpations, pressure, or tightness in chest" and prior incidents of being "severely depressed or attempted suicide."

According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported an emergency room visit for epigastric pain (most likely secondary to alcohol gastritis), Valium® was not helping with alcohol withdrawal symptoms, consuming 8 drinks a day, and that he stopped taking citalopram because there was no improvement to his restless leg syndrome. Epigastric pain, gall stones, attention deficit disorder (ADD) and obsessive compulsive disorder (OCD) were added as additional medical problems with documentation of "orders" for psychiatry with another part of the progress note stating "Orders Placed [-] None." There were no diagnostic tools or a specialty psychiatric report to support the ADD diagnosis. New medications for this visit were listed as chlordiazepoxide hydrochloride (HCL) (trade name Librium®) 25 mg, Omeprazole 20 mg, and Atenolol 25 mg.

13. On or about August 16, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported, among other things, that Librium® was beneficial, treatment for depression was put on hold until patient was "off ETOH [alcohol]," with a notation that the patient was motivated to deal with his alcohol abuse issue.

14. On or about August 25, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported, among other things, that he had three drinks in the past twelve days, he "has no desire to drink and anxiety is improved, hopes to continue taper off librium over next 3 days," and he inquired about group counseling for discord at home with his wife and daughter. A new medication for this visit was listed as Gabapentin 300 mg for restless leg syndrome.

15. On or about September 1, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical

issues were monitored. Patient A reported, among other things, that he had stopped drinking alcohol, was no longer using the Librium, he still had anxiety, and his restless leg syndrome was improved with gabapentin. The progress note documented that Patient A was previously advised to follow up with a psychiatrist given his complicated history of ADD and OCD and depression "but [patient] would like to try PCP as he is comfortable." New medication for this visit was listed as bupronin HCL (Wellbrutin®) 75 mg (1 tab daily [75 mg total], then increase to 1 tab twice a day for one week [150 mg total], then increase to 2 tabs twice a day [300 mg total].)

16. On or about September 8, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported that, among other things, he had started on the bupronin HCL (Wellbrutin®) and his anxiety over the past three days had improved, he expressed improved motivation and focus, and he requested a counseling appointment sooner due to increased stressors at home. The recommendation was for Patient A to continue Wellbrutin® and take Librium®, as needed, for depression and anxiety.

17. On or about September 22, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, an abbreviated physical exam was conducted, systems reviewed, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported, among other things, continued stressors at home, decreased effectiveness of bupronin HCL (Wellbrutin®), and Librium® at a lower dose was not helping his anxiety. New medication for this visit was listed as bupronin hydrobromide (Aplenzin®) 522 mg extended release (1 tab daily).

18. On or about October 6, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. An ultrasound was ordered for a reported right breast mass with associated pain. Patient A reported, among other things, that he had increased his bupronin to 450 mg with him feeling more agitated, pacing, unable to focus, decreased memory; he noted a

lower dose was more beneficial "but it wore off at 300 mg" and "[h]e feels symptoms of ADD are arising and would like to start treatment" with the patient reporting that he responded well to Dexedrine in the past. New medications for this visit were listed as bupronin HCL (Wellbrutin®) 75 mg "[t]ake 2 tabs [every] 12 hours (with 300 mg bupropion [twice a day] for total 450 mg [twice a day]" and dextroamphetamine sulfate (Dexedrine) 5 mg (1 tab twice a day for one week then increase to 2 tabs twice a day).

19. On or about October 13, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported that, among other things, there were less side effects with bupronin 375 mg twice a day, that he had been getting out of his house more, and improvement with his self-care. Patient A also reported that he started taking the Dexedrine 2-3 days ago, and that he had a new right breast mass. Respondent recommended that Patient A, among other things, continue bupronin at a lower dose, continue Librium as needed, and continue Dexedrine for ADD.

20. On or about October 27, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, other medical issues were monitored, and a negative mammogram was documented for the patient's right breast mass. Patient A reported, among other things, no side effects with bupronin, but still experiencing symptoms of depression with suicidal ideation "and would do something about it if it did not cause damage to his wife and children . . .," Dexedrine was helpful with better focus, planning and executing, and reducing procrastination "but finds 5 mg did not help, 10 mg did not help and did not last long enough at [twice a day] dosing." Respondent ordered labs and other testing for elevated serum levels, vitamin D deficiency, and right breast mass. New medication for this visit was listed as Dexedrine 15 mg extended release (1 capsule twice a day).

21. On or about November 3, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed,

an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported, among other things, increased anxiety based on issues with his daughter "despite 100 mg of librium at a time," continued right breast pain, and that he was maintaining sobriety. Respondent's plan for treatment of the right breast mass included, but was not limited to, reducing gabapentin and "refer to endo." In regard to Patient A's anxiety and depression, Respondent continued bupronin (Wellbrutin®) 375 mg, discontinued librium and changed to alprazolam (Xanax®) 2 mg 1-2 tabs every 6-8 hours. Dextroamphetamine sulfate (Dexedrine) was increased to 5 mg 3 tabs every 8 hours.

22. On or about November 29, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported that, among other things, he had a "stable mood on current meds including better control of anxiety [with] Xanax® although would like to go back to librium, concern for dependence," exacerbation of migraine headache twice a week for three weeks "improved with [as needed] norco up to 20 mg a day, in past maxalt helpful, triggers heat and stress," and breast pain was resolved with a reduction in the amount of gabapentin. New medications for this visit were listed as chlordiazepoxide HCL 10 mg 1-2 tabs ever 8-12 hours as needed for anxiety; dextroamphetamine sulfate (Dexedrine) 5 mg 3 tabs every 8 hours; rizatriptan benzoate (Maxalt) 1 tab at onset of headache may repreat every 2 hours as needed (not to exceed 30 mg a day); and hydrocodone-acetaminophen (APAP) (Norco)® 10-325 mg #90 1-2 tabs every 12 hours as needed.

23. On or about December 13, 2017, Respondent had a follow up visit with Patient A. According to the progress note for this visit, vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. Patient A reported that, among other things, he was seeking disability paperwork following a cholecystectomy, he had post-operative pain, and he was maintaining his sobriety. New medications for this visit were listed as oxycodone/APAP (Percocet)® 10/325 mg take 1.5 to 2 tabs every 6-8 hours as needed for severe pain; and a laxative, docusate sodium

(Colace), 100 mg 1 capsule every 6-8 hours.

24. On or about February 14, 2018, Respondent had a follow up visit with Patient A. According to the progress note,[3] vitals were taken, past medical history was reviewed, an abbreviated physical exam was conducted, and depression, alcohol abuse, and other medical issues were monitored. The patient reported that, among other things, he remained sober, was now working, was still having some migraine headaches, and would be transitioning to a new primary care physician because he now had insurance.

25. On or about May 23, 2017, Respondent issued a final prescription to Patient A for dextroamphetamine (Dextrostat) 10 mg 1.5 tabs once daily. Patient A's wife picked up the prescription and informed Respondent's staff that Patient A would establish care elsewhere based on his new insurance.

26. According to the Controlled Substance Utilization Review and Evaluation System (CURES) report for Patient A, he filled the following prescriptions for controlled substances that were issued by Respondent during the period of July 7, 2017, through June 3, 2018:

Filled	Drug Name	Strength	Quantity	Days	Prescriber
07-07-17	Diazepam	10 mg	45	3	Respondent
07-15-17	Diazepam	10 mg	60	30	Respondent
07-22-17	Hydrocodone/APAP	5/325 mg	30	3	Other M.D.
08-11-17	Chlordiazepoxide	25 mg	50	7	Respondent
08-11-17	Hydrocodone/APAP	5/325 mg	20	10	Respondent
08-16-17	Chlordiazepoxide	25 mg	120	10	Respondent
08-28-17	Chlordiazepoxide	25 mg	40	3	Respondent
09-07-17	Chlordiazepoxide	10 mg	90	15	Respondent
09-08-17	Hydrocodone/APAP	10/325 mg	60	30	Respondent

[3] The progress note with an encounter dated February 14, 2018, referenced reviewing the past medical history from January 3, 2018, and follow up from a visit six weeks ago. However, there was no progress note for a visit of on or about January 3, 2018, in the certified medical records provided by Respondent.

Filled	Drug Name	Strength	Quantity	Days	Prescriber
09-22-17	Chlordiazepoxide	25 mg	90	23	Respondent
10-10-17	Dextroamphetamine	5 mg	106	30	Respondent
10-12-17	Chlordiazepoxide	25 mg	90	23	Respondent
10-30-17	Dextroamphetamine	15 mg	60	30	Respondent
11-01-17	Chlordiazepoxide	10 mg	24	2	Respondent
11-03-17	Alprazolam	2 mg	120	15	Respondent
11-03-17	Hydrocodone/APAP	5/325 mg	90	15	Respondent
11-07-17	Dextroamphetamine	5 mg	240	27	Respondent
11-29-17	Hydrocodone/APAP	10/325 mg	90	22	Respondent
11-29-17	Dextroamphetamine	5 mg	270	30	Respondent
12-04-17	Chlordiazepoxide	10 mg	120	20	Respondent
12-10-17	Hydrocodone/APAP	5/325 mg	30	3	Other M.D.
12-13-17	Oxycodone/APAP	10/325 mg	60	8	Respondent
01-02-18	Dextroamphetamine	5 mg	170	18	Respondent
01-03-18	Chlordiazepoxide	25 mg	120	30	Respondent
01-06-18	Chlordiazepoxide	10 mg	120	20	Respondent
01-15-18	Dextroamphetamine	5 mg	200	22	Respondent
01-30-18	Chlordiazepoxide	25 mg	40	10	Respondent
02-14-18	Hydrocodone/APAP	10/325 mg	60	30	Respondent
02-14-18	Dextroamphetamine	10 mg	135	30	Respondent
03-14-18	Dextroamphetamine	10 mg	135	30	Respondent
06-03-18	Dextroamphetamine	10 mg	120	26	Respondent

27. Respondent committed gross negligence as to Patient A, including the following:

A. Respondent prescribe high doses of controlled substances to Patient A who was suffering from, among other things, alcohol abuse, depression, anxiety, and self-reported ADD/OCD, without adequate diagnostic support and/or psychiatric consultation; and

B. Respondent improperly prescribed a stimulant, dextroamphetamine sulfate (Dexedrine) to Patient A, without adequate diagnostic support and in doses that exceeded the recommended maximum daily dosage.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

28. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 741 and 2334, subdivision (c), of the Code, in that she committed repeated negligent acts in regard to her care and treatment of Patients A, B, C and D as more particularly alleged herein.

PATIENT A

A. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth herein. The acts and/or omissions by Respondent set forth in the First Cause for Discipline with respect to Patient A, either collectively or in any combination thereof, constitute repeated negligent acts; and

B. Respondent negligently prescribed a benzodiazepine, alprazolam (Xanax®), on or about November 3, 2017, in a dose that exceeded the recommended daily dosage.

PATIENT B

29. On or about March or April, 2018,[4] Respondent first saw Patient B, a 34-year-old female, for therapeutic drug monitoring related to a complaint of chronic left knee pain. A urine drug screen was obtained, Patient B was referred out for imaging, and a prescription was issued for hydrocodone/APAP (Vicodin) 5/325 mg # 90 (three times a day). During the period beginning on or about April 13, 2018, through on or about December 31, 2018, Respondent had five office visits with Patient B on or about June 27, October 1, October 25, November 8, and December 3, 2018, for her primary complaint of chronic knee pain and other medical issues. During this time, Respondent made efforts to get Patient B to physical therapy; ordered periodic drug screens; and Patient B filled prescriptions for hydrocodone/APAP (Vicodin) 5/325 mg # 90

[4] The medical records reference a referral order and imaging being ordered and a urine drug screen on or about April 11 and 12, 2018, while a progress note dated June 27, 2018, indicates the patient "has no[t] been here since 3/18, and not gone to PT or f/u with ortho."

(three times a day) on a near monthly basis that were issued by Respondent.

30. During the period beginning on or about January 1, 2019 through on or about December 31, 2019, Respondent had ten office visits with Patient B on or about January 10, February 4, February 25, March 28, April 26, July 1, August 7, September 4, October 7, and December 4, 2019, for her complaints of chronic knee pain, right hand finger pain, right sided low back pain, and other medical issues. During this time, Respondent reviewed CURES, ordered repeat imaging, followed up with an orthopedist, and continued periodic drug screens. Patient B executed a pain management agreement on or about June 1, 2019;[5] and filled prescriptions for hydrocodone/APAP (Vicodin) 5/325 mg # 90 (three times a day) on a near monthly basis that were issued by Respondent.

31. During the period beginning on or about January 1, 2020, through on or about December 31, 2020, Respondent had twelve office or telehealth visits[6] with Patient B on or about January 6, February 5, March 4, April 16, May 4, June 5, July 1, August 3, September 3, October 1, November 4, and December 3, 2020, for her complaints of chronic knee pain, low back pain, and other medical issues. During this time, Patient B filled prescriptions for hydrocodone/APAP (Vicodin) 5/325 mg # 90 (three times a day) on a near monthly basis that were issued by Respondent. Routine urine drug screens were conducted with at least one inconsistent result. Specifically, a urine sample taken on or about February 28, 2020, indicated the presence of oxazepam and temazapam, both barbituates, which were not prescribed by Respondent. In response to this inconsistent result, Patient B was advised by a letter dated March 11, 2020, that her urine drug screen was positive for benzodiazepine[s] and she would "need a compliant urine drug screen to continue prescribing pain medications."[7] Respondent failed to offer Patient B a

[5] The pain management agreement discussed, among other things, urine drug screening, face-to-face visits with providers, no refills for lost, stolen, or destroyed medications, no early refills, review of CURES, referral to specialists, when needed, and "In addition to any controlled medications prescribed, Providers will also prescribe Naloxone, as is required by law. Providers and/or the pharmacist will discuss the reason and proper use of the Naloxone with patients."

[6] The telehealth visits were related to the Covid-19 pandemic.

[7] The letter addressed to Patient B states, "I tried contacting you by telephone, but your voice mail is full. Dr. Martinez asked that I call you and advise you that [your] urine drug screen

prescription for naloxone and/or failed to counsel Patient B on opioid overdose prevention or the use of naloxone, after discovering her concurrent use of an opioid and benzodiazepines.

32. During the period beginning on or about January 1, 2021, through on or about April 5, 2021, Respondent had four office or telehealth visits with Patient B on or about January 4, February 4, March 3, and April 5, 2021, for her complaints of chronic knee pain and other medical issues. During this time, Patient B filled prescriptions for hydrocodone/APAP (Vicodin) 5/325 mg # 90 (three times a day) on an approximate monthly basis that were issued by Respondent.

33. Respondent committed negligence in her care and treatment of Patient B, including when she failed to offer Patient B a prescription for naloxone and/or failed to counsel Patient B about opioid overdose prevention or the use of naloxone, after discovering Patient B's concurrent use of an opioid medication and benzodiazepines.

PATIENT C

34. On or about January 14, 2019, Respondent assumed care for Patient C, a 64-year-old male, for follow up care. At that time, Patient C was taking hydrocodone/APAP (Norco®) 10/325 mg (1 tab four times a day) for chronic shoulder pain and right elbow pain; in addition to several other medications for various comorbidities which included, but were not limited to, chronic kidney disease, coronary issues, diabetes, and hypercholesterolemia (high cholesterol). Following her initial visit, Respondent had seven more office visits with Patient C during 2019 on or about February 20, April 17, June 21, August 16, October 16, December 18, and December 30, 2019. During this time, Patient C was maintained on various medications and hydrocodone/ APAP (Norco) 10/325 mg (1 tab four times a day) which was filled on a near monthly basis. Routine urine drug screens were conducted with some inconsistent results. Specifically, urine drug screens from collections on or about June 17, October 16, and December 15, 2019, were

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is positive for benzodiazepine, a controlled medication not prescribed by Dr. Martinez and not present on her CURES (a report of controlled medications available to physicians) so this medication is [a]pparently not prescribed by anyone else in the United States. [¶] You have violated your Controlled Medication Contract and Dr. Martinez will need a compliant urine drug screen to continue prescribing pain medications. [¶] If you have Anxiety, you can reconsider starting Cymbalta that you already have. /s/ [F.B.], RN."

negative for the presence of opiates even though Patient C was filling his prescriptions for hydrocodone/APAP (Norco) on a near monthly basis.

35. During the period beginning on or about January 1, 2020, through on or about December 31, 2020, Respondent had ten office or telehealth visits with Patient C which occurred on or about February 3, February 12, April 20, July 9, August 6, September 3, October 1, October 28, November 25, and December 23, 2020. Respondent continued to monitor and treat Patient C's various comorbidities, his chronic pain syndrome, and maintained him on other medications and hydrocodone/APAP (Norco®) 10/325 mg (1 tab four times a day) which was filled on a near monthly basis. Routine urine drug screens were conducted with at least one inconsistent result. Specifically, a urine drug screen from a sample collected on or about January 15, 2020, was negative for the presence of opiates even though Patient C was filling his prescriptions for hydrocodone/APAP (Norco®) on a near monthly basis. When advised of the inconsistent urine drug screen at the office visit on or about February 3, 2020, Patient C advised Respondent that he had family members "taking his meds [and] that he will put them under lock and key."

36. During the period beginning on or about January 1, 2021, through March 11, 2021, Respondent had seven office or telehealth visits with Patient C on or about January 8, January 21, February 10, February 23, February 25, March 10, and March 11, 2021. Respondent continued to monitor and treat Patient C's various comorbidities, his chronic pain syndrome, and maintained him on other medications and hydrocodone/APAP (Norco) 10/325 mg (1 tab four times a day) which was last filled on or about February 8, 2021, with Patient C subsequently being prescribed and filling three prescriptions for oxycodone HCL/APAP (Percocet®) 5/325 mg (ranging from 2 to 4 tabs a day), on February 10, February 25, and March 27, 2021, for better pain control following a cholecystectomy.

37. Respondent committed negligence in his care and treatment of Patient C including when she failed to act in a timely manner to rectify the inconsistent urine drug screen results and reported diversion of a controlled substance.

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PATIENT D

38. On or about June 1, 2018, Respondent first started treating Patient D, a 22-year-old female, for obesity, history of migraine headaches, kidney stone, dysuria (painful urination) and other medical conditions. Following her initial visit, Respondent had six more office visits with Patient D on or about June 27, July 27, August 29, October 8, November 5, and December 5, 2018. During this time, Patient D was prescribed phentermine 15 mg (1 tab per day) for weight loss and started on hydrocodone/APAP (Norco) 10/325 mg (1 to 1.5 tabs every 8-12 hours reduced to 1 tab per 12 hours as needed for kidney stone pain) which was filled on a near monthly basis beginning on September 28, 2019.

39. During the period beginning on or about January 1, 2019, through on or about December 31, 2019, Respondent had eleven office visits with Patient D which occurred on or about January 17, February 28, March 8, March 14, March 29, May 2, July 1, August 7, September 4, October 2, and November 1, 2019.[8] During this time, Respondent monitored and treated Patient D's obesity, history of migraine headaches, kidney stones, dysuria, right and left hip pain, and other medical conditions. Patient D also had physical therapy, imaging, and specialty consultations for her lower back and bilateral hip pain associated with a working diagnoses of SI (sacroiliac) joint dysfunction and/or low back pain and gluteal tendinitis with no abnormalities found on imaging. During this time, Respondent maintained Patient D on various medications, including phentermine 15 mg (1 tab per day) for weight loss filled on or about each of March 15 and September 4 2019; and hydrocodone/APAP (Norco®) 10/325 mg (1 tab 2-3 times a day) for bilateral hip pain that was filled on a near monthly basis.

40. During the period beginning on or about January 1, 2020 through on or about December 31, 2020, Respondent had eleven office or telehealth visits with Patient D which occurred on or about January 3, February 26, May 4, June 1, July 1, July 21, August 18, September 15, October 19, November 20, and December 14, 2020. During this time, Respondent monitored and treated Patient D's obesity, history of migraine headaches, kidney stones, dysuria,

[8] Patient D was seen by another clinic physician on or about May 9 and June 21, 2019.

bilateral hip pain, and other medical conditions; and maintained her on various medications, including, but not limited to, phentermine 15 mg (1 tab per day) for weight loss filled on or about July 7 and September 15, 2020; and hydrocodone/APAP (Norco®) 10/325 mg (1 tab every 6 hours as needed for pain)[9] for bilateral hip pain filled on a near monthly basis which was changed to oxycodone HCL/APAP (Percocet) 10/325 mg 0.5-1 tab every 8-12 hours as needed for pain which was filled on a near monthly basis.

41. During the period beginning on or about January 1, 2021 through on or about March 11, 2021, Respondent had three telehealth visits with Patient D which occurred on or about January 13, February 11, and March 11, 2021. During this time, Respondent monitored and treated Patient D's obesity, bilateral hip pain, sacroiliac joint dysfunction, and other medical conditions; and maintained her on various medications, including phentermine 15 mg (1 tab per day) for weight loss filled on or about February 1, 2021; and oxycodone HCL/APAP (Percocet®) 10/325 mg 0.5-1 tab every 8-12 hours as needed for pain which was filled on a near monthly basis.

42. Respondent committed repeated negligent acts in his care and treatment of Patient D including the following:

A. Respondent's prescribing of escalating doses of opiates was not justified by Patient D's clinical presentation and/or pathology.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Medical Records)

43. Respondent is subject to disciplinary action under section 2266 of the Code in that Respondent failed to maintain adequate and accurate records related to the provision of medical services to patients. The circumstances are as follows:

44. The allegations of the First and Second Causes for Discipline, inclusive, are incorporated herein by reference as if fully set forth.

45. Respondent failed to adequately document Patient D's pathology supporting the

[9] The hydrocodone/APAP (Norco) 10/325 mg was increased from 1 tab every 8 to 12 hours prn (as needed for) severe pain to 1 tab every 6 hours on February 26, 2020.

patient's prolonged use of opiates.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 120647, issued to Respondent Martha Viviana Martinez, M.D.;

2. Revoking, suspending or denying approval of Respondent Martha Viviana Martinez, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Martha Viviana Martinez, M.D. to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

4. Ordering Respondent Martha Viviana Martinez, M.D., if placed on probation, to provide patient notification in accordance with Business and Professions Code section 2228.1; and

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

DATED: FEB 16 2024

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

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