

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

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

Eva M. Smith, M.D.

**Physician's and Surgeon's
Certificate No. C 42592**

Respondent.

Case No.: 800-2020-067733

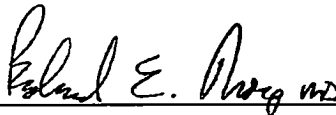
DECISION

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

This Decision shall become effective at 5:00 p.m. on August 20, 2025.

IT IS SO ORDERED: July 21, 2025.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 GREG W. CHAMBERS
Supervising Deputy Attorney General
3 THOMAS OSTLY
Deputy Attorney General
4 State Bar No. 209234
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7

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

12 In the Matter of the Accusation Against:

13 **EVA M. SMITH, M.D.**
14 **P.O. Box 1305**
Hoopla, CA 95546-1305

15 **Physician's and Surgeon's Certificate No. C**
16 **42592**

17 Respondent.

Case No. 800-2020-067733

OAH No. 2024030097

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
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 Thomas Ostly, Deputy
25 Attorney General.

26 2. Respondent Eva M. Smith, M.D. (Respondent) is represented in this proceeding by
27 attorney Christopher J. Cannon, whose address is: 737 Tehama, No. 3, San Francisco, CA 94103
28

1 3. On or about July 3, 1989, the Board issued Physician's and Surgeon's Certificate No.
2 C 42592 to Eva M. Smith, M.D. (Respondent). The Physician's and Surgeon's Certificate was in
3 full force and effect at all times relevant to the charges brought in Accusation No.
4 800-2020-067733, and will expire on May 31, 2025, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 800-2020-067733 was filed before the Board, and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on May 19, 2023. Respondent timely filed her Notice of Defense
9 contesting the Accusation.

10 5. A copy of Accusation No. 800-2020-067733 is attached as exhibit A and incorporated
11 herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2020-067733. Respondent has also carefully read,
15 fully discussed with her counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

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

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

25 **CULPABILITY**

26 9. Respondent understands and agrees that the charges and allegations in Accusation No.
27 800-2020-067733, if proven at a hearing, constitute cause for imposing discipline upon her
28 Physician's and Surgeon's Certificate, No. C 42592.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2020-067733, a copy of which is attached hereto as Exhibit A, and that she has thereby subjected her Physician's and Surgeon's Certificate No. C 42592 to disciplinary action.

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

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. 800-2020-067733 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. C 42592 issued to Respondent EVA M. SMITH, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for Buprenorphine to treat opioid use disorder, and Methadone, also used to treat addiction to opioids.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after an appropriate prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or

1 cultivation of marijuana for the personal medical purposes of the patient and that the patient or
2 the patient's primary caregiver may not rely on Respondent's statements to legally possess or
3 cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully
4 document in the patient's chart that the patient or the patient's primary caregiver was so
5 informed. Nothing in this condition prohibits Respondent from providing the patient or the
6 patient's primary caregiver information about the possible medical benefits resulting from the use
7 of marijuana.

8 2. PREScribing PRACTICES COURSE. Within 60 calendar days of the effective
9 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in
10 advance by the Board or its designee. Respondent shall provide the approved course provider
11 with any information and documents that the approved course provider may deem pertinent.
12 Respondent shall participate in and successfully complete the classroom component of the course
13 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
14 complete any other component of the course within one (1) year of enrollment. The prescribing
15 practices course shall be at Respondent's expense and shall be in addition to the Continuing
16 Medical Education (CME) requirements for renewal of licensure.

17 A prescribing practices course taken after the acts that gave rise to the charges in the
18 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
19 or its designee, be accepted towards the fulfillment of this condition if the course would have
20 been approved by the Board or its designee had the course been taken after the effective date of
21 this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
26 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
27 advance by the Board or its designee. Respondent shall provide the approved course provider
28 with any information and documents that the approved course provider may deem pertinent.

1 Respondent shall participate in and successfully complete the classroom component of the course
2 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
3 complete any other component of the course within one (1) year of enrollment. The medical
4 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
5 Medical Education (CME) requirements for renewal of licensure.

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

11 Respondent shall submit a certification of successful completion to the Board or its
12 designee not later than 15 calendar days after successfully completing the course, or not later than
13 15 calendar days after the effective date of the Decision, whichever is later.

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

23 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
24 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
25 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
26 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
27 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
28 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the

1 signed statement for approval by the Board or its designee.

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

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

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

18 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
19 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
20 name and qualifications of a replacement monitor who will be assuming that responsibility within
21 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
22 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
23 notification from the Board or its designee to cease the practice of medicine within three (3)
24 calendar days after being so notified. Respondent shall cease the practice of medicine until a
25 replacement monitor is approved and assumes monitoring responsibility.

26 In lieu of a monitor, Respondent may participate in a professional enhancement program
27 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
28 review, semi-annual practice assessment, and semi-annual review of professional growth and

1 education. Respondent shall participate in the professional enhancement program at Respondent's
2 expense during the term of probation.

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

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

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

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

18 8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
19 ordered to reimburse the Board its costs of investigation and enforcement, including, but not
20 limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena
21 enforcement, as applicable, in the amount of \$49,000 (forty-nine thousand dollars). Costs shall
22 be payable to the Medical Board of California. Failure to pay such costs shall be considered a
23 violation of probation.

24 Payment must be made in full within 30 calendar days of the effective date of the Order, or
25 by a payment plan approved by the Medical Board of California. Any and all requests for a
26 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with
27 the payment plan shall be considered a violation of probation.

28 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to

1 repay investigation and enforcement costs, including expert review costs.

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

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

7 10. GENERAL PROBATION REQUIREMENTS.

8 Compliance with Probation Unit

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

10 Address Changes

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

16 Place of Practice

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

20 License Renewal

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

23 Travel or Residence Outside California

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

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

1 departure and return.

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

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

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

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

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

26 Periods of non-practice for a Respondent residing outside of California will relieve
27 Respondent of the responsibility to comply with the probationary terms and conditions with the
28 exception of this condition and the following terms and conditions of probation: Obey All Laws;

1 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
2 Controlled Substances; and Biological Fluid Testing.

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

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

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

26 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
27 with probation monitoring each and every year of probation, as designated by the Board, which
28 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

1 California and delivered to the Board or its designee no later than January 31 of each calendar
2 year.

3 17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
4 a new license or certification, or petition for reinstatement of a license, by any other health care
5 licensing action agency in the State of California, all of the charges and allegations contained in
6 Accusation No. 800-2020-067733 shall be deemed to be true, correct, and admitted by
7 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
8 restrict license.

9 ACCEPTANCE

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

15
16 DATED: 9/19/24


EVA M. SMITH, M.D.
Respondent

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

21
22 DATED: 9.19.24


CHRISTOPHER J. CANNON
Attorney for Respondent

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ENDORSEMENT

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

DATED: September 20, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
GREG W. CHAMBERS
Supervising Deputy Attorney General

/s/ Thomas Ostly

THOMAS OSTLY
Deputy Attorney General
Attorneys for Complainant

1 ROB BONTA
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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
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12 In the Matter of the Accusation Against:

Case No. 800-2020-067733

13 **EVA M. SMITH, M.D.**
P.O. Box 1288
Hoopla, CA 95546-1288

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. C 42592,**

16 Respondent.

17
18 **PARTIES**

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

22 2. On or about July 3, 1989, the Board issued Physician's and Surgeon's Certificate
23 Number C 42592 to Eva M. Smith, M.D. (Respondent). The Physician's and Surgeon's
24 Certificate was in full force and effect at all times relevant to the charges brought herein and will
25 expire on May 31, 2023, unless renewed.

26 **JURISDICTION**

27 3. Section 2227 of the Code provides that a licensee who is found guilty under the
28 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed

1 one year, placed on probation and required to pay the costs of probation monitoring, or such other
2 action taken in relation to discipline as the Board deems proper.

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

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

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

9 "(b) Gross negligence.

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

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

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

20 "(d) Incompetence.

21 ...

22 5. Section 2266 of the Code states:

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

25 COST RECOVERY

26 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.

4 **RESPONDENT'S PRACTICE**

5 7. At the time of the events alleged in this Accusation, Respondent practiced as a
6 primary care physician in Hoopa Valley, California. Respondent provided medical treatment at a
7 clinic run by the Indian Health Service.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 1¹)

10 8. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 1,
11 and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross
12 negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that
13 Respondent committed gross negligence, repeated negligent acts and/or demonstrated
14 incompetence, including but not limited to the following:

15 9. Respondent assumed care for Patient 1 in 2017. Patient 1 was a 57-year-old woman,
16 who died on May 3, 2019. Patient 1 had a history of dialysis, renal failure, thyroid disease,
17 migraine headaches, secondary hyperparathyroidism, hypertension, anxiety and depression.

18 10. Respondent wrote 6 prescriptions for benzodiazepines from January 2017 until
19 Patient 1's death in April 2019. This prescribing pattern exceeds short term treatment and
20 increased the risk of addiction and adverse side effects.

21 11. The preferred treatment for anxiety disorders are selective serotonin reuptake
22 inhibitors. Benzodiazepines may be used for augmentation during acute treatment. However,
23 dependence, tolerance, and escalating doses to get the same effect over the long term can be
24 problematic with use of benzodiazepines. Therefore, short-term prescribing with emphasis on
25 acute management of uncontrolled anxiety is preferred. Short-acting benzodiazepines are not
26

27 _____
28 ¹ Patients are referred to by number to protect privacy.

1 preferred for treatment of anxiety because they have a higher risk of addiction and adverse
2 effects.

3 12. From January 1, 2017 through May 1, 2019, Patient 1 filled 131 prescriptions for
4 various Schedule II medications including clonazepam, oxycodone, hydromorphone, lorazepam,
5 codeine. Respondent wrote 109 of the 131 prescriptions according to Patient 1's CURES report.²
6 Patient 1 filled a 28 day supply of 162 pills of 325 oxycodone³ Hcl Acetaminophen on April 19,
7 2019 written by Respondent, resulting in 6 (162/28) pills per day or 30 morphine equivalents.⁴ On
8 April 17, 2019, and again on May 1, 2019, Patient 1 filled 14 day supplies of 14 pills of 0.5 mg
9 lorazepam.⁵

10 13. Respondent failed to utilize urine drug testing before starting opioid therapy for
11 Patient 1.

12 14. In the year 2019, Respondent wrote eight prescriptions for opioids and
13 benzodiazepines for Patient 1 and none of those prescriptions corresponds to a complete record.
14 There are no corresponding medical records to document the medical encounters that occurred or
15 rationale for the prescribing. The three medical record entries made by Respondent in 2019 were
16 all entered after Patient 1's death.

17
18
19 ² CURES "is California's prescription drug monitoring program. By statute, every
20 prescription of a Schedule II, III, or IV controlled substance must be logged in CURES, along
21 with the patient's name, address, telephone number, gender, date of birth, drug name, quantity,
22 number of refills, and information about the prescribing physician and pharmacy. [Citation.]"
(*Lewis v. Superior Court* (2017) 3 Cal.5th 561, 565 (*Lewis*)). The Board is authorized to access
23 the CURES database (*id.* at p. 567), which is maintained by the California Department of Justice
(*id.* at p. 566).

24 ³ Oxycodone is an opioid analgesic drug. It acts on the central nervous system (CNS) of
25 the brain, essentially suppressing pain signaling and stimulating the body's own pain managing
26 system.

27 ⁴ Opioid dosage is often discussed in terms of "morphine milligram equivalents", or
28 MME. MME per day, MME/d, is a standard measure of the daily dose of any opioid. The MME
of morphine is one, meaning that morphine is exactly as potent as morphine. MMEs greater than
one signify greater potency, while MMEs less than one signify lesser potency. At the time of the
events alleged in this Accusation, the standard of care has been to limit opioid dose to less than 50
MME/d in almost all patients, and to exceed 90 MME/d in only the most unusual circumstances
and with only the most careful documentation.

⁵ Lorazepam is a benzodiazepine medication. It is used to treat anxiety disorders,
insomnia, severe agitation, active seizures including status epilepticus, alcohol withdrawal, and
chemotherapy-induced nausea and vomiting.

1 15. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 1,
2 and is subject to disciplinary action under sections 2234, 2234(b), 2234(c) and/or 2234(d) of the
3 Code in that Respondent committed gross negligence, repeated negligent acts, and/or
4 demonstrated incompetence, including but not limited to the following:

5 A. Respondent prescribed dangerous drugs and controlled substances, without an
6 appropriate evaluation and history and without assessment of the indication for the medications.

7 B. Respondent prescribed controlled substances in high amounts without documentation
8 of any physical examination to support the care provided, or rationale for the large doses
9 prescribed.

10 C. Respondent prescribed narcotics in high doses without documenting any substance
11 abuse history.

12 D. Respondent prescribed controlled substances, over a long period of time and in high
13 doses, without obtaining/and/or documenting informed consent.

14 E. Respondent prescribed controlled substances, over a long period of time and in high
15 doses, without documenting a treatment plan with specific treatment goals.

16 F. Respondent continued to prescribe high doses of controlled substances, without
17 documented periodic review or assessment of the efficacy of treatment.

18 G. Respondent at no time documented a plan to taper Patient 1 off of high doses of
19 opioid medication.

20 H. Respondent prescribed a benzodiazepine and an opioid throughout 2019 without
21 taking an adequate history and attempting limiting and tapering.

22 I. Respondent failed to evaluate risk factors for opioid related harms.

23 J. Respondent failed to review CURES while treating Patient 1.

24 K. Respondent failed to evaluate urine drug testing and treatment compliance.

25 L. Respondent prescribed multiple central nervous system depressants concurrently.

26 M. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing
27 the risk of addiction and adverse side effects.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence – Patient 2)

16. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 2, and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that Respondent committed gross negligence, repeated negligent acts and/or demonstrated incompetence, including but not limited to the following:

17. Patient 2 was a 37-year-old female on November 9, 2020. Her past medical history included endometriosis, back pain and obesity.

18. According to CURES, Respondent wrote 10 prescriptions for Patient 2 between September 2017 and October 2020. According to the medical records, only a single chart entry occurred during that time period – November 9, 2020. This single entry does not correspond to any prescription written by Respondent. The two other entries by Respondent in the medical record are a one-sentence addendum and an acknowledgement of receipt.

19. There is no evidence Respondent ordered or reviewed an EKG before prescribing methadone⁶ for Patient 2. Methadone may cause a heart rhythm disorder and EKG screening is required for appropriate risk assessment prior to prescribing. EKG monitoring was performed on March 20, 2018, however Respondent's first prescription for methadone, which appears to be a refill from a different provider, was on September 15, 2017.

20. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 2, and is subject to disciplinary action under sections 2234, 2234(b), 2234(c), and/or 2234(d) of the Code, in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

A. Respondent failed to document treatment with methadone.

B. Respondent failed to conduct EKG screening before prescribing methadone.

⁶ Methadone is a medication used to treat Opioid Use Disorder (OUD). Methadone is a long-acting full opioid agonist, and a schedule II controlled medication. Methadone used to treat those with a confirmed diagnosis of OUD can only be dispensed through a Substance Mental Health Services Administration (SAMHSA) certified Opioid Treatment Program (OTP). Other medications may interact with methadone and cause heart conditions.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 3)

21. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 3, and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

22. Patient 3 was a 29-year-old male at the time of his death on May 16, 2021. His past medical history included anxiety and depression, insomnia, chronic pain, overweight, hypertension, mixed hyperlipidemia, tobacco use disorder, and heroin dependence.

23. According to CURES, Respondent wrote 73 prescriptions for Patient 3 between November 2019 and March 2021. However, the medical records only contain a single chart entry – March 4, 2021 – that was signed on June 19, 2021. The prescriptions written do not correspond to the medical records.

24. Respondent wrote 27 prescriptions for benzodiazepines from November 2019 to March 2021. This prescribing pattern exceeds short-term treatment and increases the risk of addiction and adverse side effects. The prescriptions written by Respondent do not correspond to Patient 3's medical record.

25. Benzodiazepines and opioids are central nervous system depressants. When central nervous system depressants are combined there is increased risk of respiratory depression. Use of more than one central nervous system depressant should be avoided. If benzodiazepines and opioids must be used in combination, they should be limited and tapering should be attempted.

26. Between November 2019 and March 2021, Respondent prescribed lorazepam [a benzodiazepine], morphine, oxycodone, hydrocodone and tramadol [opioids], concurrently.

27. Patient 3 tested positive for methamphetamine and amphetamine, which were not prescribed to him. There is no evidence that Respondent discussed discontinuing Patient 3's opioid therapy despite two toxicology results indicating unsanctioned use of opioids and concurrent use of illicit drugs.

1 28. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 3,
2 and is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or
3 2234(d) of the Code in that Respondent committed gross negligence and/or repeated negligent
4 acts and/or demonstrated incompetence, including but not limited to the following:

5 A. Respondent prescribed dangerous drugs and controlled substances, without an
6 appropriate evaluation and history and without assessment of the indication for the medications.

7 B. Respondent prescribed controlled substances in extremely high amounts without
8 documentation of any physical examination to support the care provided, or rationale for the large
9 doses prescribed.

10 C. Respondent prescribed narcotics in high doses without documenting any substance
11 abuse history.

12 D. Respondent prescribed controlled substances, over a long period of time and in high
13 doses, without obtaining and/or documenting informed consent.

14 E. Respondent prescribed controlled substances, over a long period of time and in high
15 doses, without documenting a treatment plan with specific treatment goals.

16 F. Respondent continued to prescribe high doses of controlled substances, without
17 documented periodic review or assessment of the efficacy of treatment.

18 G. Respondent at no time documented a plan to taper Patient 3 off high doses of opioid
19 medication.

20 H. Respondent prescribed a benzodiazepine and an opioid without taking an adequate
21 history and attempting limiting and tapering.

22 I. Respondent failed to evaluate risk factors for opioid related harms.

23 J. Respondent failed to evaluate urine drug testing and treatment compliance.

24 K. Respondent prescribed multiple central nervous system depressants concurrently.

25 L. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing
26 the risk of addiction and adverse side effects.

27 M. Respondent failed to appropriately evaluate drug testing and treatment compliance.

28

1 A. Respondent prescribed dangerous drugs and controlled substances, without an
2 appropriate evaluation and history and without assessment of the indication for the medications.

3 B. Respondent prescribed controlled substances in extremely high amounts without
4 documentation of any physical examination to support the care provided, or rationale for the large
5 doses prescribed.

6 C. Respondent prescribed narcotics in high doses without documenting any substance
7 abuse history.

8 D. Respondent prescribed controlled substances, over a long period of time and in high
9 doses, without obtaining and/or documenting informed consent.

10 E. Respondent prescribed controlled substances, over a long period of time and in high
11 doses, without documenting a treatment plan with specific treatment goals.

12 F. Respondent continued to prescribe high doses of controlled substances, without
13 documented periodic review or assessment of the efficacy of treatment.

14 G. Respondent at no time documented a plan to taper Patient 4 off high doses of opioid
15 medication.

16 H. Respondent prescribed a benzodiazepine and an opioid throughout 2019 without
17 taking an adequate history and attempting limiting and tapering.

18 I. Respondent failed to evaluate risk factors for opioid related harms.

19 J. Respondent failed to review CURES while treating Patient 4.

20 K. Respondent failed to evaluate urine drug testing and treatment compliance.

21 L. Respondent prescribed multiple central nervous system depressants concurrently.

22 M. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing
23 the risk of addiction and adverse side effects.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 (Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 5)

26 35. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 5,
27 and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross
28 negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that

1 Respondent committed gross negligence, repeated negligent acts, and/or demonstrated
2 incompetence, including but not limited to the following:

3 36. Patient 5 was a 62-year-old male in January 2017, when he filled prescriptions for
4 hydrocodone and diazepam written by Respondent. Patient 5 had a history of chronic pain from
5 his knees, shoulders, back, hypertension, benign prostatic hypertrophy, pre diabetes mellitus,
6 anxiety, and liver cancer with surgical resection.

7 37. Respondent prescribed diazepam on a monthly basis to Patient 5 between January
8 2017 and January 2022, for a total of 81 prescriptions. The American Geriatrics Society (AGS)
9 strongly recommends avoiding the use of benzodiazepines in adults over the age of 65. They
10 should not be used in combination with opioids, regardless of age, due to the risk of central
11 nervous system depression.

12 38. Respondent prescribed benzodiazepines and opioids concurrently on a monthly basis
13 between January 2017 and January 2022, exceeding short-term treatment, increasing the risk of
14 addiction and adverse side effects.

15 39. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 5,
16 and is subject to disciplinary action under sections 2234, 2234(b), 2234(c), and/or 2234(d) of the
17 Code, in that Respondent committed gross negligence, repeated negligent acts, and/or
18 demonstrated incompetence, including but not limited to the following:

19 A. Respondent prescribed dangerous drugs and controlled substances, without an
20 appropriate evaluation and history and without assessment of the indication for the medications.

21 B. Respondent prescribed controlled substances in extremely high amounts without
22 documentation of any physical examination to support the care provided, or rationale for the large
23 doses prescribed.

24 C. Respondent prescribed narcotics in high doses without documenting any substance
25 abuse history.

26 D. Respondent prescribed controlled substances, over a long period of time and in high
27 doses, without obtaining and/or documenting informed consent.
28

1 E. Respondent prescribed controlled substances, over a long period of time and in high
2 doses, without documenting a treatment plan with specific treatment goals.

3 F. Respondent continued to prescribe high doses of controlled substances, without
4 documented periodic review or assessment of the efficacy of treatment.

5 G. Respondent at no time documented a plan to taper Patient 5 off opioid medication.

6 H. Respondent prescribed a benzodiazepine and an opioid without taking an adequate
7 history and attempting limiting and tapering.

8 I. Respondent prescribed multiple central nervous system depressants concurrently.

9 J. Respondent prescribed multiple central nervous system depressants to an older adult.

10 K. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing the
11 risk of addiction and adverse side effects.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 (Failure to Maintain Adequate and Accurate Medical Records)

14 40. Paragraphs 8 through 39 are incorporated by reference as if fully set forth.

15 41. Respondent is guilty of unprofessional conduct and subject to discipline for violation
16 of sections 2234 [unprofessional conduct] and 2266 [record keeping] of the Code for failure to
17 keep adequate and accurate medical records for Patient 1, Patient 2, Patient 3, Patient 4, and
18 Patient 5.

19 42. In each case, Respondent's medical records fail to include a complete or even partial
20 assessment of the patients' presenting conditions, an assessment of the patient, the rationale for
21 prescribing, or response to treatment. Respondent failed to document that an appropriate or
22 adequate informed consent was provided to any of the patients, at any time over the course of
23 treatment, or for the types, amounts and combinations of drugs prescribed.

24 **PRAYER**

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

27 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 42592,
28 issued to Respondent Eva M. Smith, M.D.;

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

3 3. Ordering Respondent Eva M. Smith, M.D., to pay the Board the costs of the
4 investigation and enforcement of this case, and if placed on probation, the costs of probation
5 monitoring;

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

7
8 DATED: **MAY 19 2023**



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