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

In the Matter of the First Amended Petition to Revoke Probation Against Brit O. Smith, M.D. Physician's and Surgeon's Certificate No. A16994 Respondent.	Case No. 800-2019-058699

DECISION

The attached Stipulated Surrender of License and 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 AUG 0 3 2020.

IT IS SO ORDERED JUL 2 7 2020.

MEDICAL BOARD OF CALIFORNIA

By: William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
TAN N. TRAN
Deputy Attorney General
State Bar No. 197775
California Department of Justice
300 South Spring Street, Suite 1702
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Attorneys for Complainant

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

In the Matter of the First Amended Petition to Revoke Probation Against: **BRIT O. SMITH, M.D.** **44847 10th Street West** **Lancaster, CA 93534** **Physician's and Surgeon's Certificate No. A 16994,** Respondent.	Case No. 800-2019-058699 **STIPULATED SURRENDER OF LICENSE AND 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. Christine J. Lally was the Interim Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity. Since the filing of the First Amended Petition to Revoke Probation in this matter, William Prasifka replaced Christine J. Lally as the Executive Director of the Board and Mr. Prasifka now maintains the complaint in his official capacity as the Executive Director of the Board. He is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Tan N. Tran, Deputy Attorney General.

2. Brit O. Smith, M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about June 30, 1956, the Board issued Physician's and Surgeon's Certificate No. A 16994 to Respondent. That license was in full force and effect at all times relevant to the charges brought in First Amended Petition to Revoke Probation No. 800-2019-058699 and will expire on July 31, 2020, unless renewed.

JURISDICTION

4. On October 11, 2019, Petition to Revoke Probation No. 800-2019-058699 was filed before the Board. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation. Subsequently, on March 10, 2020, First Amended Petition to Revoke Probation No. 800-2019-058699 was filed before the Board, and is currently pending against Respondent. The First Amended Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent. Respondent submitted a letter in response to the First Amended Petition to Revoke Probation. A copy of First Amended Petition to Revoke Probation No. 800-2019-058699 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in First Amended Petition to Revoke Probation No. 800-2019-058699. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in First Amended Petition to Revoke Probation No. 800-2019-058699, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. A 16994 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

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

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

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 16994, issued to Respondent Brit O. Smith, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Petition to Revoke Probation No. 800-2019-058699 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. 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 agency in the State of California, all of the charges and allegations contained in First Amended Petition to Revoke Probation No. 800-2019-058699 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 licensure.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: July 11, 2020 Brit O Smith M.D

BRIT O. SMITH, M.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

Judith Alvarado Digitally signed by Judith Alvarado Date: 2020.07.23 10:49:50 -07'00'

for

TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Petition to Revoke Probation No. 800-2019-058699

XAVIER BECERRA
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Attorneys for Complainant

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

In the Matter of the First Amended Petition to Revoke Probation Against: BRIT O. SMITH, M.D. 44847 10th Street West Lancaster, CA 93534 Physician's and Surgeon's Certificate No. A 16994, Respondent.	Case No. 800-2019-058699 **FIRST AMENDED PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Christine J. Lally (Complainant) brings this First Amended Petition to Revoke Probation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about June 30, 1956, the Medical Board of California issued Physician's and Surgeon's Certificate number A 16994 to Brit O. Smith, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will

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expire on July 31, 2020, unless renewed. This Certificate is in a suspended status based on a "Cease Practice Order," dated August 13, 2019.

3. In a disciplinary action entitled "In the Matter of the First Amended Accusation Against Brit O. Smith, M.D.," Case No. 800-2015-014156, the Medical Board of California issued a decision, effective September 20, 2018 (the "2018 Decision"), in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. A copy of the 2018 Decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This First Amended Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

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

"(b) The administration and hearing of disciplinary actions.

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

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

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

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

6. 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.

7. Section 2234 of the Code, states:

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

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

"...

FIRST CAUSE TO REVOKE PROBATION

(Incompetence/Failure to Pass PACE Program)

8. At all times after the effective date of Respondent's probation, Condition 2 of the 2018 Decision states in pertinent part:

> "Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program...Respondent shall successfully complete the program...
>
> ...Respondent shall comply with the program's recommendations.
>
> ...Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.
>
> If Respondent fails to....successfully complete the clinical competence assessment program.....Respondent shall.....cease the practice of medicine within three (3) calendar days after being so notified....Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period."

Respondent has failed to comply/pass the clinical competence assessment program, thus violating his probation. The circumstances are as follows:

A. Respondent enrolled and participated in the clinical competence assessment program (PACE) on April 8-12, 2019, after settlement of an Accusation concerning Respondent's care and treatment of five patients, including inappropriate prescribing and inadequate medical records.

B. Overall, Respondent's performance on the assessment was extremely concerning and unsatisfactory. According to PACE faculty, Respondent's review of charts and interactions with mock patients revealed serious concerns about Respondent's medical judgment, skills, and knowledge.

C. During the neuropsychological evaluation, PACE staff also found deficiencies in Respondent's attention, memory, and executive functioning. Per PACE staff, these noted cognitive deficits could make Respondent susceptible to missing salient and complex details which could lead directly to patient harm.

D. The PACE evaluation of Respondent concluded that Respondent demonstrated significant deficiencies such as substandard medical knowledge and poor clinical judgment.

Based on Respondent's performance, PACE staff had serious concerns about Respondent's ability to practice medicine safely.

E. Overall, Respondent's performance during the assessment resulted in a grade of "FAIL-Category 4," which per PACE, signifies a poor performance that is not compatible with overall physician competency and safe practice. Respondent's lack of basic medical knowledge as shown by objective and subjective factors shows that he is incompetent and subjects his license to discipline.

SECOND CAUSE TO REVOKE PROBATION

(Unprofessional Conduct/Failure to Comply With Cease Practice Order)

9. Respondent is subject to disciplinary action under section 2234 of the Code for unprofessional conduct for his failure to comply with probationary requirements, per the 2018 Decision. The circumstances are as follows:

A. The Board issued a "Cease Practice Order," dated August 13, 2019, per Condition 2 of the 2018 Decision, against Respondent, due to his failure to pass the clinical competence assessment program, as described above.

B. A check of CURES,[1] by the Board, for the period of September 1, 2019 through December 30, 2019, revealed that Respondent was prescribing controlled substances to patients during said time period. In doing so, Respondent was continuing the practice of medicine after being notified not to resume the practice of medicine, due to his failure to pass the clinical competence assessment program, thus violating Condition 2 of the 2018 Decision.

C. Respondent's failure to comply with the "Cease Practice Order," dated August 13, 2019, constitutes unprofessional conduct and subjects his license to discipline.

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[1] CURES allows healthcare prescribers, pharmacists, law enforcement, and regulatory boards to access patients' and providers' controlled substance prescription histories. CURES is intended to assist in the reduction of prescription drug abuse in California.

PRAYER

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

1. Revoking the probation that was granted by the Board in Case No. 800-2015-014156 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's Certificate No. A 16994 issued to Respondent;

2. For the grounds stated, revoking or suspending Brit O. Smith, M.D.'s Physician's and Surgeon's Certificate;

3. Revoking, suspending or denying approval of Brit O. Smith, M.D.'s authority to supervise physician assistants and advance practice nurses;

4. Ordering Brit O. Smith, M.D. to pay the Medical Board of California the costs of probation monitoring, if placed on probation; and

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

DATED: MAR 10 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

Exhibit A

2018 DECISION

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

In the Matter of the First Amended Accusation Against:	)	
Brit O. Smith, M.D.	)	Case No. 800-2015-014156
Physician's and Surgeon's Certificate No. A 16994	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on September 20, 2018.

IT IS SO ORDERED: August 21, 2018.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.

Signature

For Custodian of Records
Title

Date

3. On or about June 30, 1956, the Board issued Physician's and Surgeon's Certificate No. A 16994 to BRIT O. SMITH, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2015-014156, and will expire on July 31, 2018, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2015-014156 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on or about November 15, 2017. Respondent timely filed his Notice of Defense contesting the First Amended Accusation.

5. A copy of First Amended Accusation No. 800-2015-014156 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2015-014156. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. 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 First

Amended Accusation No. 800-2015-014156 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in First Amended Accusation No. 800-2015-014156 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

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

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings 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

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

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14. 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.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 16994 issued to Respondent BRIT O. 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 - 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. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and

mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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 the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

3. 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 (Amended) Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), (Amended) Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and (Amended) 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. 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.

After Respondent has successfully completed the clinical competence assessment program, as described in term # 2 above, and has been so notified by the Board or its designee in writing, the requirement for a practice monitor, as described above, will be withdrawn.

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

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

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

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

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

7. 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.

8. 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(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.

9. 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.

10. 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..

11. 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. Upon successful completion of probation, Respondent's certificate shall be fully restored.

12. 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.

13. 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.

14. 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Albert J. Garcia. 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: 7-2-2018

BRIT O. SMITH, M.D.
Respondent

I have read and fully discussed with Respondent BRIT O. SMITH, 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: July 2, 2018

Albert Garcia
ALBERT J. GARCIA
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: 7/5/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2015-014156

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO NOV 15 2017
BY [illegible] ANALYST

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

In the Matter of the First Amended Accusation Against: **Brit O. Smith, M.D.** **44847 North 10th Street West** **Lancaster, CA 93534** **Physician's and Surgeon's Certificate No. A 16994,** Respondent.	Case No. 800-2015-014156 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 30, 1956, the Medical Board issued Physician's and Surgeon's Certificate Number A 16994 to Brit O. Smith, 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, 2018, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions 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, publicly reprimanded, or such other action taken in relation to discipline as the Board deems proper.

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

"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.

"...."

6. Section 2242 of the Code states:

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

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs

were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

8. Section 3501 of the Code states in pertinent part:

"(a) As used in this chapter:

"...

"(5) "Supervising physician" means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

"(6) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

"...

"(10) "Delegation of services agreement" means the writing that delegates to a

physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.

"...

"(b) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations adopted under this chapter."

9. Section 3502, subdivision (a), of the Code states in pertinent part:

"(a) Notwithstanding any other law, a physician assistant may perform those medical services as set forth by the regulations adopted under this chapter when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant. The medical record, for each episode of care for a patient, shall identify the physician and surgeon who is responsible for the supervision of the physician assistant."

10. California Code of Regulations, Title 16, section 1399.541 states as follows:

"Because physician assistant practice is directed by a supervising physician, and a physician assistant acts as an agent for that physician, the orders given and tasks performed by a physician assistant shall be considered the same as if they had been given and performed by the supervising physician. Unless otherwise specified in these regulations or in the delegation or protocols, these orders may be initiated without the prior patient specific order of the supervising physician. In any setting, including for example, any licensed health facility, out-patient settings, patients' residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present:

"(a) Take a patient history; perform a physical examination and make an assessment and diagnosis therefrom; initiate, review and revise treatment and therapy plans including plans for those services described in Section 1399.541(b) through Section 1399.541(i) inclusive; and record and present pertinent data in a manner meaningful to the physician.

"(b) Order or transmit an order for x-ray, other studies, therapeutic diets, physical therapy,

occupational therapy, respiratory therapy, and nursing services.

"(c) Order, transmit an order for, perform, or assist in the performance of laboratory procedures, screening procedures and therapeutic procedures.

"(d) Recognize and evaluate situations which call for immediate attention of a physician and institute, when necessary, treatment procedures essential for the life of the patient.

"(e) Instruct and counsel patients regarding matters pertaining to their physical and mental health. Counseling may include topics such as medications, diets, social habits, family planning, normal growth and development, aging, and understanding of and long-term management of their diseases.

"(f) Initiate arrangements for admissions, complete forms and charts pertinent to the patient's medical record, and provide services to patients requiring continuing care, including patients at home.

"(g) Initiate and facilitate the referral of patients to the appropriate health facilities, agencies, and resources of the community.

"(h) Administer or provide medication to a patient, or issue or transmit drug orders orally or in writing in accordance with the provisions of subdivisions (a)-(f), inclusive, of Section 3502.1 of the Code.

"(i) (1) Perform surgical procedures without the personal presence of the supervising physician which are customarily performed under local anesthesia. Prior to delegating any such surgical procedures, the supervising physician shall review documentation which indicates that the physician assistant is trained to perform the surgical procedures. All other surgical procedures requiring other forms of anesthesia may be performed by a physician assistant only in the personal presence of a supervising physician.

"(2) A physician assistant may also act as first or second assistant in surgery under the supervision of a supervising physician. The physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant. "Immediately available" means the physician is physically accessible and able to return to the patient, without any delay, upon the request of the physician assistant to address

any situation requiring the supervising physician's services."

11. California Code of Regulations section 1399.545, subdivision (f), states in pertinent part:

"(f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision."

12. California Code of Regulations section 1399.546 states:

"Each time a physician assistant provides care for a patient and enters his or her name, signature, initials, or computer code on a patient's record, chart or written order, the physician assistant shall also enter the name of his or her supervising physician who is responsible for the patient. When a physician assistant transmits an oral order, he or she shall also state the name of the supervising physician responsible for the patient."

13. Section 11217 of the California Health and Safety Code states:

"Except as provided in Section 11223, no person shall treat an addict for addiction to a narcotic drug except in one of the following:

"(a) An institution approved by the State Department of Social Services and the State Department of Health Care Services, and where the patient is at all times kept under restraint and control.

"(b) A city or county jail.

"(c) A state prison.

"(d) A facility designated by a county and approved by the State Department of Social Services pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions Code.

"(e) A state hospital.

"(f) A county hospital.

"(g) A facility licensed by the State Department of Alcohol and Drug Programs pursuant to Division 10.5 (commencing with Section 11750).

"(h) A facility as defined in subdivision (a) or (b) of Section 1250 and Section 1250.3.

"A narcotic controlled substance in the continuing treatment of addiction to a controlled substance shall be used only in those programs licensed by the State Department of Alcohol and Drug Programs pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 on either an inpatient or outpatient basis, or both.

"...."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

14. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he committed gross negligence in his care and treatment of patients B.A., M.C., C.K., H.T., and B.C.[1] The circumstances are as follows:

15. At all times relevant to the charges herein, Respondent was a licensed physician and surgeon with a solo family medicine practice that also employed a physician assistant. Respondent was the supervising physician for the physician assistant.

16. The standard of care provides that the care and management of a patient with chronic pain should include an initial physical examination and history sufficient to establish the patient's symptoms, psychosocial assessment, screening for risk of drug abuse, previous evaluation, previous treatment, and possible etiologies. Treatment involves medication, but only in conjunction with further evaluation, non-pharmacological interventions, and appropriate referrals. When medications are prescribed, they should be in appropriate dose and quantity to treat symptoms and to minimize the risk of dependency, abuse or drug diversion. While opioids are sometimes necessary, other classes of medications (NSAIDs, antidepressants, anti-epileptics, topical analgesics) should also be considered.

17. The standard of care requires that use of a physician assistant should be documented by a delegation of services agreement confirming appropriate supervision and authorized services. The medical chart should clearly document which provider has seen a patient.

[1] The patients are identified by initial to protect their privacy.

18. The standard of care is that HPV screening in a postmenopausal patient is an important test for screening of cervical cancer. The appropriate evaluation of an abnormal HPV screening test is colposcopy, especially if there is unexplained vaginal bleeding. Even if colposcopy is negative, further evaluation is indicated for unexplained vaginal bleeding, especially in a postmenopausal patient.

19. The standard of care provides that chronic and repeated prescriptions for Methadone can be an appropriate treatment, but only as part of a structured and appropriately regulated Methadone treatment program.

20. The standard of care requires that a history and examination sufficient to determine a diagnosis be performed before a knee or shoulder injection.

21. The standard of care requires male erectile dysfunction to be evaluated by obtaining a detailed history and performing both a local genital examination and a full examination to rule out possible co-morbidities or contraindications to treatment. Typically, the evaluation should include PSA, testosterone, glucose, hepatic, and thyroid lab test as a minimum evaluation.

22. The standard of care provides that a physician should not dispense prescription medication for payment, unless appropriate records are kept. Samples should not be sold to patients.

23. The standard of care is that medical records should be legible and document relevant, history, examination, assessment, and plan.

Patient B.A.

24. Patient B.A. was a long-time patient of Respondent. For the time period of approximately August 22, 2012 to December 8, 2014, B.A., a then twenty-nine year-old male, treated at Respondent's practice approximately 50 times. There is no evidence that a complete physical examination was performed during this time frame. B.A.'s weight is recorded for many, but not all visits, blood pressure is recorded on approximately 12 visits, and there is no documentation of a physical examination in the notes or of an assessment. The plan includes documentation of various medications prescribed during this time interval, including phentermine, Norco, Xanax, Percocet and Ultram. Records show six prescriptions by Respondent for a total of

720 tablets of acetaminophen/codeine, 2 prescriptions of Oxycodone for a total of 90 tablets, and 2 prescriptions for hydrocodone for a total of 270 tablets.

25. Respondent's treatment of patient B.A. includes the following acts and/or omissions which constitute extreme departures from the standard of care:

a. There is insufficient documentation that B.A.'s symptoms were adequately evaluated and that non-narcotic treatment alternatives were adequately considered.

b. The notes and medical record for B.A. do not indicate whether Respondent or the physician assistant provided care for the patient at each encounter, and which provider was authorizing prescriptions.

Patient M.C.

26. Patient M.C., a then sixty-five year-old female, treated at Respondent's practice from approximately October 10, 2012 through September 26, 2014. There are approximately 27 entries in the medical record during this time frame. On December 9, 2013, the patient complained of vaginal bleeding for three days. Treatment included Estrace, however, there is no documentation of menstrual history or postmenopausal bleeding. The patient had an abnormal Pap smear on May 1, 2013 showing the presence of high risk HPV DNA. The Pap smear was repeated on June 27, 2013 and high risk HPV DNA was not detected. Respondent issued four prescriptions of carisoprodol to M.C. for a total of 360 tablets and issued one prescription of oxycodone for a total of 90 tablets. These prescriptions were filled between September 2013 and January 2014, which coincide with onset of shingles. There is no evidence of treatment with antivirals or non-narcotic pain medications.

27. Respondent's treatment of patient M.C. included the following acts and/or omissions which constitute extreme departures from the standard of care:

a. M.C. was prescribed hormone therapy without any determination of the cause of the vaginal bleeding. Merely repeating the Pap smear is insufficient follow-up of the initial abnormal result.

b. The notes and medical record for M.C. do not indicate whether Respondent or the physician assistant provided care for the patient at each encounter, and which provider was

authorizing prescriptions.

Patient C.K.

28. Patient C.K., a then sixty-two year-old female, treated at Respondent's practice from approximately October 28, 2011 through December 19, 2014. During this time period, there are approximately 18 entries in the medical chart. The notes mention hip pain, leg brace, and at least four visits for urinary complaints. Neither a physical examination, specific assessment, nor plan are documented. An MRI report indicates low back pain, prior right hip surgery, and a prior history of stroke. Respondent prescribed hydrocodone, zolpidem, hydrocodone, and lorazepam to C.K. on multiple occasions.

29. Respondent's treatment of patient C.K. includes the following acts and/or omissions which constitute extreme departures from the standard of care:

a. There is insufficient documentation that C.K.'s symptoms were adequately evaluated and that non-narcotic treatment alternatives were adequately considered.

b. The notes and medical record for C.K. do not indicate whether Respondent or the physician assistant provided care for the patient at each encounter, and which provider was authorizing prescriptions.

Patient H.T.

30. Patient H.T., a then twenty-six year-old female, treated at Respondent's practice from approximately July 1, 2013 to November 21, 2014. There are approximately 21 entries in the medical chart during this time frame. H.T. was referred for continuing Methadone treatment. There is no evidence in the records that she was enrolled in a structured opioid treatment program.

31. Respondent's treatment of patient H.T. includes the following acts and/or omissions which constitute extreme departures from the standard of care:

a. There is no evidence that H.T. was enrolled in an appropriate Methadone maintenance program. Although Respondent was an employee of a regulated Methadone center, the prescriptions to H.T. were provided through his private practice, which is not an official regulated Methadone maintenance program.

b. The notes and medical record for H.T. do not indicate whether Respondent or

the physician assistant provided care for the patient at each encounter, and which provider was authorizing prescriptions.

Patient B.C.

32. Patient B.C., a then 55-year-old male, first presented to Respondent on or about May 28, 2014, complaining of right knee pain. He indicated on his intake form that he was taking Sular, however, there was no inquiry by Respondent about this medication. Respondent administered an injection of Depo Medrol and Xylocaine to the right knee, however, no history or examination is noted. The quantity of medication in the injection is not noted.

33. On or about August 26, 2015, Respondent administered an injection of Depo Medrol and Xylocaine to B.C.'s right shoulder for bursitis. Respondent also administered a testosterone shot. No history or examination is noted.

34. On or about October 25, 2015, B.C. gave Respondent $35 at a country club and requested 5 Cialis 20 mg pills. Respondent dispensed Cialis and Viagra purchased in Canada to B.C.

35. Respondent's treatment of patient B.C. includes the following acts and/or omissions which constitute extreme departures from the standard of care:

a. There is no evidence that an adequate history was obtained or an appropriate examination was performed prior to administering the knee injection.

b. There is no evidence that an adequate history was obtained or an appropriate examination was performed prior to administering the shoulder injection.

c. There is no evidence that an adequate history was obtained or an appropriate examination was performed prior to administering the testosterone injection. Testosterone was administered without confirming B.C. was hypogonadal.

d. Respondent sold prescription medications (Cialis and Viagra) to B.C. without appropriate record keeping.

e. Respondent's medical records lack the basic elements of a history, examination, assessment, and plan.

36. Respondent's acts and/or omissions as set forth in paragraphs 24 through 35, above,

whether proven individually, jointly, or in any combination thereof, constitute gross negligence, pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

37. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care and treatment of patients B.A., M.C., C.K., H.T., and B.C. The circumstances are as follows:

38. The allegations of the First Cause for Discipline are incorporated by reference as if fully set forth herein.

39. Respondent's treatment of patients M.C. and B.C. includes the following acts and/or omissions which constitute repeated negligent acts:

a. At times, treatment of shingles and post-herpetic neuralgia with narcotic medication can be appropriate, however, alternatives to narcotic medications should be considered. There is no evidence that M.C. was treated with antiviral medication (e.g., Acyclovir or Valacyclovir) or that non-narcotic medication (e.g., Neurontin) was considered.

b. A primary care physician should be able to identify the purpose of any medication that a patient is taking. Respondent did not look up information to determine the exact type or classification of the Sular being taken by B.C.

40. Respondent's acts and/or omissions as set forth in paragraphs 38 through 39, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts, pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Inadequate Record Keeping)

41. Respondent's license is subject to disciplinary action under sections 2234, subdivision (a), and 2266 of the Code in that he failed to maintain adequate records concerning the care and treatment of patients B.A., M.C., C.K., H.T., and B.C. The circumstances are as follows:

42. The allegations of the First Cause for Discipline are incorporated by reference as if fully set forth herein.

43. Respondent's acts and/or omissions as set forth in paragraph 42, above, whether proven individually, jointly, or in any combination thereof, constitute failure to maintain adequate and accurate records, pursuant to section 2266 of the Code. Therefore, cause for discipline exists.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Document Supervision of Physician Assistants – Patients B.A., M.C., C.K., and H.T.)

44. Respondent's license is subject to disciplinary action under sections 2234, subdivision (a), 2266, and 3502, subdivision (a), of the Code, and California Code of Regulations, Title 16, section 1399.546, in that Respondent was the supervising physician of the Physician Assistant. However, the medical records of patients B.A., M.C., C.K., and H.T. do not indicate whether Respondent or the physician assistant provided care for the patient at each encounter or which provider authorized the prescriptions. The circumstances are as follows:

45. The allegations of the First Cause for Discipline are incorporated by reference as if fully set forth herein.

46. Respondent's acts and/or omissions as set forth in paragraph 45, above, whether proven individually, jointly, or in any combination thereof, constitute failure to document supervision of physician assistants in violation of sections 2266 and 3502, subdivision (a), of the Code and California Code of Regulations, Title 16, section 1399.546. Therefore, cause for discipline exists.

FIFTH CAUSE FOR DISCIPLINE

(Prescribing Without Exam/Indication – Patients B.A., M.C., and C.K.)

47. Respondent's license is subject to disciplinary action under section 2242 of the Code, in that Respondent prescribed controlled substances and/or dangerous drugs to patients B.A., M.C., and C.K. without an appropriate prior examination or medical indication therefor. The circumstances are as follows:

48. Paragraphs 24 through 29 are incorporated by reference and re-alleged as if fully set forth herein.

49. Respondent's acts and/or omissions as set forth in paragraph 48, above, whether proven individually, jointly, or in any combination thereof, constitute prescribing without an

appropriate prior examination or medical indication, pursuant to section 2242 of the Code. Therefore, cause for discipline exists.

DISCIPLINARY CONSIDERATIONS

50. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about October 26, 2000, in a prior disciplinary action entitled *In the Matter of the Accusation Against: Brit Owen Smith, M.D.*, before the Medical Board of California, Case No. 11-98-91571, a Decision became effective providing for a Conditional Agreement for a Public Letter of Reprimand related to his care and treatment of a single patient, including requirements of a Physician Assessment and Clinical Education Program and an ethics course. The conditions were met and a Public Letter of Reprimand was issued on January 16, 2002. That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 16994, issued to Brit O. Smith, M.D.;

2. Revoking, suspending or denying approval of Brit O. Smith, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Brit O. Smith, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: November 15, 2017

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

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