XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General
JOHN S. GATSCHET
Deputy Attorney General
State Bar No. 244388
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7546
Facsimile: (916) 327-2247

Attorneys for Complainant

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

In the Matter of the Accusation Against, **MICHAEL WILLIAM FIEDLER, M.D.** 848 N. Rainbow Blvd. # 696 Las Vegas, NV 89107 Physician's and Surgeon's Certificate No. G 73536 Respondent.	Case No. 800-2017-034456 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 29, 2020, Complainant William Prasifka, in his official capacity as the Executive Director of the Medical Board of California ("Board"), Department of Consumer Affairs, filed Accusation No. 800-2017-034456 against Michael William Fiedler, M.D. ("Respondent") before the Medical Board of California.

2. On or about March 4, 1992, the Board issued Physician's and Surgeon's Certificate No. G 73536 to Respondent. That Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2021, unless renewed.

3. On or about June 29, 2020, Merlene Francis, an employee of the Board, served by Certified and First Class Mail a copy of the Accusation No. 800-2017-034456, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 848 N. Rainbow Blvd. # 696, Las Vegas, NV 89107. A copy of the Accusation, the related documents, and Declaration of Service are attached as **Exhibit A**, and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c). On or about July 10, 2020, the Board received back a Certified Mailing Receipt from Respondent's address of record with the Board marked "Covid 19." The Board did not receive back the mailed packet of information, which was originally sent on June 29, 2020. A copy of the Certified Mailing Receipt returned by the post office is attached as **Exhibit B**, and is incorporated herein by reference.

5. On July 24, 2020, the Attorney General's Office sent a Notice of Defense Courtesy Request letter to Respondent's address of record with the Board by First Class Mail. The Attorney General's Office has received no response. A copy of the Notice of Defense Courtesy Request letter is attached as **Exhibit C**, and is incorporated herein by reference.

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-2017-034456.

7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A, B, C, and D finds that the allegations in Accusation No. 800-2017-034456 are true.

9. Business and Professions Code section 2227 provides, in pertinent part, that a licensee who is found guilty under the Medical Practice Act may have his or her licensed 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.

10. Business and Professions Code section 2234 provides, in pertinent part, that the Board shall take action against any licensee who is charged with unprofessional conduct. According to subdivision (c), of Business and Code section 2234, unprofessional conduct includes the commission of repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

11. Respondent's license is subject to discipline for unprofessional conduct under Business and Professions Code section 2234, subdivision (c) by reason of the following:

a. On or about March 4, 1992, the Board issued Physician's and Surgeon's Certificate Number G 73536 to Respondent. That certificate is renewed and current with an expiration date of May 31, 2021. (The Certificate of Licensure is attached as **Exhibit D-1**, and is incorporated herein by reference.)

b. On or about April 7, 2016, Respondent issued a self-prescription for 90 tablets of 3-mg eszopiclone using his own DEA number for his own personal use. Eszopiclone is a Schedule IV controlled substance. On or about May 4, 2016, Respondent issued a self-prescription for 60 tablets of .25-mg triazolam using his own DEA prescriber number for his own personal use. Triazolam is a Schedule IV controlled substance. (A Redacted Copy of Respondent's Certified Pharmacy Prescription Profile is attached as **Exhibit D-2**, and is incorporated herein by reference.)

///

c. On March 17, 2020, Respondent was interviewed by the Medical Board of California. During the interview, Respondent admitted that he personally refilled prescriptions for eszopiclone and triazolam for his personal use using his DEA prescriber number. (A Redacted Copy of Respondent's Medical Board Interview is attached as **Exhibit D-3**, and is incorporated herein by reference.)

d. On April 30, 2020, a reviewing expert, Dr. W.W., determined that Respondent's actions in self-prescribing controlled substances on two separate occasions constituted two separate simple deviations from the standard of care. Dr. W.W. stated that the standard of care in California is to not self-prescribe controlled substances and Respondent breached the standard of care for prescribing. (A Redacted Copy of Dr. W.W.'s report is attached as **Exhibit D-4**, and is incorporated herein by reference.)

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Michael William Fiedler, M.D. has subjected his Physician's and Surgeon's Certificate No. G 73536 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. Pursuant to the authority under California Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations contained in Accusation No. 800-2017-034456, and the Findings of Fact in paragraphs 1 through 11, above, and each of them, separately and severally, are true and correct.

5. Pursuant to its authority under California Code section 11520, and by reason of the Findings of Fact contained in paragraphs 1 through 11, above and Determination of Issues 1, 2, and 3, above, the Board hereby finds that Respondent Michael William Fiedler, M.D., has subjected his Physician's and Surgeon's Certificate No. G 73536 to disciplinary action under California Business Code section 2234, subdivision (c) in that he has:

a. Committed two simple departures from the standard of care related to self-prescribing controlled substances on two separate occasions to himself for personal use.

ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 73536, heretofore issued to Respondent Michael William Fiedler, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on SEP 16 2020.

It is so ORDERED AUG 17 2020

FOR THE MEDICAL BOARD OF
CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

SA2020301873
34291316.docx

XAVIER BECERRA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General
JOHN S. GATSCHET
Deputy Attorney General
State Bar No. 244388
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7546
Facsimile: (916) 327-2247

Attorneys for Complainant

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

In the Matter of the Accusation Against: **Michael William Fiedler, M.D.** 848 N. Rainbow Blvd. # 696 Las Vegas, NV 89107 Physician's and Surgeon's Certificate No. G 73536, Respondent.	Case No. 800-2017-034456 **A C C U S A T I O N**

PARTIES

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

2. On or about March 4, 1992, the Medical Board issued Physician's and Surgeon's Certificate Number G 73536 to Michael William Fiedler, 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 May 31, 2021, unless renewed.

///

JURISDICTION

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

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

5. Section 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:
>
> "..."
>
> (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.
>
> "..."

PERTINENT DRUG DEFINITIONS

6. Triazolam – Generic name for Halcion. Triazolam is a member of the benzodiazepine family and has a fast onset of action and short half-life. Halcion is indicated for the short-term treatment of insomnia (generally seven to ten days) and may be prescribed to treat acute insomnia and circadian rhythm sleep disorders, including jet lag. Triazolam is a Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14

subdivision (c) and Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

7. Eszopiclone – Generic name for Lunesta. Eszopiclone is a sedative and hypnotic used for short-term treatment of insomnia. Eszopiclone, a stereoisomer of zopiclone, is a Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14 subdivision (c). It is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

8. On July 6, 2017, the Medical Board of California received an online complaint from a pharmacist located in the State of Oregon that the Respondent was engaging in the self-prescribing of non-controlled substances. On or about April 7, 2016, the Respondent issued prescription number 507449 for 90 tablets of 3 mg. eszopiclone, a controlled substance, to himself. The address listed on the prescription profile matched the Respondent's home address in Palm Springs. According to the prescription records, prescription number 507449 was an original prescription and not a refill. On or about May 4, 2016, the Respondent issued prescription number 513090 for 60 tablets of .25 mg. triazolam, a controlled substance, to himself. The address listed on the prescription profile matched the Respondent's home address in Palm Springs.

9. On March 17, 2020, the Respondent attended a subject interview with the Medical Board of California. The Respondent admitted that he lived at the address in Palm Springs listed on the prescription profiles for ten to twelve years until apprixmately 2018. During the interview, the respondent admitted that he has self-prescribed a number of non-controlled medications. Respondent also admitted that he prescribed Lunesta and triazolam to himself. The Respondent claimed that his primary care physicians were aware of all of the prescriptions but that he later refilled them as a matter of convenience. The Respondent indicated that he filled prescriptions for himself in Oregon, Florida, California, maybe Arizona, Illinois, and New York.

///

///

CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

10. The Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code in that Respondent committed repeated negligent acts by self-prescribing controlled substances to himself. The circumstances are as follows:

11. Complainant realleges paragraphs 8 through 9, and those paragraphs are incorporated by reference as if fully set forth herein.

12. The Respondent committed the following negligent acts:

a.) On or about April 7, 2016, the Respondent self-prescribed eszopiclone, a controlled substance; and

b.) On or about May 4, 2016, the Respondent self-prescribed triazolam, a controlled substance.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

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 G 73536, issued to Michael William Fiedler, M.D.;

2. Revoking, suspending or denying approval of Michael William Fiedler, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Michael William Fiedler, 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: JUN 29 2020

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

SA2020301873
34183210.docx