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

In the Matter of the Accusation Against: **LENG THAI KY, M.D.** **940 E. Valley Pkwy., Ste. K** **Escondido, CA 92025-3441** **Physician's and Surgeon's Certificate No. A 104049,** Respondent.	Case No. 800-2017-036533 **DEFAULT DECISION AND DISCIPLINARY ORDER** [Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about September 8, 2020, Complainant William Prasifka, in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, filed Accusation No. 800-2017-036533 against Leng Thai Ky, M.D. (Respondent) before the Medical Board of California.

2. On or about May 23, 2008, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 104049 to Respondent. Physician's and Surgeon's

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Certificate No. A 104049 was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2021, unless renewed. (Exhibit A.[1])

3. On or about October 8, 2020, Merlene Francis, an employee of the Complainant Agency, served by Certified Mail a copy of Accusation No. 800-2017-036533, 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 940 E. Valley Pkwy., Ste. K, Escondido, CA 92025-3441. (Exhibit B.)

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about September 25, 2020, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed, Unable to Forward." (Exhibit C.)

6. On or about October 1, 2020, Rosita Donovan, an employee of the Attorney General's office, served by Certified and First Class Mail a Courtesy Notice of Default along with a copy of Accusation No. 800-2017-036533 and the related documents to Respondent's address of record with the Board, which was and is 940 E. Valley Pkwy., Ste. K, Escondido, CA 92025-3441. (Exhibit D and Exhibit E, ¶ 6.)

7. To date, Respondent has not filed a Notice of Defense. (Exhibit E, ¶ 8.)

8. 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.
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> ...

9. 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. 800-2017-036533. (Exhibit E, ¶ 8.)

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[1] All exhibits are true and correct copies of the originals, and are attached to the accompanying Default Decision Evidence Packet. The Default Decision Evidence Packet is hereby incorporated by reference, in its entirety, as if fully set forth herein.

10. 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.
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> ...

JURISDICTION

11. Business and Professions Code section 2220 provides, in pertinent part, that the Board may take action against all persons guilty of violating the provisions of Chapter 5 of Division 2 of that Code.

12. Business and Professions Code section 2227 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, be publicly reprimanded, or have such other action taken in relation to discipline as the Medical Board deems proper.

13. Business and Professions Code section 2234 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:
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> ...
>
> (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.
>
> ...

14. Business and Professions Code section 2266 states that 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.

BUSINESS AND PROFESSIONS CODE VIOLATIONS

Gross Negligence

15. Respondent has subjected his Physician's and Surgeon's Certificate No. A 104049 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he has committed gross negligence in his care and treatment of Patient A, as more particularly alleged hereinafter:

A. On an unknown date, Respondent met Patient A, a woman, in a coffee shop in San Diego. After learning Respondent was a physician, Patient A told Respondent she had jaw pain. Respondent gave Patient A his cell phone number. (Exhibit F.)

B. On another unknown date, Respondent met with Patient A. Patient A continued to complain of pain and requested a prescription. (Exhibit F.)

C. Respondent continued to meet with Patient A on a regular basis to treat her pain. They met at coffee shops and after hours at Respondent's office. Patient A, however, never became an established patient at his office, and Respondent maintained his treatment records for Patient A on his personal computer. (Exhibit F.)

D. From on or about April 8, 2013 through on or about February 20, 2018, Patient A filled prescriptions written by Respondent for Norco, alprazolam, hydromorphone, Percocet, oxycodone, diazepam, lorazepam, clonazepam, carisoprodol, and buprenorphine naloxone. Respondent's treatment records for Patient A include documented visits in or around December 2013 and December 2016. For 2017, Respondent's treatment records indicate that he saw Patient A for follow up visits approximately once a month. Patient A's last documented visit with Respondent was in or around January 2018. In his records, Respondent fails to

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include the majority of the controlled substance prescriptions Respondent wrote for Patient A. (Exhibit F.)

E. Respondent documented that Patient A had trigeminal neuralgia and anxiety. (Exhibit F.)

F. Respondent committed gross negligence in his care and treatment of Patient A for the following reasons, as set forth in Exhibit F:

a. Respondent failed to document the minimum basis subjective and objecting findings including routine vital signs, depression scales or index, and anxiety measures;

b. Respondent failed to perform a physical examination or document findings to substantiate Patient A's continued use of opioids;

c. Respondent failed to develop a differential diagnosis as a treating physician and various treatment options associated with a differential diagnosis;

d. Respondent failed to document any objective or subjective findings regarding the initial or continued effectiveness of treatment;

e. Respondent failed to initiate titrate, or rotate benzodiazepines without qualification in their use, experience in the management of the disease, and without the documented informed consent of Patient A;

f. Respondent failed to initiate, titrate, or rotate psychoactive drugs without qualification in their use, experience in the management of the disease, and without the documented informed consent of Patient A;

g. Respondent failed to perform or document an adequate evaluation over the years' duration of Patient A's care relating to her chronic pain disease and the continued opioid management of that disease;

h. Respondent failed to document the rationale for the continued prescribing and excessive titration of opioid therapy for Patient A;

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i. Respondent failed to perform and/or document periodic review while continuing to prescribe Patient A opioids during 2015 and 2016, and had minimal documentation in 2017; and

j. Respondent failed to document and/or consider the use of consultation including medical consultation for facial pain, psychiatric consultation for depression and anxiety, or addiction medicine consultation.

Repeated Negligent Acts

16. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 104049to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A as more particularly alleged hereinafter:

A. Paragraph 15, above, is hereby incorporated by reference as if fully set forth herein.

B. Respondent committed an additional negligent act for failing to document Patient A's understanding of the risks, benefits, alternatives and goals associated with opioid therapy before December 3, 2016, as referenced in Exhibit F.

Failure to Maintain Adequate and Accurate Records

17. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 104049 to disciplinary action under sections 2227 and 2234, as defined by section 2266, in that he failed to maintain adequate and accurate medical records for Patient A, as set forth in Exhibit F.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Leng Thai Ky, M.D., has subjected his Physician's and Surgeon's Certificate No. A 104049 to disciplinary action.

2. Pursuant to its authority under Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations in Accusation No. 800-2017-036533, and the Findings of Fact contained in paragraphs 1 through 17, above, and each of them, separately and severally, are true and correct.

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3. Pursuant to its authority under Government Code section 11520, and by reason of the findings of Fact contained in paragraphs 1 through 17, above, and Determination of Issues 1 and 2, above, the Board hereby finds that Respondent Leng Thai Ky, M.D., has subjected his Physician's and Surgeon's Certificate No. A 104049 to disciplinary action under Business and Professions Code sections 2227 and 2234, in that he has:

A. Committed gross negligence in his care and treatment of Patient A, in violation of Business and Professions Code section 2234, subdivision (b);

B. Committed repeated negligent acts in his care and treatment of Patient A, in violation of Business and Professions Code section 2234, subdivision (c); and

C. Failed to maintain adequate and accurate records in connection with his treatment of Patient A, in violation of Business and Professions Code section 2266.

DISCIPLINARY ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. A 104049, heretofore issued to Respondent Leng Thai Ky, M.D., is revoked for each of the violations, separately and severally, of the Business and Professions Code found in the Determination of Issues, above.

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 Feb 18, 2021 at 5:00 p.m.

It is so ORDERED Jan. 19, 2021

REJI VARGHESE
DEPUTY DIRECTOR
FOR THE MEDICAL BOARD OF
CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against: **LENG THAI KY, M.D.** **940 E. Valley Pkwy., Ste. K** **Escondido, CA 92025-3441** **Physician's and Surgeon's Certificate No. A104049,** Respondent.	Case No. 800-2017-036533 **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 May 23, 2008, the Medical Board issued Physician's and Surgeon's Certificate No. A104049 to Leng Thai Ky, M.D. (Respondent). Physician's and Surgeon's Certificate No. A104049 was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2021, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code states, in pertinent part:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem 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:
>
> ...
>
> (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.

...

6. 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."

7. Section 2228.1 of the Code states, in pertinent part:

(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

...

(D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgement that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

...

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes

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by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

...

FIRST CAUSE FOR DISCIPLINE
(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. A104049 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in the care and treatment of Patient A,[1] as more particularly alleged hereafter:

9. According to a deposition of Respondent, on or about an unknown date, he met Patient A, a woman, in a coffee shop in San Diego. On or about that day, Patient A had overheard that Respondent was a physician who specialized in pain management. Patient A told Respondent that she had jaw pain. Respondent gave Patient A his cell phone number.

10. According to his deposition, on or about an unknown date, Respondent met with Patient A again at a coffee shop after she contacted him. Patient A continued to complain of pain and requested a prescription for pain medication. Respondent said he checked Patient A's face and neck.

11. According to his deposition, Respondent continued to meet with Patient A on a regular basis to treat her pain. Respondent met with Patient A at coffee shops and after hours at his office. Patient A, however, never became an established patient at his office, and Respondent maintained his treatment records for Patient A on his personal computer. He prescribed Patient A

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[1] The patient's name has been omitted to protect her privacy. Respondent is aware of the patient's identity.

opioid medication, a month at a time, at Patient A's request. These medications included Norco[2] and hydromorphone.[3] Respondent claimed that he had diagnosed Patient A with trigeminal neuralgia on her second or third visit.

12. According to the Controlled Substance Utilization Review and Evaluation System (CURES)[4] report, Patient A filled a prescription written by Respondent for 24 tablets of 325-5 mg hydrocodone acetaminophen on or about April 8, 2013.[5] Patient A was 21-years old at the time.

13. Respondent's records of his treatment and care of Patient A begin on or about December 10, 2013. In his note for this date, Respondent documented that he performed a physical exam on Patient A. Patient A complained of left maxillary and mandibular pain lasting approximately two months, as well as anxiety and pelvic pain. Respondent's assessment was to consider trigeminal neuralgia, anxiety, and Irritable Bowel Syndrome. He gave Patient A a prescription for 90 tablets of 325-10 mg Norco. He also noted that Patient A was seen and evaluated pro bono, and that no compensation was requested.

14. Respondent's medical records include a form signed by Patient A on or about December 13, 2016, in which Patient A consented to random drug testing and agreeing to take her medications as prescribed.

15. According to the CURES report, from on or about March 10, 2015 through December 9, 2016, Patient A filled prescriptions written by Respondent for the following:

Date	Medication	Dose	Quantity
March 10, 2015	Hydrocodone acetaminophen	325-10 mg	45
March 24, 2015	Alprazolam[6]	1 mg	45

[2] Norco is the brand name for hydrocodone acetaminophen. Hydrocodone is an opioid and a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b).

[3] Hydromorphone, brand name Dilaudid, is an opioid and a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b).

[4] CURES is a database of Schedule II, III, and IV controlled substance prescriptions dispensed in California serving the public health, regulatory and oversight agencies, and law enforcement.

[5] Conduct occurring more than seven (7) years from the filing date of this Accusation or more than three (3) years from notification to the Board is for informational purposes only and is not alleged as a basis for disciplinary action.

[6] Alprazolam, brand name Xanax, is a benzodiazepine and a Schedule IV controlled

April 17, 2015	Oxycodone acetaminophen[7]	325-10 mg	45
April 21, 2015	Alprazolam	1 mg	45
May 8, 2015	Alprazolam	1 mg	45
May 8, 2015	Oxycodone acetaminophen	325-10 mg	45
May 22, 2015	Alprazolam	1 mg	45
May 22, 2015	Oxycodone acetaminophen	325-10 mg	45
June 11, 2015	Oxycodone acetaminophen	325-10 mg	15
June 11, 2015	Oxycodone acetaminophen	325-10 mg	45
June 11, 2015	Alprazolam	1 mg	45
June 26, 2015	Alprazolam	1 mg	21
July 3, 2015	Alprazolam	1 mg	45
July 3, 2015	Oxycodone	15 mg	45
July 17, 2015	Oxycodone	15 mg	45
July 17, 2015	Diazepam[8]	5 mg	45
July 31, 2015	Oxycodone	15 mg	45
July 31, 2015	Alprazolam	0.5 mg	45
August 14, 2015	Oxycodone	15 mg	90
August 14, 2015	Lorazepam[9]	1 mg	90
September 17, 2015	Oxycodone	15 mg	90
September 17, 2015	Alprazolam	0.5 mg	90
October 15, 2015	Alprazolam	1 mg	90
October 15, 2015	Oxycodone	15 mg	90
November 14, 2015	Oxycodone	15 mg	90

substance pursuant to Health and Safety Code section 11057, subdivision (d).

[7] Percocet is the brand name for oxycodone acetaminophen. Oxycodone is an opioid and a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b).

[8] Diazepam, brand name Valium, is a benzodiazepine and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d).

[9] Lorazepam, brand name Ativan, is a benzodiazepine and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d).

November 21, 2015	Alprazolam	1 mg	7
December 7, 2015	Alprazolam	0.5 mg	14
December 12, 2015	Oxycodone	15 mg	90
December 12, 2015	Alprazolam	0.5 mg	60
January 11, 2016	Oxycodone	15 mg	90
January 11, 2016	Alprazolam	0.5 mg	90
February 11, 2016	Oxycodone	15 mg	90
February 17, 2016	Alprazolam	1 mg	30
February 22, 2016	Lorazepam	0.5 mg	180
March 9, 2016	Lorazepam	1 mg	60
March 9, 2016	Oxycodone	15 mg	90
March 15, 2016	Alprazolam	0.5 mg	30
July 1, 2016	Diazepam	10 mg	30
July 1, 2016	Oxycodone	15 mg	90
July 20, 2016	Clonazepam[10]	1 mg	28
July 28, 2016	Diazepam	10 mg	90
August 5, 2016	Hydrocodone acetaminophen	325-10 mg	10
August 5, 2016	Oxycodone	15 mg	90
August 5, 2016	Clonazepam	1 mg	30
August 11, 2016	Carisoprodol[11]	350 mg	90
August 17, 2016	Alprazolam	0.5 mg	60
August 29, 2016	Clonazepam	0.5 mg	90
September 2, 2016	Oxycodone	15 mg	90
September 14, 2016	Diazepam	10 mg	45
September 30, 2016	Clonazepam	1 mg	60

[10] Clonazepam, brand name Klonopin, is a benzodiazepine and a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d).

[11] Carisoprodol, brand name Soma, is a muscle relaxant.

September 30, 2016	Oxycodone	15 mg	90
October 13, 2016	Alprazolam	1 mg	60
October 27, 2016	Oxycodone	15 mg	84
November 8, 2016	Alprazolam	2 mg	90
November 9, 2016	Oxycodone	10 mg	30
November 23, 2016	Alprazolam	2 mg	4
November 28, 2016	Oxycodone	15 mg	90
December 8, 2016	Clonazepam	1 mg	90
December 9, 2016	Alprazolam	1 mg	90

16. On or about December 13, 2016, Respondent documented that he met with Patient A. Patient A complained of renewed facial pain symptoms with frequent headaches on the left side of her head and sharp, stabbing pain across her cheek and jaw. Respondent documents Patient A's vital signs and a review of systems. His assessment was concern for reactivation of trigeminal neuralgia. He prescribed carbamazepine[12] and 4 mg hydromorphone to be taken three times a day as needed for pain. Respondent fails to make any reference to treatment related to his prescriptions for alprazolam, clonazepam, and diazepam.

17. According to the CURES report, from on or about December 14, 2016 through January 27, 2017, Patient A filled prescriptions written by Respondent for the following:

Date	Medication	Dose	Quantity
December 14, 2016	Hydromorphone	8 mg	90
December 20, 2016	Alprazolam	2 mg	60
December 23, 2016	Diazepam	10 mg	180
January 2, 2017	Oxycodone	15 mg	120
January 16, 2017	Alprazolam	2 mg	60
January 27, 2017	Oxycodone	10 mg	35
January 27, 2017	Oxycodone	5 mg	42

[12] Carbamazepine, brand name Tegretol, is a nerve pain medication.

18. On or about February 16, 2017, Respondent documented that he saw Patient A. According to the note, Patient A complained of continued facial pain and some nausea. Respondent documented Patient A's vital signs and a review of systems. His assessment was for trigeminal neuralgia and he prescribed hydrocodone, Soma, and an increased dose of carbamazepine. Once again, Respondent fails to make any reference to treatment related to his prescriptions for alprazolam and diazepam.

19. On or about March 22, 2017, Respondent documented that he saw Patient A. According to the note, Patient A stated that carbamazepine made her nauseous and Soma made her groggy. Respondent documented Patient A's vital signs and a review of systems. His assessment was for trigeminal neuralgia. His plan was to discontinue carbamazepine and Soma, start gabapentin,[13] and continue hydromorphone.

20. On or about April 18, 2017, Respondent documented that he saw Patient A. According to the note, Patient A continued to have facial pain with daily headaches on the left side of her head and stabbing pain across her cheek and jaw. She also said that hydromorphone did not last as long as needed. Respondent documented Patient A's vital signs and a review of systems. His plan was to continue gabapentin and consider switching to oxycodone acetaminophen. He also noted that he expressed concerns about the risks of opioid dependence.

21. From on or about May 10, 2017 through May 19, 2017, Patient A filled prescriptions written by Respondent for the following:

May 10, 2017	Clonazepam	1 mg	60
May 11, 2017	Diazepam	10 mg	90
May 19, 2017	Lorazepam	2 mg	60

22. On or about May 26, 2017, Respondent documented that he saw Patient A. According to the note, Patient A continued to complain of facial pain and increased nausea, vomiting, and anxiety. Respondent documented a review of systems and a new assessment of generalized anxiety disorder. His plan was to continue gabapentin, start 15 mg oxycodone to be

[13] Gabapentin, brand name Neurontin, is a nerve pain medication.

taken three times per day, 20 mg paroxetine[14] per day for anxiety, and ondansetron for nausea. Once again, Respondent fails to reference the treatment related to the prescriptions for clonazepam, diazepam, and lorazepam that he gave to Patient A.

23. According to the CURES report, from on or about May 27, 2017 through June 9, 2017, Patient A filled prescriptions written by Respondent for the following:

May 27, 2017	Oxycodone	15 mg	90
June 9, 2017	Diazepam	10 mg	90

24. On or about June 21, 2017, Respondent documented that he saw Patient A. According to the note, Patient A complained of facial pain and daily headaches on the left side of her head. She also complained of continued anxiety and occasional panic attacks. Respondent documented a review of systems. His plan was to continue gabapentin, consider increasing oxycodone to 30 mg for better pain control, continue paroxetine, start 2 mg alprazolam three times per day for anxiety, and continue ondansetron. According to the CURES report, on or about June 28, 2017, Patient A filled a prescription written by Respondent for 90 tablets of 20 mg oxycodone.

25. On or about July 18, 2017, Respondent documented that he saw Patient A. According to the note, Patient A continued to complain of facial pain, daily headaches on the left side of her head, anxiety, and occasional panic attacks. She also complained of weight gain and altered sensorium. Respondent documented a review of systems and an unchanged assessment. His plan was to continue gabapentin, increase oxycodone to 30 mg taken three times per day for better pain control, a discussion of concerns about escalating doses of opioids in combination with benzodiazepines, continue alprazolam, and continue ondansetron.

26. According to the CURES report, from on or about July 19, 2017 through September 12, 2017, Patient A filled prescriptions written by Respondent for the following:

July 19, 2017	Oxycodone	15 mg	60
July 25, 2017	Alprazolam	1 mg	60

[14] Paroxetine, brand name Paxil, is a selective serotonin reuptake inhibitor (SSRI) and an anti-depressant.

August 3, 2017	Oxycodone	20 mg	45
August 17, 2017	Oxycodone	20 mg	45
August 25, 2017	Diazepam	10 mg	24
August 31, 2017	Oxycodone	30 mg	90
September 12, 2017	Diazepam	10 mg	24

27. On or about September 17, 2017, Respondent documented that he met with Patient A. According to the note, Patient A continued to complain of facial pain, anxiety, and occasional panic attacks. Patient A discontinued gabapentin because it made her groggy. Respondent documented a review of systems. His plan was to continue 30 mg oxycodone and 2 mg alprazolam taken three times per day.

28. On or about October 12, 2017, Respondent documented that he met with Patient A. According to the note, Patient A continued to complain of facial pain and panic attacks. Also, "Patient [A] required secondary prescriptions for diazepam between visits as panic attacks continued." Respondent documented a review of systems. His assessment was for trigeminal neuralgia, generalized anxiety disorder, and substance use disorder. His plan was to continue 30 mg oxycodone and 2 mg alprazolam. He noted that he discussed dependency risks with Patient A and that she should consider buprenorphine.[15] Respondent documented that if Patient A did not switch to buprenorphine, Respondent would not be able to continue to care for her.

29. On or about November 10, 2017, Respondent documented that he met with Patient A. According to the note, Patient A continued to complain of facial pain and continued panic attacks. She said she was not ready to switch to buprenorphine. Respondent's plan was to continue oxycodone and alprazolam, and to transition Patient A to buprenorphine at the next visit.

30. On or about December 16, 2017, Respondent documented that he met with Patient A. Patient A complained of facial pain. She agreed to transition to buprenorphine, but wanted oxycodone in case her pain worsened. Respondent's assessment was for trigeminal neuralgia, generalized anxiety disorder, and substance abuse disorder. He gave prescriptions for 30 mg

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[15] Buprenorphine naloxone, brand name Suboxone, is used to treat narcotic dependence.

oxycodone to be taken three times per day as needed, 2 mg alprazolam to be taken three times per day as needed, and buprenorphine-naloxone.

31. On or about January 16, 2018, Respondent documented that he met with Patient A. Patient A continued to complain of facial pain. Patient A was willing to "continue buprenorphine" but wanted oxycodone as well for the pain. The plan was for prescriptions of oxycodone and alprazolam and for Patient A to continue with buprenorphine-naloxone.

32. According to the CURES report, from on or about January 19, 2018 through February 20, 2018, Patient A filled prescriptions written by Respondent for the following:

January 19, 2018	Oxycodone	15 mg	90
January 23, 2018	Suboxone	8-2 mg	90
January 23, 2018	Diazepam	10 mg	10
January 26, 2018	Diazepam	10 mg	60
February 19, 2018	Buprenorphine naloxone	8-2 mg	30
February 20, 2018	Alprazolam	2 mg	90

33. Respondent committed gross negligence in his care and treatment of Patient A, which includes, but is not limited to, the following:

a. Respondent failed to document the minimum basic subjective and objective findings including routine vital signs, depression scales or index, and anxiety measures;

b. Respondent failed to perform a physical examination or document findings to substantiate Patient A's continued use of opioids;

c. Respondent failed to develop a differential diagnosis as a treating physician and various treatment options associated with a differential diagnosis;

d. Respondent failed to document any objective or subjective findings regarding the initial or continued effectiveness of treatment;

e. Respondent failed to initiate, titrate, or rotate benzodiazepines without qualification in their use, experience in the management of the disease, and without the documented informed consent of Patient A;

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f. Respondent failed to initiate, titrate, or rotate psychoactive drugs without qualification in their use, experience in the management of the disease, and without the documented informed consent of Patient A;

g. Respondent failed to perform or document an adequate evaluation over the years' duration of Patient A's care relating to her chronic pain disease and the continued opioid management of that disease;

h. Respondent failed to document the rationale for the continued prescribing and excessive titration of opioid therapy;

i. Respondent failed to perform and/or document periodic review while continuing to prescribe Patient A opioids during 2015 and 2016, and had minimal documentation in 2017; and

j. Respondent failed to document and/or consider the use of consultation including medical consultation for facial pain, psychiatric consultation for depression and anxiety, or addiction medicine consultation.

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

34. Respondent has further subjected his Physician's and Surgeon's Certificate No. A104049 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged hereafter:

35. Paragraphs 9 through 33, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

36. Respondent failed to document the patient's understanding of the risks, benefits, alternatives and goals associated with opioid therapy before December 3, 2016.

THIRD CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

37. Respondent has further subjected his Physician's and Surgeon's Certificate No. A104049 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the

Code, in that he failed to maintain adequate and accurate records of his treatment of Patient A, as more particularly alleged in paragraphs 9 through 36, above, which are hereby incorporated by reference and re-alleged 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 No. A104049, issued to Respondent Leng Thai Ky, M.D.;

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

3. Ordering Respondent Leng Thai Ky, M.D., if placed on probation, to pay the Board the costs of probation monitoring;

4. Ordering Respondent Leng Thai Ky, M.D., if placed on probation, to disclose the disciplinary order to patients pursuant to Business and Professions Code section 2228.1; and

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

DATED: SEP 0 8 2020

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

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