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

In the Matter of the Accusation Against: **Paulino Evo Tocchet, M.D.** **Physician's and Surgeon's Certificate No. G 16156** **Respondent.**	**Case No. 800-2017-034368**

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 December 14, 2021.

IT IS SO ORDERED December 7, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
BRIAN D. BILL
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California Department of Justice
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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 Accusation Against: PAULINO EVO TOCCHET, M.D. 14 Ford Road, P.O. Box 1573 Carmel Valley, CA 93924-9511 Physician's and Surgeon's Certificate G 16156, Respondent.	Case No. 800-2017-034368 OAH No. 2021030206 **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. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Brian D. Bill, Deputy Attorney General.

2. Paulino Evo Tocchet, M.D. (Respondent) is represented in this proceeding by attorney Thomas E. Still of Hinshaw, Marsh, Still & Hinshaw, LLP, 12901 Saratoga Avenue, Saratoga CA 95070-4110.

3. On February 17, 1969, the Board issued Physician's and Surgeon's Certificate No. G

16156 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-034368 and will expire on December 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-034368 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 1, 2020. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-034368 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-034368. Respondent also has carefully read, fully discussed with counsel, 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 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.

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

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 800-2017-034368, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima

facie case or factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. 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

11. 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 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 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.

12. 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.

13. 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:

ORDER

IT IS HEREBY ORDERED THAT Physician's and Surgeon's Certificate No. G 16156, issued to Respondent Paulino Evo Tocchet; 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 Accusation No. 800-2017-034368 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Thomas E. Still. 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: 10-25-21

PAULINO EVO TOCCHET, M.D.
Respondent

I have read and fully discussed with Respondent PAULINO EVO TOCCHET, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 10-28-2021

THOMAS E. STILL
Attorney for Respondent

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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 Accusation No. 800-2017-034368 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney Thomas E. Still. 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: _____ _____

PAULINO EVO TOCCHET, M.D.
Respondent

I have read and fully discussed with Respondent PAULINO EVO TOCCHET, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____ _____

THOMAS E. STILL
Attorney for Respondent

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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: November 9, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

Brian D. Bill

BRIAN D. BILL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-034368

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

In the Matter of the Accusation Against: PAULINO EVO TOCCHET, M.D. 14 Ford Road P.O. Box 1573 Carmel Valley, California 93924-9511 Physician's and Surgeon's Certificate No. G 16156, Respondent.	Case No. 800-2017-034368 **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 February 17, 1969, the Medical Board issued Physician's and Surgeon's Certificate Number G 16156 to Paulino Evo Tocchet, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on December 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 2001.1 of the Code states:

> Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

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 states:

> 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.

B. Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

7. Section 2228 of the Code states:

The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

8. Section 2228.1 of the Code states:

(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 the 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 contendre or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment 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.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(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 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.

(e) Section 2314 shall not apply to this section.

STATUTORY PROVISIONS

9. Section 725, subdivision (a) of the Code states:

Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

...

10. 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.

...

11. Section 2241 of the Code states:

(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance

on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

(d)(1) For purposes of this section and Section 2241.5, addict means a person whose actions are characterized by craving in combination with one or more of the following:

(A) Impaired control over drug use.

(B) Compulsive use.

(C) Continued use despite harm.

(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section or Section 2241.5.

12. Section 2241.5 of the Code states:

(a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

13. 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. An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

14. 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.

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DEFINITIONS

15. Controlled Substance – A controlled substance is a drug which has been declared by federal or state law to be illegal for sale or use, but may be dispensed under a physician's prescription. The basis for control and regulation is the danger of addiction, abuse, physical or mental harm, and death. Controlled substances include:

a. Opioids: Drugs generally prescribed for moderate to severe pain that have a high potential for abuse, dependence, and addiction. The dangers of using such drugs include, but are not limited to, drug abuse, psychic dependence, immunosuppression, hormonal changes, central nervous system depression, and death. Common prescription opioids include Norco, oxycodone, OxyContin, and Tramadol.

b. Benzodiazepines – Drugs generally prescribed to treat anxiety. Benzodiazepines are habit-forming and have significant addiction potential when improperly prescribed and/or used over prolonged periods. Negative side effects include drowsiness, dizziness, increased saliva, mood changes, hallucinations, thoughts of suicide, slurred speech, loss of coordination, difficulty walking, coma, respiratory failure and death. Common benzodiazepines include: alprazolam (Xanax), temazepam (Restoril), lorazepam (Ativan), diazepam (Valium), triazolam (Halcion)

c. Central Nervous Stimulants – Drugs that contain amphetamine and dextroamphetamine and are prescribed to treat attention deficit hyperactivity disorder and narcolepsy. C.N.S. stimulants have a high potential for abuse and dependence. Side effects include insomnia, nervousness, dizziness, mood swings, bodily weakness, new or worsened mental health issues, and circulatory problems. Common central nervous stimulants include Adderall.

d. Hypnotics/sedatives – Drugs generally prescribed to treat insomnia. Hypnotics/sedatives are habit-forming; continuous and daily use should be avoided. Negative side effects include depression, anxiety, aggression, agitation, confusion, unusual thoughts, hallucinations, memory problems, personality changes, decreased inhibitions, and dizziness. Common hypnotics/sedatives include zolpidem (Ambien).

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FACTUAL ALLEGATIONS

Patient No. 1[1]

16. Patient No. 1 (or "patient") is a 40-year-old female who began treatment with Respondent on November 10, 2015 through August 28, 2017.[2] Patient No. 1 reported a history of migraine headaches, tennis elbow, and hypertension.

17. Respondent treated Patient No. 1 for chronic headaches, anxiety, and other conditions.[3]

18. According to the medical record, Respondent did not see the patient from November 11, 2015 through June 2, 2016. However, per a Controlled Substance Utilization Review and Evaluation System (CURES)[4] report, Respondent refilled prescriptions for alprazolam[5] and oxycodone[6] monthly during this period.

19. During the treatment period, Respondent prescribed excessive amounts of oxycodone without documenting a clear medical diagnosis.[7] Respondent prescribed excessive amounts of oxycodone without proper medical indication.[8] Respondent's physical examinations were

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

[2] These are approximate dates based on the records available for review. Patient No. 1 may have treated with Respondent before or after these dates.

[3] During a Board interview, Respondent stated that Patient No. 1 also complained of back and neck pain, but neither of these complaints were recorded or evaluated in the record.

[4] CURES 2.0 (Controlled Substance Utilization Review and Evaluation System) is a database of Schedule II, III and IV controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement. CURES 2.0 is committed to the reduction of prescription drug abuse and diversion without affecting legitimate medical practice or patient care.

[5] During the treatment period, Respondent prescribed 90, 2 mg tablets of Xanax, a large dose.

[6] During the treatment period, Respondent prescribed 360, 30 mg tablets of oxycodone monthly. The dose is 10 times greater than recommended by the C.D.C.

[7] A clear medical diagnosis is determined by obtaining objective evidence, which includes, but is not limited to: obtaining and documenting a complete medical history, which includes information regarding the beginning of the condition, location and duration of the condition, exacerbating or palliative triggers, lifestyle habits, the efficacy of prior treatments, and history of substance abuse; obtaining and reviewing prior medical records and imaging studies; performing and documenting robust physical examinations, particularly of the affected part of the patient's body; and identifying and documenting specific symptoms of the condition and the impact of the symptoms on a patient's functioning.

[8] A proper medical indication is based upon obtaining and documenting a clear medical diagnosis.

generally documented as "normal."

20. During the treatment period, Respondent prescribed excessive amounts of alprazolam, for anxiety, without documenting a clear diagnosis and without proper medical indication.

21. Respondent failed to properly monitor[9] the patient's controlled substance use.

22. On August 21, 2017, Respondent was notified that Patient No. 1 was apprehended by law enforcement while attempting to sell her prescribed oxycodone. Notwithstanding that, on August 28, 2017, Respondent authorized a refill of alprazolam. Respondent discharged Patient No. 1 on the same date.

23. During the treatment period, Respondent failed to recognize the indicia of controlled substance misuse, dependency, addiction, abuse, and/or diversion.[10]

Patient No. 2

24. Patient No. 2 (or "patient") is a female born in 1960 who was reportedly disabled. Patient No. 2 considered Respondent her primary care physician.[11] Patient No. 2 reported a history of back surgeries and chronic back pain. The patient also reported multiple medication intolerances and that certain pain medications were "ineffective."

25. Respondent treated Patient No. 2 from March 2014 through August 2018[12] for "back

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[9] Failure to properly monitor a patient taking controlled substances includes, but is not limited to: executing a detailed controlled substance agreement, failing to attempt safer treatment modalities prior to prescribing controlled substances; reducing the strength and/or quantity of the prescribed controlled substance(s); discussing the patient's current substance abuse issues; refer the patient for further evaluations or to specialists, including pain management, orthopedic surgery, psychiatry, or behavioral therapy; document discussions regarding the risks of using controlled substances, high doses of controlled substances, or polypharmacy; consult or obtain a CURES report; determine whether the patient exhibited misuse, dependence, addiction, or diversion of controlled substances; and conducting urine toxicology screenings.

[10] Indicia of controlled substance misuse, dependency, addiction, abuse, and/or diversion includes, but is not limited to: obtaining controlled substances from multiple providers, filling prescriptions of controlled substances at multiple pharmacies, requiring chronic high doses, using controlled substances not prescribed to the patient, resisting attempts to decrease or change medications, reporting lost or stolen medications, and negative interactions with law enforcement.

[11] A primary care physician has the obligation to perform, counsel, and/or provide the patient recommendations for preventive care or routine health exams, such as mammograms; Pap smears; vaccines; or screenings for high cholesterol, various cancers, or depression.

[12] These are approximate dates based on the records available for review. Patient No. 2 may have treated with Respondent before or after these dates.

pain" without ever arriving at a clear diagnosis. Rather, Respondent relied solely on the patient's subjective reports. Respondent prescribed between 700-960 Norco tablets monthly, an exceedingly large dose, as treatment for back pain. Additionally, Respondent prescribed large doses of acetaminophen by prescribing large doses of Norco. The quantity of acetaminophen contained in the prescribed Norco was equal to 9,750 mg. The amount is greater than double the recommended dosage.

26. During the treatment period, Respondent failed to recognize the indicia of controlled substance misuse, dependency, addiction, abuse, and/or diversion.

27. During the course of treatment, Respondent failed to provide recommendations for preventive care or routine health exams.

Patient No. 3

28. Patient No. 3 (or "patient") is a female born in 1934, who reported a history of high blood pressure, gout, osteoporosis, venous insufficiency, chronic kidney disease, thrombocytopenia, high cholesterol, arthritis, chronic insomnia, and hypothyroidism. The Patient also reported allergies to acetaminophen and oxycodone.

29. Beginning in February 2014 and continuing through January 2018,[13] Respondent regularly prescribed the patient the following controlled Substances:

a. Temazepam – approximately every 60-90 days from February 2014 through February 2016;

b. Lorazepam – monthly from March 2014 through March of 2018;

c. Zolpidem – initially 90 tablets every three months from March 2014 until August 2014, and 30 tablets of an extended-release formulation monthly from December 2015 through January 2018; and

d. Tramadol – 40 tablets every 2-3 weeks from August 2014 through April 2015, then 100 tablets approximately every 4-6 weeks until August 2017.

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[13] These are approximate dates based on the records available for review. Patient No. 3 may have treated with Respondent before or after these dates.

30. During 2015 and 2016, the scope of Respondent's treatment was largely focused on the patient's insomnia and severe depression/bereavement related to her daughter's and husband's deaths. Respondent prescribed Lexapro for depression, Ambien, and temazepam for insomnia, and lorazepam for "stress."

31. On May 16, 2017, Patient No. 3 was treated in the Emergency Room for a right thumb fracture sustained due to falling in her home. The discharge summary includes the diagnosis of "Fall, likely due to somnolence related to polypharmacy."

32. The patient followed up with Respondent on May 25, 2017. Respondent documented that he believed it was unsafe for the patient to continue taking the prescribed controlled substances. However, and despite that, Respondent continued to prescribe the same dosages and quantities of Tramadol and lorazepam.

33. In September 2017, Patient No. 3 was hospitalized for a subdural hematoma, subarachnoid hemorrhage, and a fracture of a vertebrae after falling in her home. The hospital records document that Patient No. 3 also had a prolonged Q.T. interval.[14]

34. Respondent prescribed lorazepam monthly, and in combination with zolpidem, and occasionally also with temazepam, for several years without documenting a clear medical diagnosis, and without proper medical indication.

35. Respondent did not refer the patient for behavioral health counseling or consultation with a Psychiatrist, despite repeatedly documenting that the patient's bereavement symptoms were severe, and that the patient was not functioning well.

36. Respondent continued to prescribe multiple benzodiazepines even after two hospitalizations directly related to the use of the medications. Additionally, Respondent did not see the patient in-office after May 2017, yet continued to refill the medications via fax without proper monitoring.

Patient No. 4

37. Patient No. 4 (or "patient") is a male born in 1972, who reported chronic hip and knee pain. Respondent documented that the patient's medical history included obesity, smoking,

[14] The amount of time between the heartbeats.

substance abuse, "mild COPD," a prior hand fracture, fatty liver, chronic constipation, cirrhosis, stomach problems, enlarged spleen, liver problems, Grave's disease, and that the patient was disabled.

38. The patient was also a known substance abuser, including heroin, which Respondent documented throughout the medical record.

39. Respondent treated the patient for pain, anxiety, ADD/ADHD, and muscle spasms without documenting a clear medical diagnosis. Additionally, Respondent treated the patient for other conditions.

40. Respondent saw the patient in-office approximately every two months from 2015 through October 2017, usually for medication refills. However, there is documentation that indicates Respondent's treatment began in 2014 and continued to 2019.[15]

41. Respondent regularly prescribed the following controlled substances to the patient without proper medical indication:

a. Oxycodone: Approximately 200-300 pills monthly from February 2014 through April 2014; 540 tablets monthly from April 2014 through November 2015, and 360 tablets monthly from December 2015 through January 2019.

b. Norco: 200 tablets monthly from February 2014 through August 2017.[16]

c. Diazepam: 100 tablets monthly from February 2014 through August 2015, 120 tablets monthly from September 2015 through November 2015, and 120 tablets per month from December 2015 through November 2017. This medication was prescribed to treat muscle spasm.

d. Alprazolam: between 60 and 120 tablets monthly from April 2014 through January 2019. This medication was prescribed to treat anxiety.

e. Adderall: between 60 to 90 tablets monthly from October 2015 through February 2019. This medication was prescribed to treat ADHD.

42. Respondent's physical examinations were generally minimal and were essentially

[15] These are approximate dates based on the records available for review. Patient No. 4 may have treated with Respondent before or after these dates.

[16] The patient was also being prescribed buprenorphine, a medication used to treat heroin and opioid addiction, by another provider from October 2014 through March 2015.

normal. The record contained three M.R.I. reports of the spine that show mild disc disease and mild degenerative changes. The record contains one M.R.I. of the right shoulder that showed tears of two tendons and hypertrophy of the capsule of the acromioclavicular joint. Additionally, the record contains an X-ray that revealed a normal lumbar spine, pelvis, and left shoulder. The quantities of opioids prescribed were excessive, given the relatively mild conditions exhibited by the various imaging studies, and to a patient who was a known polysubstance abuser.

43. Respondent prescribed oxycodone and Norco to Patient No. 4 without documenting a clear medical diagnosis and without proper medical indication. Respondent failed to properly monitor the patient's use of the prescribed opioids during the course of treatment.

44. Respondent prescribed diazepam and alprazolam to the patient without documenting a clear medical diagnosis and without proper medical indication. Respondent failed to monitor the patient's use of the prescribed benzodiazepines during the course of treatment.

45. Respondent prescribed Adderall to the patient beginning in October 2015 without documenting a clear medical diagnosis and without proper medical indication. Respondent failed to monitor the patient's use of Adderall during the course of treatment.

46. Respondent had actual knowledge that the patient's history included alcoholism and polysubstance abuse, yet prescribed high-risk medications including oxycodone, Norco, diazepam, alprazolam, and Adderall.

47. Respondent failed to recognize the indicia of controlled substance misuse, dependency, addiction, abuse, and/or diversion. On September 6, 2017, the patient requested a refill of his prescriptions, as he claimed they were stolen. Respondent approved the refill. Approximately two weeks later, Respondent sent the patient a letter stating he was terminating the patient's care for "breach of your pain contract."

48. On September 26, 2017, the patient contacted Respondent via telephone and requested a refill of oxycodone because the medications were seized by law enforcement.

49. On September 28, 2017, Respondent treated the patient and refilled a prescription for oxycodone. Respondent again documented that he planned to discontinue care of the patient.

50. Despite his intent to discharge the patient, Respondent treated Patient No. 4 on

October 26, 2017, for an acute injury to his shoulder. Respondent refilled prescriptions for oxycodone and Adderall. Respondent failed to document the reason he resumed care of the patient.

51. According to the medical record, October 26, 2017, was the last face-to-face visit with the patient. However, per the CURES report, Respondent continued to prescribe controlled substances to the patient through February 2019.

52. During the course of treatment, Respondent failed to provide recommendations for preventive care or routine health exams.

Patient No. 6[17]

53. Patient No. 6 (or "patient") is a male born in 1956. The patient reported a history of diabetes, hypertension, hyperlipidemia, chronic pain syndrome due to multiple orthopedic issues, anemia, duodenal ulcer, liver problems, kidney stones, diabetes, smoking, and excessive alcohol use. The patient was also on employment disability. Respondent was Patient No. 6's primary care physician. Respondent's care and treatment of the patient appears to begin in March 2014 and continued through July 2018.[18]

54. According to the CURES report, Respondent prescribed the following controlled substances monthly:

a. Oxycodone from September 2016 through August 2018;

b. OxyContin from September 2016 through August 2018;

c. Lorazepam from March 2014 through July 2018, for "anxiety;"

d. Triazolam from March 2014 through July 2018, for "sleep;"

e. Diazepam from March 2014 through July 2018, for "spasms;" and

f. Testosterone cypionate.

55. Respondent prescribed Flomax for prostate issues. However, the record contains no indication for the medication as Respondent failed to perform a prostate exam during the

[17] Patient No. 5, identified during the underlying investigation, is not included in this Accusation. To avoid confusion, the patients are presented as they were identified in the investigation.

[18] These are approximate dates based on the records available for review. Patient No. 6 may have treated with Respondent before or after these dates.

treatment period.

56. Respondent's physical examinations were generally minimal and generally documented only "pain" in the joints. Many treatment records include no physical examination other than vital signs.

57. Respondent prescribed oxycodone and OxyContin to the patient without documenting a clear medical diagnosis and without proper medical indication. Respondent failed to properly monitor the patient's use of opioids during the course of treatment.

58. Respondent prescribed the patient exceedingly high doses of oxycodone and OxyContin for two years, at a daily dosage that is many times greater than the recommended maximum amounts.

59. Respondent prescribed lorazepam, triazolam and diazepam, to the patient without documenting a clear medical diagnosis and without proper medical indication. Respondent failed to monitor the patient's use of the prescribed benzodiazepines during the course of treatment.

60. Respondent also prescribed testosterone but failed to document a proper medical justification for the treatment. Respondent failed to monitor the patient's prostate as he never performed a prostate examination and only ordered one P.S.A. test (prostate blood test) over the treatment period.

61. Respondent failed to recognize the indicia of controlled substance misuse, dependency, addiction, abuse, and/or diversion. On June 7, 2017, Patient No. 6 reported that his medications were stolen. Respondent authorized an early refill of diazepam and lorazepam.

62. In November 2017, Patient No. 6 was admitted to a hospital. The discharge note, initialed by Respondent, "Patient on high-dose narcotics, suspicious for accidental overdose."

63. During the course of treatment, Respondent failed to provide recommendations for preventive care or routine health exams. Respondent failed to perform or recommend routine eye and foot examinations indicated for all patients with diabetes.

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FIRST CAUSE FOR DISCIPLINE

(Excessive Prescribing of Controlled Substances)

64. Respondent Paulino Evo Tocchet, M.D. is subject to disciplinary action under section 725, subdivision (a) in that Respondent prescribed excessive amounts of controlled substances to Patients 1 through 4, and 6 The circumstances are as follows:

a. Patient No. 1. Respondent prescribed opioids in excessive amounts. The facts set forth in paragraph 19, above are incorporated by reference as if set forth in full herein.

b. Patient No. 2. Respondent prescribed opioids in excessive amounts. The facts set forth in paragraph 25, above, are incorporated by reference as if set forth in full herein.

c. Patient No. 3. Respondent prescribed benzodiazepines in excessive amounts. The facts set forth in paragraph 29, above, are incorporated by reference as if set forth in full herein.

d. Patient No. 4. Respondent prescribed opioids and benzodiazepines. The facts set forth in paragraphs 41, 42, above, are incorporated by reference as if set forth in full herein.

e. Patient No. 6. Respondent prescribed benzodiazepines. The facts set forth in paragraphs 54, above, are incorporated by reference as if set forth in full herein.

SECOND CAUSE FOR DISCIPLINE

(Prescribing Controlled Substances to an Addict)

65. Respondent Paulino Evo Tocchet, M.D. is subject to disciplinary action under section 2241, subdivision (d), subsections (1)-(3) in that throughout the course of treatment, Respondent continuously prescribed multiple controlled substances to:

a. Patient No. 3 after she sustained multiple injuries due to the side-effects of the drugs. The facts set forth in paragraphs 28 through 36, above, are incorporated by reference as if set forth in full herein.

b. Patient No. 4, despite having actual knowledge of the patient's impaired control of prescription and illegal controlled substances. The facts set forth in paragraphs 37 through 51, above, are incorporated by reference as if set forth in full herein.

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THIRD CAUSE FOR DISCIPLINE

(Prescribing Controlled Substances Without Proper Medical Indication)

66. Respondent Paulino Evo Tocchet, M.D. is subject to disciplinary action under section 2242, subdivision (a) in that Respondent prescribed multiple controlled substances to Patients 1 through 4, and 6 without obtaining objective evidence to support a proper medical indication. The facts set forth in paragraphs 16 through 63, above, are incorporated by reference as if set forth in full herein.

FOURTH CAUSE FOR DISCIPLINE

(Inadequate Record Keeping)

67. Respondent Paulino Evo Tocchet, M.D. is subject to disciplinary action under section 2266, in that Respondent failed to create and maintain proper medical records of his care and treatment of Patients 1 through 4, and 6. The facts set forth in paragraphs 16 through 63, above, are incorporated by reference as if set forth in full herein.

FIFTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

68. Respondent Paulino Evo Tocchet, M.D. is subject to disciplinary action under section 2234, subdivision (c) in that as to his care and treatment of Patients 1 through 4, and 6, Respondent:

a. Respondent failed to properly monitor Patients 1 through 4, and 6's chronic use of controlled substances;

b. Respondent failed to identify the indicia controlled substance misuse, dependency, addiction, abuse and/or diversion exhibited by Patients 1 through 4, and 6;

c. Respondent improperly subjected Patients 1 through 4, and 6 to polypharmacy.

d. Respondent failed to recommend preventative and/or routine health care treatments to Patients 2, 4, and 6.

69. The facts set forth in paragraphs 16 through 67, above, are incorporated by reference as if set forth in full herein.

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SIXTH CAUSE FOR DISCIPLINE

(Incompetence)

70. Respondent Paulino Evo Tocchet, M.D. is subject to disciplinary action under section 2234, subdivision (d) in that as to his care and treatment of Patients 1 through 4, and 6, Respondent:

a. Prescribed an extremely high-dose opiate to Patient No. 1 without a clear medical indication and did not appropriately monitor the patient for abuse or diversion constitutes evidences a lack of knowledge.

b. Treated Patient No. 1's chronic headaches with a high-dose opioid, a contraindicated drug for the condition evidences a lack of knowledge.

c. Prescribed extremely high-dose opioids to Patient No. 2 without a clear medical indication and did not appropriately monitor the patient for abuse or diversion constitutes evidences a lack of knowledge.

d. Prescribed high doses of benzodiazepines to Patient No. 3, an elderly patient, evidences a lack of knowledge.

e. Prescribed zolpidem concomitantly with benzodiazepines to Patient No. 3, an elderly patient, evidences a lack of knowledge.

f. Prescribed tramadol concomitantly with benzodiazepines to Patient No. 3, an elderly patient, evidences a lack of knowledge.

g. Prescribed an extremely high-dose opiate to Patient No. 4, a known substance abuser, without appropriate monitoring for abuse or diversion evidences a lack of knowledge.

h. Prescribed high doses of benzodiazepines to Patient No. 4, a known substance abuser, without appropriate monitoring for abuse or diversion evidences a lack of knowledge.

i. Prescribed high doses of benzodiazepines to Patient No. 6, a known substance abuser, without appropriate monitoring for abuse or diversion evidences a lack of knowledge.

j. Prescribed chronic opioids to Patient No. 6, a known substance abuser, without appropriate monitoring for abuse or diversion evidences a lack of knowledge.

k. Prescribed testosterone therapy to Patient No. 6, without proper medical

indication evidences a lack of knowledge.

71. The facts set forth in paragraphs 16 through 67, above, are incorporated by reference as if set forth in full herein.

SEVENTH CAUSE FOR DISCIPLINE

(Inappropriate Prescribing of Controlled Substances Resulting in Harm to Patients)

72. Respondent Paulino Evo Tocchet, M.D. is subject to disciplinary action under section 2228.1, subdivision (a), subsections (1)(D) and (2), in that Respondent's prescribing of controlled substances resulted in harm to:

a. Patient No. 3 who sustained injuries on at least two occasions that required hospital treatment. The falls and resulting injuries are a result of polypharmacy. The facts set forth in paragraphs 28 through 36, above, are incorporated by reference as if set forth in full herein.

b. Patient No. 4, as Respondent had actual knowledge that the patient was a known substance abuser and continued to prescribe multiple controlled substances. The facts set forth in paragraphs 37 through 52, above, are incorporated by reference as if set forth in full herein.

c. Patient No. 6 who was hospitalized due to possible overdose. The facts set forth in paragraphs 53 through 63, above, are incorporated by reference as if set forth in full 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 G 16156, issued to Paulino Evo Tocchet, M.D.;

2. Revoking, suspending or denying approval of Paulino Evo Tocchet, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering Paulino Evo Tocchet, M.D. to pay the Board the costs of probation monitoring;

4. Ordering Paulino Evo Tocchet, M.D. to provide the requisite written disclosures to patients if it is determined that Paulino Evo Tocchet, M.D.'s inappropriate prescribing of controlled substances resulted in harm to patients and a period of probation of five years or greater is imposed; and

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

DATED: July 1, 2020

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

Complainant

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