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

In the Matter of the Accusation Against: **Warden Hamlin Emory, M.D.** **Physician's and Surgeon's Certificate No. C 31807** **Respondent.**	**Case No.: 800-2017-039397**

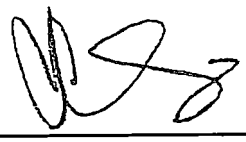
DECISION

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

This Decision shall become effective at 5:00 p.m. on September 30, 2022.

IT IS SO ORDERED: September 2, 2022.

MEDICAL BOARD OF CALIFORNIA



Laurie Rose Lubiano, J.D., Chair
Panel A

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General
CHRISTINA SEIN GOOT
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **WARDEN HAMLIN EMORY, M.D.** **2080 Century Park East, Suite 1409** **Los Angeles, CA 90067** **Physician's and Surgeon's** **Certificate No. C 31807,** Respondent.	Case No. 800-2017-039397 OAH No. 2021050238 **STIPULATED SETTLEMENT AND DISCIPLINARY 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 Christina Sein Goot, Deputy Attorney General.

2. Respondent Warden Hamlin Emory, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is: 5440 Trabuco Road, Irvine, CA 92620.

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3. On or about November 5, 1969, the Board issued Physician's and Surgeon's Certificate No. C 31807 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-039397, and will expire on January 31, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-039397 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 December 11, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-039397 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-039397. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2017-039397, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2017-039397, that he has thereby subjected his license to disciplinary action and hereby gives up his right to contest those charges.

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

CONTINGENCY

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

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2017-039397 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreement of the parties in this above entitled matter.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile

signatures thereto, shall have the same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 31807 issued to Respondent Warden Hamlin Emory, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years upon the following terms and conditions:

1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not order, prescribe, dispense, administer, furnish, or possess the following controlled substances, as defined by the California Uniform Controlled Substances Act: Schedule II controlled substances identified in California Health and Safety Code section 11055, subdivisions (b), (c), (d), (e), and (f).

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

informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and address of the patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

4. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider

with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

5. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

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

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

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

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

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

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

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

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

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

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

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

10. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement in the amount of Two thousand three hundred sixty-five dollars and zero cents ($2,365.00). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by respondent to the Board.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

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

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

12. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no

circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-

practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

15. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

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

18. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

19. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2017-039397 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

[Signatures on following page]

ACCEPTANCE

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

DATED: 2-8-22

WARDEN HAMLIN EMORY, M.D.
Respondent

I have read and fully discussed with Respondent Warden Hamlin Emory, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: February 8, 2022

RAYMOND J. MCMAHON
Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General

CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

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

DATED: _____ _____
WARDEN HAMLIN EMORY, M.D.
Respondent

I have read and fully discussed with Respondent Warden Hamlin Emory, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____ _____
RAYMOND J. MCMAHON
Attorney for Respondent

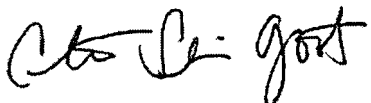
ENDORSEMENT

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

DATED: 2/8/22

Respectfully submitted,

ROB BONTA
Attorney General of California
EDWARD KIM
Supervising Deputy Attorney General



CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-039397

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
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Facsimile: (916) 731-2117
Attorneys for Complainant

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

In the Matter of the Accusation Against: WARDEN HAMLIN EMORY, M.D. 2080 Century Park East, Suite 1409 Los Angeles, CA 90067 Physician's and Surgeon's Certificate No. C 31807, Respondent.	Case No. 800-2017-039397 **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 November 5, 1969, the Board issued Physician's and Surgeon's Certificate Number C 31807 to Warden Hamlin Emory, M.D. (Respondent). That Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2023, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following

laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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

5. Section 2234 of the Code, states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
>
> (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
>
> (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
>
> (d) Incompetence.
>
> (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.
>
> (f) Any action or conduct that would have warranted the denial of a certificate.
>
> (g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

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."

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FACTUAL ALLEGATIONS

7. At all times relevant to the allegations herein, Respondent practiced psychiatry in Los Angeles, California. Respondent also provided treatment for physical and chronic pain.

Patient 1

8. Respondent treated Patient 1, a male in his 40's, from approximately 2003 until 2008. Thereafter, Patient 1 treated with another physician. Patient 1 then returned to Respondent and treated with him from 2012 until 2018. Respondent diagnosed Patient 1 with anxiety, depression, and attention deficit hyperactivity disorder (ADHD). Respondent also treated Patient 1 for chronic pain.

9. Respondent regularly prescribed Patient 1 high doses of opioids and benzodiazepines; however, there was no discussion of an opioid agreement or the potential risks of combining opioids and benzodiazepines documented in the medical record. In addition, there was no risk stratification, urine testing, or regular review of the Controlled Substance Utilization, Review and Evaluation System (CURES). Respondent's evaluation of respiratory depression risk related to the combination of an opioid and benzodiazepine by solely evaluating electroencephalogram (EEG) data is not consistent with the standard of care. On several occasions, Patient 1 was seen many days after he had run out of his medication early. Respondent failed to explore in-depth the reasons why this occurred. In addition, Patient 1 was an out-of-state patient paying Respondent by cash. This presented potential concerns that he could obtain controlled substances from out-of-state physicians that would not show up on CURES, even if Respondent had regularly reviewed CURES reports (which he did not). This was an extreme departure from the standard of care.

10. When Patient 1 first returned to Respondent's care, Respondent failed to document any attempts to obtain records from Patient 1's prior treating physician. This was a simple departure from the standard of care.

11. Throughout his treatment of Patient 1, Respondent regularly prescribed controlled substances for pain. Discussions of the risks and benefits of these controlled substances were poorly documented (or not documented at all), and there was no opioid agreement with the

patient. This was a simple departure from the standard of care.

12. Respondent did not make any significant effort to assure that the controlled substances he prescribed were not being diverted by the patient. There was no discussion with the patient of the issue of potential diversion and no periodic urine toxicology screening (not only to look for illicit or unprescribed substances, but also to make sure the prescribed medications were actually being taken). This was a simple departure from the standard of care.

13. Respondent terminated the physician-patient relationship with Patient 1; however, his letter terminating the relationship did not (a) contain any reference to providing at least 15 days of emergency treatment and prescriptions before discontinuing Respondent's availability; (b) include alternative sources of medical care, or (c) contain the information necessary for Patient 1 to obtain his medical records, as is required by the standard of care. This was a simple departure from the standard of care.

Patient 2

14. Respondent treated Patient 2, at the time a 35-year-old male, from approximately January 2015 through October 2018. Respondent diagnosed Patient 2 with anxiety, depression, avoidant traits, hypothyroidism, hypotestosteronemia[1], and cryptogenic insomnia, that is, insomnia of an unknown cause. Respondent also treated Patient 2 for chronic pain.

15. Respondent regularly prescribed Patient 2 opioids, benzodiazepines, and muscle relaxants. There was no discussion with this patient of an opioid agreement or the risks of combining opioids, benzodiazepines, and ketamine. In addition, there was no risk stratification, urine testing, or regular review of CURES. Patient 2 also reported that he would have likely committed suicide without Respondent's help; however, there was no further documentation about a discussion of suicidality with this patient nor was there any discussion of how the patient should dispose of the ketamine he was no longer using. This was an extreme departure from the standard of care.

16. At the January 8, 2015 visit, Respondent noted that Patient 2 had been acquiring

[1] This terms refers to abnormally low testosterone production; possibly due to testicular dysfunction (primary hypogonadism) or hypothalamic-pituitary dysfunction (secondary hypogonadism). It may be congenital or acquired.

Norco 7.5/325 from a local physician but that he had to wait in her office waiting room monthly for the refill. Respondent then prescribed Patient 2 a 6-month supply of Norco. Respondent's records do not indicate that he contacted the patient's other physician to advise that he would be taking over management of the opioids or to inquire if there were specific concerns/reasons to require monthly visits from Patient 2. This was a simple departure from the standard of care.

17. Throughout his treatment of Patient 2, Respondent regularly prescribed controlled substances for pain. Discussions of the risks and benefits of these controlled substances were poorly documented (or not at all), and there was no opioid agreement with the patient. This was a simple departure from the standard of care.

18. Respondent did not make any significant effort to assure that the controlled substances prescribed were not being diverted by the patient. There was no discussion with the patient of the issue of potential diversion and no periodic urine toxicology screening (not only to look for illicit or unprescribed substances, but also to make sure the prescribed medications were actually being taken). This was a simple departure from the standard of care.

Patient 3

19. Respondent treated Patient 3, a 68-year-old female at the time, from May 2015 until August 2018. Respondent diagnosed Patient 3 with unspecified anxiety, unspecified depression, and unspecified sleep stage disorder. Respondent also treated Patient 3 for chronic pain.

20. Patient 3 owned a jet and would travel back and forth between Arizona, Michigan, and Los Angeles. Her living arrangements posed a potential risk of medication misuse or diversion. She had both the financial and physical means to readily and regularly travel out of state and pay cash (which was how she paid Respondent) for essentially untraceable visits with physicians whose out-of-state prescriptions would not show up on a CURES report, even if Respondent had checked them regularly (which he did not). In such a patient, drug toxicology screening and a clear medication contract/agreement would be a cornerstone of responsible management if that management involved the prescription of controlled substances. Respondent prescribed Patient 3 opioids and benzodiazepines, among other medications. In addition to a lack

of toxicology screening, regular review of CURES reports,[2] and an opioid agreement, there was no clear assessment of the risk of substance abuse, misuse, or addiction. This was an extreme departure from the standard of care.

21. Patient 3 had knee surgery during the time she treated with Respondent. Ten weeks post-surgery, Patient 3 reported feeling worse after her dose of Vicodin had been decreased. Respondent increased Patient 3's dose of Vicodin without consulting with the patient's knee surgeon. Respondent acknowledged that it would have been prudent to have Patient 3 return to see her surgeon. This was a simple departure from the standard of care.

22. Throughout his treatment of Patient 3, Respondent regularly prescribed controlled substances for pain. Discussions of the risks and benefits of these controlled substances were poorly documented (or not at all), and there was no opioid agreement with the patient. This was a simple departure from the standard of care.

23. Respondent did not make any significant effort to assure that the patient was not diverting the controlled substances prescribed. There was no discussion with the patient of the issue of potential diversion and no periodic urine toxicology screening (not only to look for illicit or unprescribed substances but also to make sure the prescribed medications were actually being taken). This was a simple departure from the standard of care.

Patient 4

24. Respondent treated Patient 4, a 23-year-old male at the time, from May 2015 through October 2018. Respondent diagnosed him with anxiety, depressed mood, attention deficit "secondary to NP variance," thyroiditis, chronic pain, "[n]eurodevelopmental tachycardia," and insomnia.

25. During his course of treatment, Respondent regularly prescribed Patient 4 amphetamines and opioids. There was no discussion with the patient of an opioid agreement or the risks of combining opioids and ketamine. In addition, there was no risk stratification, urine testing, or regular review of CURES. This was an extreme departure from the standard of care.

[2] As mentioned previously, in the case of Patient 3, CURES alone would be insufficient to track the patient's prescription refills that occurred out of state.

26. Throughout his treatment of Patient 4, Respondent failed to consult with a cardiologist or any other physician regarding the patient's tachycardia. Respondent performed an EEG that included a single channel of electrocardiogram (EKG); however, its diagnostic utility is limited and is not intended as a replacement for a 12-lead EKG. Respondent's failure to consult with a cardiologist or other specialist was a simple departure from the standard of care.

27. Throughout his treatment of Patient 4, Respondent regularly prescribed controlled substances for pain. Discussions of the risks and benefits of these controlled substances were poorly documented (or not at all), and there was no opioid agreement with the patient. This was a simple departure from the standard of care.

28. Respondent did not make any significant effort to assure that the patient was not diverting the controlled substances prescribed. There was no discussion with the patient of the issue of potential diversion and no periodic urine toxicology screening (not only to look for illicit or unprescribed substances but also to make sure the prescribed medications were actually being taken). This was a simple departure from the standard of care.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence – Patients 1, 2, 3, and 4)

29. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he committed gross negligence in his care and treatment of Patients 1, 2, 3, and 4. The circumstances are as follows:

30. Complainant refers to and, by this reference, incorporates paragraphs 7 through 28, above, as though set forth fully herein.

31. Respondent failed to adequately perform risk stratification during his course of treatment of Patients 1, 2, 3, and 4, which constitutes gross negligence.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts – Patients 1, 2, 3, and 4)

32. Respondent is further subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care and treatment of Patients 1, 2, 3, and 4. The circumstances are as follows:

33. Complainant refers to and, by this reference, incorporates paragraphs 7 through 28, above, as though set forth fully herein.

34. Respondent's treatment of Patients 1, 2, 3, and 4 include the following acts and/or omissions which constitute repeated negligent acts:

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

b. Respondent failed to document any attempts to obtain appropriate documentation from other health care providers of Patients 1, 2, and 4;

c. Respondent inadequately documented (or did not document at all) discussions of the risks and benefits of controlled substances and/or did not obtain opioid agreements with Patients 1, 2, 3, and 4;

d. Respondent failed to document any attempts to refer Patients 2, 3, and 4 to relevant specialists and/or a pain management specialist;

e. Respondent failed to make any significant effort to assure that the controlled substances prescribed were not being diverted by Patients 1, 2, 3, and 4; and

f. Respondent's letter terminating the physician-patient relationship with Patient 1 did not (1) contain any reference to providing at least 15 days of emergency treatment and prescriptions before discontinuing Respondent's availability; (2) include alternative sources of medical care; or (3) contain the information necessary for Patient 1 to obtain his medical records.

THIRD CAUSE FOR DISCIPLINE

(Inadequate Record-Keeping – Patients 1, 2, 3, and 4)

35. Respondent's license is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate records concerning the care and treatment of Patients 1, 2, 3, and 4. The circumstances are as follows:

36. Complainant refers to and, by this reference, incorporates paragraphs 7 through 28, above, as though set forth fully herein.

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

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 31807, issued to Warden Hamlin Emory, M.D.;

2. Revoking, suspending or denying approval of Warden Hamlin Emory, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering Warden Hamlin Emory, M.D. to pay the Board the costs of probation monitoring; and

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

DATED: 12/11/2020

Jenne Jones for William Prasifka
WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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