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

In the Matter of the Accusation Against Scott W. Penkoff, M.D. Physician's and Surgeon's Certificate No. G47766 Respondent.	Case No. 800-2017-029340

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 31, 2020.

IT IS SO ORDERED September 8, 2020.

MEDICAL BOARD OF CALIFORNIA

By: _____
William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRIS LEONG
Deputy Attorney General
State Bar No. 141079
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6460
Facsimile: (916) 731-2117
E-mail: chris.leong@doj.ca.gov
Attorneys for Complainant

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

In the Matter of the Accusation Against: SCOTT W. PENKOFF, M.D. 18300 Yorba Linda Blvd., Ste. 204 Yorba Linda, California 92886-4052 Physician's Surgeon's Certificate G 47766, Respondent.	Case No. 800-2017-029340 OAH No. 2020010055 **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 Xavier Becerra, Attorney General of the State of California, by Chris Leong, Deputy Attorney General.

//

//

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

3. On or about June 28, 1982, the Board issued Physician's and Surgeon's Certificate No. G 47766 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-029340 and will expire on January 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-029340 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 November 27, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-029340 is attached as **Exhibit A** and is incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-029340. 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. 800-2017-029340, 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 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 47766, issued to Respondent Scott W. Penkoff, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate, to be effective on December 31, 2020, 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. 800-2017-029340 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2017-029340 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and 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 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: 8 - 16 - 2020

SCOTT W. PENKOFF, M.D.
Respondent

I have read and fully discussed with Respondent Scott W. Penkoff, 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: _____

RAYMOND J. MCMAHON
Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

Deputy Attorney General
Attorneys for Complainant

LA2019502010
Stipulated Surrender in Penkoff - SDAG Reviewed.docx

DATED: _____ _____

SCOTT W. PENKOFF, M.D.
Respondent

I have read and fully discussed with Respondent Scott W. Penkoff, 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: August 17, 2020 _____

RAYMOND J. MCMAHON
Attorney for Respondent

ENDORSEMENT

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

DATED: August 17, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

Chris Leong
CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant

LA2019502010
Stipulated Surrender in Penkoff - SDAG Reviewed.docx

Exhibit A

Accusation No. 800-2017-029340

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRIS LEONG
Deputy Attorney General
State Bar No. 141079
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6460
Facsimile: (916) 731-2117
E-mail: chris.leong@doj.ca.gov
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 27 2019
BY: Anna Logan ANALYST

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

In the Matter of the Accusation Against: SCOTT W. PENKOFF, M.D. 19742 MacArthur Boulevard, Ste. 100 Irvine, California 92612 Physician's and Surgeon's Certificate G 47766, Respondent.	Case No. 800-2017-029340 **A C C U S A T I O N**

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California (Board).

2. On June 28, 1982, the Board issued Physician's and Surgeon's Certificate Number G 47766 to Scott W. Penkoff, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2020, 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.

STATUTORY PROVISIONS

4. 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.

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 patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct

departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

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

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

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

(h) The repeated 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 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.

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

DRUGS

8. **Norco**, a brand name for hydrocodone with acetaminophen, is a dangerous drug pursuant to Code section 4022. It is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(I).

9. **Soma** is a dangerous drug pursuant to section 4022 of the Code. It is not a controlled substance. Its generic name is Carisprodol and it is used as a skeletal muscle relaxant.

10. **Oxycontin** (Oxycodone) is an opioid, i.e., a synthetic narcotic that resembles the naturally occurring opiates. It is a Schedule II controlled substance, as designated by Health and Safety Code section 11055, subdivision (b)(1)(M), and a close relative of morphine, heroin, codeine, fentanyl, and methadone. It is a dangerous drug within the meaning of Code section 4022.

11. **Hydrocodone/APAP** (Lortab) hydrocodone and acetaminophen. Acetaminophen, often abbreviated as APAP, is a peripherally acting analgesic agent found in many combination products and also available by itself. This combination product is used to treat moderate to moderately severe pain. In the U.S., formulations containing more than 15 mg hydrocodone per dosage unit are considered Schedule II drugs. Those containing less than or equal to 15 mg per dosage unit in combination with acetaminophen or another non-controlled drug are called hydrocodone compounds and are considered Schedule III drugs. Hydrocodone is not available in pure form in the United States due to a separate regulation. Hydrocodone is always sold combined with another drug.

12. **Clonazepam (Klonopin)** is a dangerous drug pursuant to section 4022 of the Code. It is a Schedule IV controlled substance, as designated by Health and Safety Code section 11057, subdivision (d)(7). It is used in both the prophylaxis and treatment of various seizure disorders. The dosage of Clonazepam should be carefully and slowly adjusted to meet the needs and requirements of the individual. An initial adult dose, however, should not exceed 1.5 mg daily. Adult maintenance dosage should generally not exceed 20 mg daily.

13. **Ultram** is a brand name for Tramadol, an effective pain reliever (analgesic), and is categorized as a dangerous drug under section 4022 of the Code.

14. **Percocet** (oxycodone and acetaminophen) is an opioid, i.e., a synthetic narcotic that resembles the naturally occurring opiates. It is a Schedule II controlled substance, as designated by Health and Safety Code section 1105, subdivision (b)(1)(M), and a close relative of morphine, heroin, codeine, fentanyl, and methadone. It is a dangerous drug within the meaning of Code section 4022.

15. **Ambien** (Zolpidem), a depressant, is categorized as a Schedule IV controlled substance, as designated by Health and Safety Code section 11057, subdivision (d)(32), it is a dangerous drug within the meaning of Code section 4022.

16. **Lorazepam** (Ativan), a depressant, is categorized as a Schedule IV controlled substance, as designated by Health and Safety Code section 11057, subdivision (d)(16). It is a dangerous drug within the meaning of Code section 4022.

17. **Tramadol** (Ultram) is an opiate and a controlled substance. The U.S. Drug Enforcement Administration (DEA) announced that Tramadol classification was placed into Schedule IV of the Controlled Substances Act (CSA) effective August 18, 2014. It is a dangerous drug within the meaning of Code section 4022.

18. **Adderall** is a stimulant and a controlled substance. The DEA classification is Schedule II of the CSA. It is a dangerous drug within the meaning of code section 4022.

BACKGROUND

19. Respondent is a family physician and has never been Board certified. He has worked as an employee for Caduceus Medical Group (hereafter, "Caduceus") at four locations for approximately 13 years, seeing patients of all ages in an outpatient setting approximately three days per week. There are approximately ten other family physicians in the medical group, and the group uses an Electronic Medical Record system.

20. Patient 1 is a female, born in 1992, at the time in question, twenty-seven years of age. Patient 1 was seen by the medical group for adjustment reaction, attention deficit disorder, cervicalgia, insomnia, and back pain. Respondent began seeing Patient 1 in July 2012, although he did not consider her "his patient" because she saw multiple providers in the practice.

21. Patient 1's sister complained to the Board and stated that Respondent was excessively prescribing Soma, Amphetamines, Clonazepam, and OxyContin even though Patient 1 had a known history of substance abuse and had a history of a conviction for driving under the influence, numerous detox stays, overdoses and psychiatric holds. Patient 1's sister stated that Respondent is "well known in Laguna Beach and the surrounding area for prescribing narcotics without any oversight."

SUMMARY OF CARE

22. On July 28, 2012, Patient 1 had a scheduled appointment with Respondent but did not appear for the appointment. Instead, she went to the Emergency room for anxiety. Respondent ran a CURES report on that date in anticipation of her visit and noted that Adderall was not included in the last 12 months, and there was only one prescription filled for Ritalin 5 mg #30 filled on February 27, 2012.

23. On July 30, 2012, Patient 1 had her first visit with Respondent. Patient 1 reported that the Seroquel she was taking was making her aggressive, and she wished to discontinue it. She requested an increase in her Clonazepam (Klonopin), which she took for sleep each evening.

24. On December 14, 2012, Respondent saw Patient 1 again for acute sinusitis and prescribed Augmentin.

25. In January 2013, after being referred by the Respondent, Patient 1 was seen by the Physical Therapist (PT) in the practice for neck pain related to an automobile accident. Patient 1 reported, "sneezing and running into a telephone pole and rolling her car." She was working at a medical marijuana clinic and had to take off work because of the pain.

26. Patient 1 saw another provider twice in January 2013 who refilled the Clonazepam and Percocet, and prescribed the antibiotic Cipro for possible pneumonia.

27. On January 25, 2013, Respondent saw Patient 1 again for "medication refills." Patient 1 was requesting refills of Ambien and Percocet and reported a persistent cough for which she was taking the previously prescribed Cipro. The medication list also documents that she was taking Soma, Clonazepam, and Propranolol. The Review of Systems (ROS) for this visit was again quite extensive and similar to previous visits other than reports of back pain and difficulty

sleeping and denial of cough or trouble breathing. The examination included normal vital signs other than a pulse of 99, tenderness over her maxillary and frontal sinuses, and normal lung examination. No musculoskeletal examination was performed. Respondent diagnosed insomnia, acute bronchitis, and worsening acute sinusitis. Respondent refilled Ambien CR 12.5 mg one every night, #30 with 2 refills, and Percocet 10-325 #120 with no refills. He advised her to continue the Cipro and to add Mucinex twice a day and to call if she did not improve within 4 days.

28. On April 2, 2013, Patient 1 was seen by another provider in the practice who refilled Ambien CR and Percocet.

29. On September 25, 2013, Respondent received a FAX from Patient 1's insurance company informing him that they were concerned about Patient 1's use of controlled substances and noted she was being prescribed Zolpidem (Ambien), Lorazepam (Ativan), Oxycodone/Acetaminophen (Percocet), and Carisoprodol (Soma) concurrently. There is no record that the Respondent responded to the insurance company's concern regarding the patient's high-risk medication use.

30. On October 7, 2013, Patient 1 saw a Physician's Assistant (PA) in the practice and received refills for three months of Clonazepam, Propranolol, and Soma.

31. On October 30, 2013, Patient 1 saw another PA in the practice who diagnosed Sinusitis and prescribed Augmentin, as well as prescribed Norco #40 with 1 refill for shoulder pain.

32. On February 22, 2014, Respondent saw Patient 1 for medication refills and to complete Department of Motor Vehicle (DMV) paperwork[1]. At that time, she had been on Soma, Propranolol, Clonazepam, and was previously prescribed Norco and Percocet. Patient 1 reported increased panic attacks in the previous 6 weeks, for which Clonazepam helped. She was planning to move to Northern California to attend culinary school. It was documented that she was in physical therapy for a right ankle injury and was taking Soma and Hydrocodone for shoulder and

[1] Patient 1 had fainted in 2013 and had restrictions on her license, but because the Respondent's practice was prescribing medications, the DMV requested a form to be filled out by Respondent.

ankle pain. Respondent's ROS noted panic attacks and no anxiety, depression, difficulty sleeping, joint pain, joint swelling, or limitation of motion. Physical examination noted normal vital signs, normal constitutional symptoms, skin, head, face, eyes, respiratory, cardiovascular, and musculoskeletal exams. Of note, the psychiatric, shoulder, and ankle exams were noted as normal.

33. On March 3, 2014, Patient 1 saw a Nurse Practitioner (NP) in the practice. The NP diagnosed Bronchopneumonia and prescribed Cipro, Flonase, cough syrup, and refilled Ambien CR.

34. On June 25, 2014, Respondent saw Patient 1 again for updates to the DMV paperwork and a right wrist injury. Patient 1 reported injuring her right wrist while playing with her dog two days prior and had been wearing a brace. She reported gastrointestinal upset from the Norco and requested a different medication for pain. She reported that her anxiety attacks were stable, and she denied any lightheadedness or fainting in the past year. The history noted a limited range of motion with pain in her wrist and a bruise on the mid-ulnar area and tenderness at the distal radius. The medication list for that visit included Ambien CR, Clonazepam, Norco, Propranolol, and Soma, and she reported also taking Gabapentin. The examination noted vital signs, a full physical including cardiovascular, respiratory, pupillary, skin, and musculoskeletal examinations. Her wrist was noted to have tenderness to palpation over the wrist, restricted range of motion, and pain at the wrist with motion present. Respondent diagnosed Adjustment Reaction, wrist pain with possible fracture, and Herpes Simplex of the lip. He prescribed Acyclovir tablets, Tramadol 50 mg 1-2 four times a day for pain, #120 with 2 refills, and Norco 10-325 one as needed three times a day for pain #40 with no refills. He advised Patient 1 to wear a wrist splint for four weeks and ordered an X-ray, which was performed that day and was normal. There was no record of the DMV form.

35. On June 15, 2015, Patient 1 saw a PA in the practice. This was a year after the previous visit. Patient 1 reported a seizure disorder. She was prescribed Gabapentin, Norco #60, Propranolol, and Tramadol #120 with 3 refills. She signed a pain contract at that visit.

36. On August 31, 2015, Respondent saw Patient 1 for refills of Norco and Adderall. She reported being "bothered by her ADD in the last four months" and wanted to resume Adderall. There were no questions regarding attention, concentration, distractions, or how her Attention Deficit Disorder (ADD) was affecting her function. There is no symptom scale or psychiatric report referred to or on file. There was no mention anywhere in the patient history of neck or back pain. The medication list at that visit included Acyclovir, Clonazepam, Gabapentin, Norco, Propranolol, Soma, and Tramadol. The ROS was negative, including denial of any musculoskeletal pain. The physical examination included respiratory, cardiovascular, and musculoskeletal examinations. Respondent noted normal vital signs and normal constitutional symptoms. Of note, the spine examination was normal, as was the shoulder examination. The Respondent diagnosed back pain, Adjustment reaction, Cervicalgia, and ADD. He prescribed Adderall 20 mg one per day #30, Norco #60, and Soma #90 with two refills. Respondent stopped the Tramadol. There was also a notation that on this visit Respondent handwrote a prescription to be filled on September 29, 2018, and October 25, 2018, for the same prescription of Adderall 20 and Norco 10/325. Respondent ordered a drug screen that was performed that day and was positive for amphetamines and benzodiazepines and negative for opiates, including Oxycodone. Respondent advised Patient 1 to return in three months.

37. On December 30, 2015, Patient 1 saw a PA in the practice. The PA noted that there was a pain contract on file and that Patient 1 stated she smoked marijuana regularly since age 18. The PA increased the Gabapentin and refilled the Norco, Soma, and Adderall. A drug screen was performed that day and was positive only for marijuana (THC). A CURES report was run that date and signed by the PA.[2]

38. A year later, on December 22, 2016, Respondent saw Patient 1 once again for medication refills of Adderall, Clonazepam, and Soma. The patient reported good control of her symptoms, but no specific symptoms or complaints. A ROS was negative, including no joint pain, muscle pain, and no anxiety, panic, depression, or presence of constitutional symptoms.

[2] Notably, none of the PA records concerning this patient were counter-signed by a physician.

The examination noted normal vital signs and normal examination of her eyes, face, skin, psychiatric, and neurologic examination. No musculoskeletal examination was performed. The Respondent diagnosed back pain, ADD, Adjustment Reaction, and Insomnia. He prescribed Clonazepam 1 mg three per day, #120 with five refills, Soma #60 with 5 refills, and Adderall 20 mg #30 with no refills. Patient 1 was advised she could call monthly for refills of her Adderall and advised to follow up in one year.

39. The records include no telephone calls, no copies of the DMV reports, or the "pain contract" mentioned by the PA. Respondent ran only one CURES report in July of 2012 before seeing Patient 1. Respondent never noted reviewing or having Patient 1 sign a pain contract. In the subject interview, Respondent denied knowledge that Patient 1 had had a DUI. He did recall receiving a message from Patient 1's sister but did not return the call because she was "not on the HIPAA form." None of the Physician Assistant notes are cosigned by a Physician.

40. A review of the CURES report printed on February 1, 2017, confirmed that Patient 1 was filling the above medications prescribed by the Respondent, including Soma, Norco, Clonazepam, Percocet, and Ambien.

41. On September 6, 2018, Patient 1's sister reported to the Board having communicated to Patient's 1 the Respondent regarding her sister. Patient 1's sister reported episodes of Patient 1 seeming "out of sorts" and of finding a bottle of #120 Clonazepam with 6 refills. In addition, Patient 1 had been arrested twice for Driving Under the Influence. Patient's sister called the Respondent to express her concerns about her sister and the medications she was being prescribed, but Respondent never returned her calls.

42. On November 15, 2018, Respondent was interviewed by a Health Quality Investigation Unit (HQIU) Investigator. During the interview, Respondent was asked about this visit. In the interview, the Respondent stated the physical examination "came off a template," adding, "I doubt I listened to her heart and lungs that day, to be honest with you, and probably didn't remove it from the template." Respondent diagnosed Adjustment Reaction and Insomnia and refilled Clonazepam #60, Norco #40, and Soma #90. He advised Patient 1 that she could increase her Clonazepam to three pills per day - one for panic attacks and two at night for sleep.

There is no documentation of any discussion with Patient 1 regarding the potential risks and side effects of these medications, especially in combination. There was no record of the DMV form.

43. During the November 15, 2018 subject interview referred to in the paragraph above, Respondent was asked about the August 31, 2015 examination:

Q: "What page were you reading?"

A: That was page 129

Q: 129 and what does the – the – was there any objective finding in her exam for the back pain on her – her back – uh – the cervical spine or the lumbar spine?

A. No.

Q. So mainly, this pain was subjective?

A. Well, I didn't do an exam...."

FIRST CAUSE FOR DISCIPLINE

(Dishonesty)

44. Respondent is subject to disciplinary action under Code section 2234, subdivision (e), for dishonesty. The facts and circumstances alleged in paragraphs 19 through 43 are incorporated herein as if fully set forth.

45. Respondent was dishonest in his practice of medicine as follows: Regarding an August 31, 2015 visit, Respondent documented a complete physical examination in the medical record, including symptoms of back pain. In fact, he did not perform the physical examination.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

46. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he was grossly negligent in the care and treatment of Patient 1. The facts and circumstances as alleged in paragraphs 19 through 43, are incorporated as if fully set forth and are also as follows:

A. **DOCUMENTATION & MEDICAL RECORDS**. Respondent's documentation of medical records was inadequate and inaccurate as follows:

(1) Respondent admitted that his records were populated by a preset template and were not accurate.

(2) Many of the ROS sections were repeated verbatim from visit to visit.

(3) Information in the ROS often contradicted the information in the history.

(4) Patient 1 was receiving pain medications, but in the ROS, Patient 1 denied any joint or muscle pain.

(5) Respondent documented complete genitourinary and gastrointestinal review of systems. This is doubtful because this was allegedly done during initial visits for mental health conditions.

B. **PRESCRIBING OF BENZODIAZEPINES**. Respondent's prescribing of Benzodiazepines constituted gross negligence as follows:

(1) Respondent prescribed Patient 1 Clonazepam 1 mg tablets typically #90 to 120 at a time, which is enough for three or four times daily, even though he prescribed this "as needed."

(2) Respondent failed to attempt safer alternatives such as Doxepin or Tricyclic Antidepressants for Insomnia, or a Selective Serotonin Reuptake Inhibitor (SSRI) or Buspar for Anxiety.

(3) Respondent failed to refer Patient 1 for counseling or cognitive behavioral therapy or to a psychiatrist for Anxiety or panic disorders.

(4) Respondent failed to question Patient 1 about alcohol use or advise her to avoid driving, even though he knew that she had issues with the Department of Motor Vehicles (DMV).

(5) Respondent provided Patient 1 prescriptions and refills enough for one year and did not perform adequate follow-up monitoring.

(6) Respondent failed to discuss or to document the risk of taking the medications, including opiates and Soma.

///

(7) Respondent failed to monitor Patient 1's medications appropriately. During the span of his care of Patient 1, he requested only one Controlled Substance Utilization Review and Evaluation System (CURES) Report.

(8) Respondent prescribed chronic high-dose Benzodiazepine in combination with other high-risk medications under comorbid conditions, without adequate justification.

C. **DIAGNOSIS & TREATMENT OF ATTENTION DEFICIT DISORDER**. Respondent's diagnosis and treatment of ADD constituted gross negligence as follows:

(1) On August 31, 2015, Respondent prescribed an ADD medication, Adderall, to Patient 1 even though she never had a psychiatric evaluation.

(2) Respondent failed to perform evaluations to confirm the diagnosis of ADD. He failed to question her or do a specific evaluation of her symptoms. He failed to complete symptom report scales and failed to refer Patient 1 for an appropriate professional evaluation.

(3) Respondent failed to offer alternatives or counsel Patient 1 regarding the risk of the medication. Safer alternatives such as counseling, or other drugs such as Strattera or Wellbutrin were not offered.

(4) Respondent failed to assess Patient 1 for her response to the medication. Respondent failed to monitor Patient 1 to see if the medication he prescribed improved her symptoms.

THIRD CAUSE FOR DISCIPLINE

(Repeated Acts of Negligence)

47. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he was repeatedly negligent in the care and treatment of Patient 1. The facts and circumstances as alleged in paragraphs 19 through 43, are incorporated as if fully set forth and are also as follows:

A. **PRESCRIBING CHRONIC OPIATES**. Respondent's prescribing of opiates constituted repeated acts of negligence as follows:

(1) Respondent failed to discuss and document the risk of taking the medications, especially in combination with other high-risk medications, and failed to obtain a signed pain management contract regarding prescribing opiates, including Percocet.

(2) Respondent failed to attempt to prescribe safer non-narcotic alternatives, such as a Nonsteroidal Anti-Inflammatory Drug (NSAID), when he prescribed Norco to Patient 1 in February 2014.

(3) Respondent prescribed opiates in excessive quantities. The prescribing of opiates continued even though the examination findings of Patient 1 were normal.

(4) Respondent's prescribing of daily narcotics, including opiates, continued through January 2013 without discussion or revaluation of the shoulder pain. Respondent failed to perform a musculoskeletal examination.

(5) In February 2014, Respondent began prescribing Patient 1 Norco, even though she reported being intolerant to this medication. There was no clear medical indication for this prescribing, and there was no clear diagnosis.

(6) Respondent failed to monitor Patient 1's medications appropriately. He only requested one Controlled Substance Utilization Review and Evaluation System (CURES) Report, and that was prior to the patient's first visit.

(7) Respondent failed to screen Patient 1 for Opiate Dependence disorder. Respondent failed to respond to Patient 1's insurance company's concern regarding her high-risk medication use.

(8) Respondent performed only one urine drug screening over several years of treatment, and it was negative for opiates. Yet, Patient 1 reported taking the opiates, and Respondent refilled the Norco for three months without addressing the negative toxicology finding.

B. **TREATMENT OF SHOULDER PAIN**. Respondent's failure to evaluate and treat Patient 1's shoulder pain properly constitutes negligence as follows:

(1) Respondent diagnosed Patient 1 with subluxation[3] of the shoulder even though the examination findings were not consistent with this diagnosis, and Patient 1 had no evidence of shoulder subluxation on the X-ray performed in the emergency room.

(2) Respondent failed to examine or evaluate Patient 1's musculoskeletal complaints adequately or to achieve a definitive diagnosis, yet he continued to prescribe pain medications.

C. **PRESCRIBING SOMA FOR MUSCLE SPASMS**. Respondent's prescribing of Soma for muscle spasms constitutes negligence as follows:

(1) Respondent prescribed Soma to Patient 1 with no clear medical indication. Patient 1 did not mention spasms, and Respondent did not note any muscle spasms in his medical notes regarding Patient's 1 examinations.

(2) Respondent failed to document or advise Patient 1 of the risk of taking Soma, especially in combination with high-dose opiates. There was no medical indication to prescribe Soma long-term.

D. **TREATMENT OF INSOMNIA AND ANXIETY**. Respondent's treatment of Patient 1's insomnia and anxiety constitutes negligence as follows:

(1) Respondent prescribed Patient 1 Clonazepam for insomnia for at least five (5) years and never offered or considered any safer medication alternatives such as Trazodone, Doxepin, nor did Respondent suggest cognitive behavioral therapy.

(2) Respondent failed to offer treatment for anxiety such as SSRI's or Buspar and, as previously stated never referred Patient 1 to counseling.

(3) Respondent failed to document or advise Patient 1 of the risk of taking Clonazepam, especially in combination with high-dose opiates, such as Soma, and while using alcohol and marijuana.

(4) Respondent prescribed stimulants to Patient 1, which is known to cause insomnia.

///

///

[3] Incomplete or partial dislocation.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

48. Respondent is subject to disciplinary action under Code section 2234, subdivision (d), in that he was incompetent in the care and treatment of Patient 1. The facts and circumstances as alleged in paragraphs 19 through 24, are incorporated as if fully set forth, and are also as follows:

A **FAILURE TO RECOGNIZE SUBSTANCE ABUSE**. Respondent's failure to recognize Patient 1's substance abuse constitutes incompetence and a lack of knowledge.

B. **PRESCRIBING CONTROLLED SUBSTANCES**. Respondent prescribed high-risk controlled substances, as described above, but failed to evaluate and monitor Patient 1 properly. Respondent failed to recognize "red flags" for abuse and misuse and allowed Patient 1 to take four different classes of controlled substances (opiates, benzodiazepines, muscle relaxers, and stimulants). This occurred in the context of a patient who was young, who had a history of substance abuse, had issues with alcohol with at least one DUI arrest, and who exhibited signs and symptoms of substance abuse.

C. **FAILURE TO RESPOND**. Respondent failed to respond to Patient 1's family and failed to listen to or to obtain information from family members even though he was aware that they called him. Respondent also failed to respond to Patient 1's insurance company, who expressed concerns about Patient 1's medication use. Respondent failed to consider that Patient 1 had dependence disorders.

D. **EVALUATION AND TREATMENT OF SHOULDER PAIN**. Respondent's failure to evaluate and treat shoulder pain properly constitutes negligence as follows:

(1) Respondent diagnosed Patient 1 with subluxation of the shoulder even though the examination findings were not consistent with this, and Patient 1 had no evidence of shoulder subluxation on the x-ray performed in the emergency room.

(2) Respondent failed to examine or evaluate Patient 1's musculoskeletal complaints adequately or to achieve a definitive diagnosis, yet he continued to prescribe pain medications.

E. **PRESCRIBING SOMA FOR MUSCLE SPASM**. Respondent's prescribing of Soma for muscle spasms, constitutes negligence as follows:

(1) Respondent prescribed Soma to Patient 1 with no clear medical indication. Patient 1 did not mention spasms and Respondent did not note any muscle spasms in the medical notes regarding Patient 1's examinations.

(2) Respondent failed to document or advise Patient 1 of the risk of taking Soma, especially in combination with high-dose opiates. There was no medical indication to prescribe Soma long-term.

F. **TREATMENT OF INSOMNIA AND ANXIETY**. Respondent's treatment of Patient 1's insomnia and anxiety constitutes negligence as follows:

(1) Respondent prescribed Patient 1 Clonazepam for insomnia for at least five (5) years yet never offered nor considered any safer medication alternatives such as Trazodone or Doxepin, nor did Respondent suggest cognitive behavioral therapy.

(2) Respondent failed to offer treatment for anxiety such as SSRI's or Buspar and never referred Patient 1 to counseling

(3) Respondent failed to document or advise Patient 1 of the risk of taking Clonazepam, especially in combination with high-dose opiates such as Soma, or while using alcohol and marijuana.

(4) Respondent prescribed stimulants to Patient 1, which is known to cause insomnia.

FIFTH CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Records)

49. Respondent is subject to disciplinary action under Code section 2266, for failure to maintain adequate and accurate medical records. The facts and circumstances as alleged in paragraphs 19 through 24, are incorporated as if fully set forth.

///

///

///

///

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

50. Respondent is subject to disciplinary action under Code section 2234 for unprofessional conduct. The facts and circumstances, as alleged in paragraphs 19 through 24 are incorporated as if fully set forth.

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 47766, issued to Scott W. Penkoff, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants and advanced practice nurses;

3. If placed on probation, ordering him to pay the Board the costs of probation monitoring;

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

DATED: November 27, 2019

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

Complainant

LA2019502010
53904425.docx