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

In the Matter of the Accusation Against: Solomon Adu-Beniako, M.D. Physician's and Surgeon's Certificate No. A 108552 Respondent.	Case No. 800-2019-055442

DECISION

The attached Proposed Decision 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 October 29, 2020.

IT IS SO ORDERED September 29, 2020.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the Accusation Against:

SOLOMON ADU-BENIAKO, M.D.

Physician's and Surgeon's Certificate No. A 108552

Respondent.

Case No. 800-2019-055442

OAH No. 2020030639

PROPOSED DECISION

Administrative Law Judge Regina Brown, Office of Administrative Hearings (OAH), State of California, heard this matter remotely on June 4, 2020.

Hamsa M. Murthy, Deputy Attorney General, represented complainant Christine J. Lally, Interim Executive Director of the Medical Board of California.

Respondent Solomon Adu-Beniako, M.D., represented himself at the hearing.

The record closed and the matter was submitted for decision on June 6, 2020.[1]

FACTUAL FINDINGS

1. Complainant Christine J. Lally issued the Accusation in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Medical Board).

2. On June 26, 2009, the Medical Board issued Physician's and Surgeon's Certificate (Certificate) No. A 108552 to respondent Solomon Adu-Beniako, M.D. Respondent's Certificate was in full force and effect at the times of the acts set forth below. Although his Certificate was renewed through October 31, 2020, on November 26, 2019, the Medical Board placed respondent's license in suspended status under Business and Professions Code, section 2310, subdivision (a), due to the suspension of respondent's license by the Michigan Department of Licensing and Regulatory Affairs Bureau of Professional Licensing, Board of Medicine Disciplinary Subcommittee (Michigan Board).[2]

3. The Accusation alleges that respondent's California Certificate is subject to discipline because of the action taken by the Michigan Board against respondent's

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[1] It is believed that respondent attempted to submit documents to OAH after the record was closed. However, the documents were not properly filed with OAH and were not included in the record.

[2] The evidence did not establish that respondent requested a hearing on the suspension pursuant to Business and Professions Code section 2310.

license to practice medicine in Michigan. Respondent requested a hearing, and this hearing followed.

Action by the Michigan Board

4. On January 18, 2018, the Michigan Board issued an administrative complaint against respondent, alleging the following: Between January 2016 and October 31, 2016, and January 2017 to December 31, 2017, respondent was a top prescriber authorizing prescriptions for commonly abused and diverted controlled substances: hydrocodone, promethazine, alprazolam, carisoprodol and/or oxycodone. A significant percentage of the prescriptions were paid by patients with cash, where the state average of patients paying by cash for controlled substance medications was less than 10 percent. Data also revealed that several of respondent's patients travelled long distances (ranging between 240 to 420 miles) to respondent's facilities to obtain prescriptions. Respondent also prescribed controlled substances for patients who were obtaining controlled substance prescriptions concurrently from multiple providers. Respondent's prescribing practices and medical records reflected deficiencies in respondent's management of patient care.

5. After accepting an administrative law judge's Findings of Fact and Conclusions of Law, on April 5, 2019, the Michigan Board issued a Final Order suspending respondent's license for a minimum of six months and one day, voiding his controlled substance license, and imposing a fine in the amount of $15,000. The Final Order also required respondent to reapply for licensure before reinstatement. The Final Order was based on respondent's violation of Michigan's Public Health Code, MCL 333.16221, subdivision (a), because his conduct constituted "a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or

not injury results, or a condition, conduct, or practice that impairs, or may impair, the ability safely and skillfully to engage in the practice of the health profession," and a violation of MCL 333.16221, subdivision (b)(i), because his conduct failed "to conform to minimal standards of acceptable, prevailing practice for the health profession."

The Final Order did not appear to find that respondent violated MCL 333.16221, subdivision (c)(iv), for engaging in conduct that "constitutes selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes," as alleged in the administrative complaint.

Respondent's Evidence

6. Respondent provided the following explanation: In 2008, respondent incorporated East & West Physicians which he owns. However, he did not start treating patients until August 2016.

In October 2016, respondent was first made aware of a fraudulent prescription in his name by a pharmacy. He informed the Michigan Board and the Detroit office of the DEA and he filed a police report. In December 2016, respondent pulled a Michigan Automatic Prescription System (MAPS) report on a patient and found out that the patient had fraudulently filled a prescription under his name. Respondent filed a police report. When questioned, respondent's employees denied any involvement.

In April 2017, respondent discovered that three other of his former patients also filled fraudulent prescriptions. At that time, the police departments located in the various cities refused to allow respondent to file any police reports. In June 2017, when respondent spoke to a DEA agent about changing his DEA number, they came to the conclusion that changing his DEA number alone would not solve the problem because the information on the fraudulent prescriptions matched information in respondent's

office, and "it looked like the person behind the fraud was someone close" to respondent. The prescription fraud continued and respondent continued to file police reports, but he encountered police who were unwilling to assist him.

In October 2017, one of respondent's medical assistants, who was hired in September 2016 (around the time that respondent first became aware of the fraudulent prescriptions), was caught verifying prescriptions for someone who was not respondent's patient. Respondent immediately terminated her employment.

7. Respondent strongly believes that he was wrongly found to have committed misconduct by the Michigan Board and insists that his suspension was improper as it was based on uncorroborated MAPS reports that included over a hundred names of individuals who were not his patients. He insists that he has never written a prescription for oxycodone. In his own words, respondent believes that "Michigan had nothing on me." According to respondent, although he reported to the police, the Michigan Board, and the DEA that someone in his office had committed the prescription fraud, they did nothing. He accuses the Michigan Board of fabricating evidence, not allowing him to present evidence at the hearing and prohibiting from cross-examining witnesses. Respondent states that if the Michigan Board had done a proper investigation, then he would not be facing discipline in California.

8. Respondent believes that the matter before the Michigan Board had nothing to do with his performance as a doctor.

9. Respondent states that he voluntarily disclosed to the Medical Board the pending proceedings before the Michigan Board.

10. Respondent is certified with the American Board of Addiction Medicine from November 2014 to December 2024.

11. Respondent provided no evidence to establish that he has taken responsibility for his actions in Michigan, especially in the area of negligent supervision of his employees.

12. Respondent provided no evidence of rehabilitation to establish that he is safe to practice medicine in California.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code[3] section 141, subdivision (a), applies generally to licenses issued by agencies that are part of the Department of Consumer Affairs, such as the Medical Board. It provides, in relevant part, as follows: "For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action by another state . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board."

3. The disciplinary action of the Michigan Board was based on acts substantially related to the practice of medicine. Cause exists under section 141 to take disciplinary action against respondent's Certificate, by reason of the matters set forth in Findings 4 and 5.

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[3] All references are to the Business and Professions Code.

4. Section 2305, which applies specifically to licenses issued by the Board, provides in relevant part as follows:

> The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state . . . that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

5. The conduct for which respondent was disciplined in Michigan constitutes cause for disciplinary action in California under section 2234 (general unprofessional conduct). Accordingly, cause exists under section 2305 to take disciplinary action against respondent's Certificate, as set forth in Findings 4 and 5.

6. Respondent contends that section 2310, subdivision (c), applies in this matter. His contention is misplaced. Section 2310, subdivision (c), applies when a physician's license is automatically suspended and a physician is given a right to have the issue of penalty heard by an administrative law judge or a panel, and, after a hearing, if the administrative law judge or the panel finds that the out-of–state action is not a basis for discipline in California, then the suspension is rescinded.

In this case, the disciplinary proceeding is pursuant to an Accusation, and not a request for a hearing on an automatic suspension; therefore, section 2310, subdivision (c), does not apply. (§ 2310, subds. (c), (g), & (h); Findings 1 through 3.)

Disciplinary Considerations

7. Cause for discipline having been established, the remaining issue is the appropriate level of discipline. The Medical Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (Guidelines) (12th ed., 2016) recommend, at a minimum, that the same penalty for a similar offense in California be imposed, which is a stayed revocation and five years' probation, subject to appropriate terms and conditions, for respondent's unprofessional conduct. The maximum discipline is revocation. Complainant argues that revocation of respondent's Certificate is necessary to protect the public.

8. In determining the appropriate disciplinary penalty, the seriousness of the misconduct is balanced against the physician's showing of rehabilitation. The burden of establishing rehabilitation is on respondent and the standard of proof is a preponderance of the evidence. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164; Evid. Code, §§ 115, 500.)

9. It is noted that respondent has been licensed in California for 11 years. Respondent's misconduct in the instant case, however, is serious and is exacerbated by the presence of aggravating factors. Under these circumstances, in order to remain licensed, respondent must make a particularly strong showing of rehabilitation.

10. In determining whether or not a licensee is sufficiently rehabilitated to justify continued licensure, it must be kept in mind that, in exercising its licensing functions, protection of the public is the highest priority of the Medical Board. The Medical Board seeks to ensure that licensees will, among other things, be completely candid and worthy of the responsibilities they bear by reason of their licensure. The outcome of this case, therefore, turns on whether respondent has taken responsibility

for his misconduct and taken steps to rehabilitate himself to the extent that he can be trusted to practice medicine in a manner consistent with public safety.

11. The expression of remorse and the taking of responsibility for past misconduct are relevant in assessing rehabilitation, just as the absence of remorse and the failure to take responsibility are aggravating factors. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 [fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation].)

12. Respondent believes that the Final Order was unjustly issued by the Michigan Board, and for this reason, he argues that no discipline should be imposed in this matter.

Respondent sincerely believes that he has been victimized by his medical assistant, and the failures of the various police departments, the DEA, and the Michigan Board. However, the fact remains that respondent was negligent in his supervision in his office which allowed the fraud to continue for almost two years, even after he was made aware that fraudulent prescriptions were being issued under his name as early as October 2016, which coincided with the hiring of a new medical assistant. Moreover, respondent did not express remorse or accept any responsibility for his misconduct, and lacks insight into his misconduct. He showed no evidence that he can be trusted to properly supervise his employees or that he has taken steps to prevent this type of fraud from recurring in the future.

Respondent's wholesale denial of his misconduct does not reflect well on his suitability for probation. Because respondent failed to present any meaningful evidence of rehabilitation, the Medical Board lacks assurances that, if placed on probation, respondent can be trusted to perform licensed activities in a manner

consistent with public safety. Against this background, protection of the public requires revocation of respondent's Certificate.

ORDER

Physician's and Surgeon's Certificate No. A 108552 issued to respondent Solomon Adu-Beniako, M.D., is revoked.

DATE: July 6, 2020

DocuSigned by:
Regina Brown
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REGINA BROWN
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JAN 16 2020
BY A. ESPERANZA ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2019-055442
Solomon Adu-Beniako, M.D. 20905 Greenfield Rd, Suite 702 Southfield, MI 48075-5360 **Physician's and Surgeon's Certificate No. A 108552,** Respondent.	**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, Department of Consumer Affairs (Board).

2. On or about June 26, 2009, the Medical Board issued Physician's and Surgeon's Certificate Number A 108552 to Solomon Adu-Beniako, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2020; however, on November 26, 2019, the Board placed Respondent's license in suspended status under Business and Professions Code section 2310(a) due to the suspension of Respondent's license by the Michigan Board of Medicine.

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 2305 of the Code states:

> The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

6. Section 141 of the Code states:

> (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.
>
> (b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another Jurisdiction)

7. On April 5, 2019, the Michigan Department of Licensing and Regulatory Affairs Bureau of Professional Licensing, Board of Medicine Disciplinary Subcommittee (Michigan Board) issued a Final Order suspending Respondent's license for six months, voiding his controlled substance license, and fining him $15,000. The Final Order further stated that Respondent would be required to reapply for licensure before reinstatement. The Final Order was

issued following an administrative hearing based on allegations that Respondent's prescribing of controlled substances "constitutes a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or a condition, conduct, or practice that impairs, or may impair, the ability safely and skillfully to engage in the practice of the health profession;" failing to "conform to minimal standards of acceptable prevailing practice for the health profession;" and engaging in conduct that "constitutes selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes." A copy of the Michigan Board Administrative Complaint and Final Order are attached as Exhibit A.

8. Respondent's conduct and the action of the Michigan Board as set forth in paragraph 7, above, and within the actual Michigan Board documents attached as Exhibit A, constitutes unprofessional conduct within the meaning of section 2305 and conduct subject to disciplinary action within the meaning of section 141(a).

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:

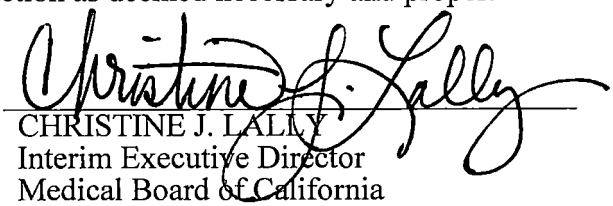
1. Revoking or suspending Physician's and Surgeon's Certificate Number A 108552, issued to Solomon Adu-Beniako, M.D.;

2. Revoking, suspending or denying approval of Solomon Adu-Beniako, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Solomon Adu-Beniako, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: JAN 16, 2020



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

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EXHIBIT A

Michigan Department of Licensing and Regulatory Affairs Bureau of Professional Licensing, Board of Medicine Disciplinary Subcommittee Administrative Complaint and Final Order

GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Certification of Documents in Response to FOIA Request

Requester: Sharee Woods

I, Stephani Fleming, FOIA Coordinator, Michigan Department of Licensing and Regulatory Affairs, acknowledge that a FOIA requesting certified records, dated 05/13/2019, was received by the Department on 05/13/2019. Enclosed are true copies of the only records within the Department's possession related to "Documents filed against Solomon Adu-Beniako, DOB: 1962, including the Statement of Charges and Final Decision," which consists of 16 pages. The Department conducted a thorough search of its electronic databases and other records, and I certify that, to the best of my knowledge, information, and belief, it has no additional records responsive to the request.

Dated: June 4, 2019

Stephani Fleming
FOIA Coordinator
Department of Licensing and Regulatory Affairs
State of Michigan

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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

SOLOMON ADU-BENIAKO, M.D.
License No. 43-01-084828,
Respondent.

Docket No. 18-007018
File No. 43-17-145786

FINAL ORDER

On January 18, 2018, the Department of Licensing and Regulatory Affairs (Department), executed an Administrative Complaint charging Respondent with violating the Public Health Code, MCL 333.1101 et seq.

An administrative hearing was held in this matter before an administrative law judge who, on November 8, 2018, issued a Proposal for Decision (PFD) setting forth recommended Findings of Fact and Conclusions of Law.

On December 20, 2018, Petitioner filed Petitioner's Exceptions to Proposal for Decision.

On December 21, 2018, Respondent filed Respondent's Exceptions to Proposal for Decision.

On December 21, 2018, Respondent filed Respondent's Amended Exceptions to Proposal for Decision.

On December 27, 2018, Petitioner filed Petitioner's Reply to Respondent's Exceptions to Proposal for Decision.

On January 14, 2019, Respondent filed Respondent's Response to [Petitioner's] Exceptions.

The Michigan Board of Medicine Disciplinary Subcommittee (DSC), having reviewed the administrative record, considered this matter at a regularly scheduled meeting held in Lansing, Michigan on March 20, 2019, and accepted the administrative law judge's Findings of Fact and Conclusions of Law contained in the PFD. Therefore,

IT IS ORDERED that for violating MCL 333.16221(a) and (b)(i) Respondent's license to practice medicine is SUSPENDED for a minimum of six months and one day, commencing on the effective date of this Order.

IT IS FURTHER ORDERED that, pursuant to MCL 333.7311(6) Respondent's controlled substance license is automatically void, commencing on the effective date that Respondent's license to practice medicine in the state of Michigan is suspended.

IT IS FURTHER ORDERED that reinstatement of a license which has been suspended for more than six months is not automatic and, in the event Respondent applies for reinstatement of the license, application for reinstatement may not be made sooner than 90 days prior to the end of the suspension period and shall be in accordance with MCL 333.16245 and 333.16247.

IT IS FURTHER ORDERED that for the cited violations of the Public Health Code, Respondent is FINED $15,000.00 to be paid to the state of Michigan prior to filing an application for reinstatement of the license. Respondent shall direct payment to the **Department of Licensing and Regulatory Affairs, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, MI 48909.** The fine shall be paid by check or money order made payable to the State of Michigan, and the check or money order shall clearly display file number **43-17-145786.**

IT IS FURTHER ORDERED that if Respondent violates any provision of this Order, or fails to complete any terms of the order, the DSC may take disciplinary action pursuant to Mich Admin Code, R 338.1632 and MCL 333.16221(h).

This matter is a public record required to be published and made available to the public pursuant to the Michigan Freedom of Information Act, MCL 15.231 et seq., and this action will be reported to the National Practitioner Data Bank and any other entity as required by state or federal law.

IT IS FURTHER ORDERED that this Order shall be effective 30 days from the date signed by the DSC's Chairperson or authorized representative, as set forth below.

Dated: 04/05/2019

MICHIGAN BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

By: Cheryl Wykoff Pezon

Cheryl Wykoff Pezon, Director
Bureau of Professional Licensing
Authorized Representative

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

SOLOMON ADU-BENIAKO, M.D.
License No. 43-01-084828,

File No. 43-17-145786

Respondent.

ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, by Cheryl Wykoff Pezon, Acting Director, Bureau of Professional Licensing, complains against Respondent Solomon Adu-Beniako, M.D. as follows:

1. The Michigan Board of Medicine is an administrative agency established by the Public Health Code, MCL 333.1101 *et seq.* Pursuant to MCL 333.16226, the Board's Disciplinary Subcommittee (DSC) is empowered to discipline licensees for Code violations.

2. Respondent has an active Michigan medicine license. Respondent also has an active controlled substance license[1], an active drug treatment program prescriber license, and active drug control-location licenses.

3. Alprazolam (e.g. Xanax), a schedule 4 controlled substance, is a benzodiazepine used to treat anxiety disorders and panic disorder. Alprazolam is a commonly abused and diverted drug, particularly in its 1 mg and 2 mg dosages.

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[1] The Department has also filed an Administrative Complaint against Respondent before the Board of Pharmacy Disciplinary Subcommittee for the conduct alleged here, *Solomon Adu-Beniako, M.D.*, No. 53-18-149382.

4. Buprenorphine/naloxone (Suboxone) is an opioid schedule 3 controlled substance commonly used in opioid dependence treatment. Suboxone is known as "prison heroin," and is commonly abused and diverted.

5. Carisoprodol (Soma) is a muscle relaxant and a schedule 4 controlled substance. Carisoprodol has significant potential for abuse, dependence, overdose, and withdrawal, particularly when used in conjunction with opioids and benzodiazepines.

6. Codeine preparations (e.g., codeine/promethazine syrup) are schedule 5 controlled substances prescribed for treating cough and related upper respiratory symptoms. Codeine/promethazine syrup is rarely indicated for any other health condition, and is particularly ill-suited for long-term treatment of chronic pain. Codeine/promethazine syrup is a highly sought-after drug of abuse, and is known by the street names "lean," "purple drank," and "sizzurp."

7. Hydrocodone is an opioid. Hydrocodone combination products (e.g., Norco), are Schedule 2 controlled substances due to their high potential for abuse.

8. Oxycodone (e.g., Percocet), a schedule 2 controlled substance, is an opioid used to treat pain, and is commonly abused and diverted.

9. At all relevant times, Respondent was engaged in private practice in southeast Michigan.

10. Complainant reviewed data from the Michigan Automated Prescription System (MAPS), the State of Michigan's prescription monitoring program, which gathers data regarding controlled substances dispensed in Michigan. MAPS data for the period between January 1, 2016 and October 31, 2016 revealed that Respondent authorized the following number of prescriptions for the following commonly abused and diverted controlled substances:

	# Prescriptions	% of Total CS Prescriptions
(a) Hydrocodone/Acetaminophen combination products	819	45.17%
(b) Promethazine-Codeine Syrup	684	37.73%
(c) Alprazolam 1 mg	107	5.90%
(d) Oxycodone 30 mg	95	5.24%
(e) Total, (a) - (d)	1,705	**94.04%**
(f) Total Controlled Substances	1,813	

11. MAPS data for the period between January 1, 2017 and December 31, 2017 revealed that Respondent authorized the following number of prescriptions for the following commonly abused and diverted controlled substances:

	# Prescriptions	% of Total CS Prescriptions
(a) Hydrocodone/Acetaminophen combination products	3,934	44.18%
(b) Promethazine-Codeine Syrup	3,355	37.68%
(c) Alprazolam 1 mg	319	3.58%
(d) Oxycodone 30 mg	470	5.27%
(e) Total, (a) - (d)	8078	**90.73%**
(f) Total Controlled Substances	8,903	

12. MAPS data for the period between quarter four of 2016 to quarter 3 of 2017 revealed that Respondent was a top prescriber for the following commonly diverted and abused controlled substances:

Drug	Licensee's 2016 Q4 Rank	Licensee's 2017 Q1 Rank	Licensee's 2017 Q2 Rank	Licensee's 2017 Q3 Rank
(a) Promethazine-Codeine Syrup	1	1	1	1
(b) Hydrocodone 10 mg	49	11	28	24
(c) Oxycodone 30 mg	71	28	26	93
(d) Oxymorphone 40 mg	-	-	37	21
(e) Carisoprodol	-	-	-	33

13. Approximately 30.83% of controlled substance prescriptions issued by Respondent between January 1, 2016 and December 31, 2016 were paid for by patients with cash. Approximately 23.64% of controlled substance prescriptions issued by Respondent between January 1, 2017 and December 31, 2017 were paid for by patients with cash. The state average of patients paying cash for controlled substance medications is less than ten percent. The high proportion of patients paying cash for controlled substance medications is indicative of prescriptions filled for the purpose of drug diversion.

14. In November 2014 and October 2016, the Department sent correspondence to Respondent notifying him that his patient was displaying "doctor shopping" behaviors, meaning the patient was obtaining controlled substance prescriptions from multiple providers.

15. In answering the October 2016 doctor-shopping letter and in an interview with a Department investigator, Respondent affirmed that he obtains MAPS reports on his patients.

16. MAPS data indicated that several of Respondent's patients travelled long distances to Respondent's facilities to obtain prescriptions, including:

a. Three patients from the Escanaba/Gladstone, Michigan area, all receiving prescriptions for buprenorphine/naloxone (approximately 420 miles);

b. One patient from Cincinnati, Ohio receiving prescriptions for oxymorphone 40 mg and hydrocodone-acetaminophen 10-325 mg (approximately 270 miles);

c. One patient from Ludington, Michigan receiving prescriptions for promethazine with codeine and hydrocodone-acetaminophen 10-325 mg (approximately 240 miles); and

d. One patient from Middletown, Ohio receiving prescriptions for oxymorphone 40 mg and hydrocodone-acetaminophen 10-325 mg (approximately 240 miles).

17. Between January 1, 2017 and December 31, 2017, Respondent prescribed controlled substances to 938 unique patients. Respondent prescribed a combination of promethazine with codeine and hydrocodone-acetaminophen 10-325 mg to 420, or 44.78%, of those patients.

17. In the May 2017 interview with a Department investigator, Respondent claimed that most of his patients have coughs and thus he prescribes them promethazine with codeine. He indicated that he initially authorizes an 8-ounce bottle and reduces the volume to 4 ounces for subsequent prescriptions.

18. In contrast, MAPS data revealed that Respondent continuously issues prescriptions for 8-ounce bottles of promethazine with codeine to several patients.

19. As part of an investigation into Respondent's prescribing practices, the Department received and analyzed medical records of six of Respondent's patients: BS[2], JJ, LL, MO, MB, and SK.

20. An expert reviewed the individuals' medical records and discovered the following deficiencies in Respondent's management of patient care:

(a) Respondent's medical records fail to provide sufficient clinical detail. Respondent's medical decision-making is not documented, and there is no sense of longitudinal process or progress.

(b) Respondent does not consistently perform or document appropriate exams, tests, labs, x-rays, or referrals. Exams

[2] Patients are identified by their initials.

often do not reflect detail appropriate to the clinical problem. Imaging history and use of advanced imaging is limited or absent.

(c) Neurological and musculoskeletal examinations of patients with back pain are often the same from patient to patient; or, for a patient, from encounter to encounter.

(d) Plain radiographs are sometimes performed without a clear indication, and their impact on the patient's care is not described in reports.

(e) The rationale and need for laboratory tests is often unclear, results are not discussed in the medical record, and their impact on patient care is not clear.

(f) Respondent did not properly monitor patients being treated with opioids. To illustrate, patients received controlled substance prescriptions from multiple providers during their treatment with Respondent.

(g) Respondent did not appropriately and recurrently evaluate and document the efficacy, risks, benefits, and need for long-term treatment with opioids.

(h) The frequency, strength, and medications chosen by Respondent suggest no individualized treatment plan. Patients were generally treated with the same opioid preparation at the same frequency without a rationale provided in the medical record.

(i) Patient medical records contain little information regarding clinical efficacy, suggesting that treatment choices were arbitrary and not individualized.

21. The expert discovered the following deficiencies in the individual medical files Respondent produced, in addition to those noted above:

<u>Patient BS</u>

(a) Patient BS was involved in a motor vehicle crash; however, Respondent's medical record does not contain details on that incident, such as details of prior treatment or clear documentation of the nature of patient BS's injuries to his back, hand, and knee.

(b) Diagnoses such as anxiety and erectile dysfunction were noted in patient BS's medical record without an appropriate history or examination documented by Respondent.

(c) Respondent prescribed medication to patient BS without appropriate history, examination, and relevant decision making.

(d) Respondent failed to properly monitor Respondent's controlled substance pharmacological treatment.

(e) Respondent refers to patient BS's drug screens in the medical record; however, no results are noted in the medical record.

Patient JJ

(f) The care provided to patient JJ and Respondent's documentation did not reflect the exercise of due care in the practice of medicine.

(g) Respondent failed to obtain appropriate history for patient JJ's initial complaints of cough and low back pain, initiated tests and therapies without appropriate clinical justification or, where relevant, an incremental approach to treatment.

(h) Respondent did not obtain a MAPS report for patient JJ until approximately five months after Respondent began treating patient JJ. Had Respondent obtained a MAPS report for JJ, he would have observed a concerning pattern of JJ obtaining controlled substances from multiple providers.

Patient LL

(i) Respondent did not obtain an adequate history regarding patient LL's complaints of back pain and sore throat combined with difficulty swallowing. For the latter complaint, Respondent inappropriately initiated antibiotic therapy and a codeine-containing cough syrup.

(j) Respondent did not appropriately document the rationale for or appropriately monitor patient LL's controlled substance pharmacological treatment.

(k) Respondent did not obtain a MAPS report for patient LL, which would have shown a pattern of extensive controlled substance treatment by multiple providers.

(l) Respondent documented the performance of multiple drug screens but the results and their interpretations do not appear in patient LL's medical record.

(m) Patient LL's response to treatment and further medical decision making by Respondent were not adequately addressed in the medical record.

Patient MO

(n) Patient MO's initial presentation to Respondent was strikingly similar to that of patient LL, with a sore throat, difficulty swallowing, productive cough, and low back pain. Respondent did not obtain an appropriate history for either set of complaints.

(o) Respondent prescribed codeine-containing cough syrup for patient MO's throat and cough complaint and controlled substance pharmacological treatment for patient MO's low back pain, with documentation of intent to provide long-term controlled substance treatment.

(p) Respondent delayed obtaining a MAPS report for patient MO, which should have been obtained sooner. The MAPS report would have shown patient MO receiving controlled substance treatment from multiple providers, as well as undisclosed treatment with a stimulant.

(q) Drug screens were documented as ordered, but the results do not appear in patient MO's medical record.

Patient MB

(r) Respondent's treatment of patient MB exhibited several deficiencies, including inadequate history, long-term controlled substance pharmacological treatment initiated at the first visit, use of codeine-containing syrups without appropriate clinical indication, and inadequate evaluation for and monitoring of controlled substance pharmacological treatment.

(s) Patient MB's medical record regarding her urine drug screens was inadequate.

(t) Respondent did not obtain a MAPS report for patient MB until later in MB's treatment, when Respondent had concerns about prescription pad theft and prescription forgery at the practice. Patient MB's MAPS report would have shown a history of buprenorphine use by patient MB and receipt of controlled substance prescriptions by multiple providers.

(u) Patient MB's previous prescription for buprenorphine required specific investigation and evaluation, and Respondent failed to appropriately address this.

Patient SK

(v) Respondent provided care to patient SK over two visits, one of which was for an acute injury. Patient SK's histories were incomplete, and patient SK's controlled substance pharmacological treatment related care and documentation was deficient.

(w) Respondent did not obtain a MAPS report at patient SK's first visit, which would have shown a pattern of patient SK receiving controlled substances from multiple providers for treatment of undisclosed conditions.

22. The expert also analyzed MAPS data for three other patients: PL, LS, and JP. The expert found that Respondent prescribed each patient controlled substances over several years, with each patient receiving prescriptions for multiple controlled substances simultaneously. Additionally, the patients were obtaining controlled substance prescriptions from multiple other providers concurrently with Respondent's prescribing. The expert opined that the MAPS reports for these patients strongly suggest that controlled substances were being obtained for other than legitimate medical use.

23. In the aforementioned May 2017 interview with a Department Investigator, Respondent claimed his DEA registration number had been compromised, and fraudulent prescriptions were being issued in his name. He indicated that he would be contacting the DEA immediately about the fraudulent prescriptions and to obtain a new

DEA registration number.

24. As of January 18, 2018, Respondent has yet to request a new DEA registration number.

COUNT I

Respondent's conduct constitutes a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or a condition, conduct, or practice that impairs, or may impair, the ability safely and skillfully to engage in the practice of the health profession in violation of MCL 333.16221(a).

COUNT II

Respondent's conduct fails to conform to minimal standards of acceptable, prevailing practice for the health profession in violation of MCL 333.16221(b)(i).

COUNT III

Respondent's conduct, as set forth above, constitutes selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes, in violation of MCL 333.16221(c)(iv).

RESPONDENT IS NOTIFIED that, pursuant to MCL 333.16231(8), Respondent has 30 days from the date of receipt of this complaint to answer this complaint in writing and to show compliance with all lawful requirements for retention of the license. Respondent shall submit the response to the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI

48909.

Respondent's failure to submit an answer within 30 days is an admission of the allegations in this complaint. If Respondent fails to answer, the Department shall transmit this complaint directly to the Board's Disciplinary Subcommittee to impose a sanction pursuant to MCL 333.16231(9).

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: 1/18/2018, 2018

By: Cheryl Wykoff Pezon, Acting Director
Bureau of Professional Licensing

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