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

In the Matter of the Accusation Against: Kim Jeffery Horowitz, M.D. Physician's & Surgeon's Certificate No. A 42396 Respondent.	Case No. 800-2017-036369

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 December 29, 2022.

IT IS SO ORDERED: November 29, 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
Deputy Attorney General
State Bar No. 229094
Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6481
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: **KIM JEFFERY HOROWITZ, M.D.** **P.O. Box 1898** **Tehachapi, CA 93581** **Physician's and Surgeon's Certificate No. A 42396,** Respondent.	Case No. 800-2017-036369 OAH No. 2021080772 **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 Kim Jeffery Horowitz, M.D. (Respondent) is represented in this proceeding by attorney Dennis R. Thelen, whose address is: 5001 E. Commerce Center Dr. Ste 300, Bakersfield, CA 93309-1687.

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3. On or about December 30, 1985, the Board issued Physician's and Surgeon's Certificate No. A 42396 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. 800-2017-036369, and will expire on June 30, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-036369 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 August 26, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-036369 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. 800-2017-036369. 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 understand and agrees that the charges and allegations in Accusation No. 800-2017-036369, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate. Respondent hereby gives up his right to contest those

charges and allegations.

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. 800-2017-036369 and that he has thereby subjected his license to disciplinary action.

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 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 an accusation is subsequently filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2017-036369 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. A 42396 issued to Respondent Kim Jeffery Horowitz, M.D. is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4), and it is further ordered that Respondent comply with the following attendant terms and conditions:

A. PUBLIC REPRIMAND

The Public Reprimand issued in connection with Accusation No. 800-2017-036369, against Respondent Kim Jeffery Horowitz, M.D. is as follows:

> "You failed to maintain adequate and accurate records regarding your care and treatment of Patient 1 and should have attempted to avoid treating Patient 1 with a combination of controlled substances that increased her risk of overdose and other reactions, as more fully described in Accusation No. 800-2017-036369."

B. 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.

C. 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.

D. INVESTIGATION/ENFORCEMENT COST RECOVERY.

Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement in the year of 2022, including, but not limited to, expert review, amended accusations, legal reviews, joint investigations, and subpoena enforcement, as applicable, in the amount of $5,300.00 (five thousand three hundred dollars and zero cents). Costs shall be payable

to the Medical Board of California. Costs shall be payable to the Medical Board of California within one (1) year from the effective date of this Decision.

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.

E. FAILURE TO COMPLY

Failure to comply with any of the terms of this Disciplinary Order shall constitute general unprofessional conduct and may serve as grounds for further disciplinary action.

F. 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. 800-2017-036369 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Dennis R. Thelen, Esq. 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: 6/4/2022

KIM JEFFERY HOROWITZ, M.D.
Respondent

[Signatures continued on following page]

I have read and fully discussed with Respondent Kim Jeffery Horowitz, 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: 5-25-22

DENNIS R. THELEN, ESQ.
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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conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____ _____
DENNIS R. THELEN, ESQ.
Attorney for Respondent

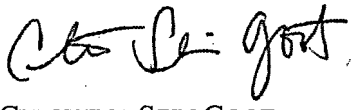
ENDORSEMENT

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

DATED: ____7/8/22_____

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. 800-2017-036369

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRISTINA SEIN GOOT
Deputy Attorney General
State Bar No. 229094
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6481
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: Kim Jeffery Horowitz, M.D. P.O. Box 1898 Tehachapi, CA 93581 Physician's and Surgeon's Certificate A 42396, Respondent.	Case No. 800-2017-036369 **ACCUSATION**

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 December 30, 1985, the Board issued Physician's and Surgeon's Certificate Number A 42396 to Kim Jeffery Horowitz, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2021, 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."

FACTS

7. At all times relevant to the allegations herein, Respondent was a licensed physician practicing family medicine.

8. Respondent treated Patient 1,[1] a 60-year-old female, from June 27, 2016 through March 31, 2017. On June 27, 2016, Patient 1 was seen for lab results and medication refills. Prior to this visit, Respondent received three statements from CVS pharmacy detailing concerns about Patient 1's medication combinations and long-term use of Lunesta. Patient 1's listed medications were Soma 350 mg - every four to six hours as needed (prn); Percocet 10/325 mg (10 mg of oxycodone and 325 mg of acetaminophen) - every four to six hours prn; Mylan brand Fentanyl Transdermal patch 100 mcg/hr (100 micrograms delivered hourly) - one patch daily; Lunesta 3 mg - one to two at night; Lorazepam 1 mg - twice per day (BID) prn; Prempro; simvastatin; fiber; and stool softeners. The assessment was chronic low back pain, post-laminectomy syndrome, peripheral neuropathy, spinal stenosis, scoliosis, hyperlipidemia, menopause, and chronic insomnia. The plan documented was labs with drug screen, refills of medications, and Respondent noted that he had an "extended discussion" with Patient 1, who indicated she was fearful of weaning medications, but agreed to try to lower her Soma and Percocet by ½ tablet a day and to make the Fentanyl patch last longer. All the prescriptions were refilled for three months.

9. Respondent next saw Patient 1 on October 31, 2016. The exam was normal except for tachycardia. He prescribed Valium 10 mg #90 - three times per day (TID) and stopped Lorazepam and Soma. He stopped Lunesta, but instead of melatonin medications, he prescribed zolpidem (Ambien) 12.5 mg CR (extended release) #30, one nightly. On the follow-up exam on November 28, 2016, Respondent's note stated that Valium helps the pain, but not the panic attacks, and that zolpidem was ineffective for sleep. Patient 1 was also unable to wean the Percocet to TID. The exam was normal (no further tachycardia). Refills were given for zolpidem 12.5 mg CR, Fentanyl, Percocet (#180 per month), and Valium 10 mg, all for three months, and melatonin 3 mg and chamomile tea nightly was recommended.

[1] The patient is referred to by number to protect her privacy.

10. Patient 1 was again seen on January 30, 2017, and Respondent noted that severe low back pain, right leg pain, and thoracic spine pain continued, but that zolpidem was helping with sleep, and Valium was helping with anxiety and muscle spasms. The exam was normal and Respondent mentioned having Patient 1 bring in her medicine bottles for a pill count at the next visit. Valium and zolpidem were refilled, both with five extra refills. Multiple labs and a January 23, 2017 drug screen were reviewed, with the drug screen results showing the presence of the two opiates.

11. Patient 1's last visit with Respondent was on March 31, 2017. Patient 1 had a non-productive cough and wheezing for months, and was having increased panic attacks and nausea and vomiting episodes (possibly from the panic attacks). The exam was normal except for a congested nose, for which Flonase was prescribed. There was no evidence of a pill count being performed. For the increased anxiety, Respondent referred Patient 1 to a psychiatrist. Fentanyl and Percocet each were refilled for three months.

12. For the aforementioned nine months of care, the medical records are lacking. The history is perfunctory with mention only of the presence of chronic pain, without further characterizing the pain and without mention of the "4 A's" of pain management – analgesia, activities of daily living, adverse side effects, and aberrant drug-taking behaviors – that should be addressed at each visit when opiates are prescribed. Exams are even less notable with just lines or check marks, and mention is only made of the presence of a brace or "the same" peripheral neuropathy. Throughout this period of care, only one pain score is noted on June 27, 2016, tachycardia is not addressed on two visits, and no other medical issues (hyperlipidemia, physicals, anemia on lab work from January 23, 2017, nausea and vomiting, or cough and wheezing) seem to be discussed or fully evaluated. Additionally, there is no documented discussion of sleep hygiene for the insomnia.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he committed gross negligence in the care and treatment of Patient 1. The

circumstances are as follows:

14. Complainant refers to and, by this reference, incorporates Paragraphs 7 through 12, above, as though set forth fully herein.

15. When prescribing controlled medications, the standard of care is to perform a careful history and physical at each visit, have a treatment plan and clear objectives, have informed consent (such as a pain contract), conduct periodic review of the effectiveness of treatment or of the abuse of treatment (and modifying opiates as needed, such as lowering dosages when pain goals are met), obtain consultations as needed, and maintain complete records.

16. Respondent's care and treatment of Patient 1, as set forth above, includes the following act and/or omission, which constitutes an extreme departure from the standard of care: Respondent's failure to maintain adequate records.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

17. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in the care and treatment of Patient 1. The circumstances are as follows:

18. Complainant refers to and, by this reference, incorporates Paragraphs 7 through 12, above, as though set forth fully herein.

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

20. When prescribing opiates for pain management, the standard of care is to use the lowest dose possible and to watch consistently for adverse effects and signs of abuse and diversion. When pain goals are met, gradual tapering is recommended in order to attempt to discontinue opiates. When pain goals are not met, or abuse or diversion is detected, referral to a specialist for continued pain management is essential.

21. The standard of care is to avoid combining opiates with benzodiazepines and other sedatives in order to avoid the higher risk of overdose inherent in these combinations.

22. Respondent's care and treatment of Patient 1, as set forth above, includes the

following acts and/or omissions, which constitute simple departures from the standard of care:

a. Respondent's failure to maintain adequate records.

b. Respondent's failure to taper the dose of opiates prescribed.

c. Respondent's treatment of Patient 1 with benzodiazepines and other sedatives combined with opiates, thereby increasing the risk of overdose and other reactions.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

23. 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 Patient 1. The circumstances are as follows:

24. Complainant refers to and, by this reference, incorporates Paragraphs 7 through 12, above, as though set forth fully herein.

25. The allegations of the First 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 A 42396, issued to Kim Jeffery Horowitz, M.D.;

2. Revoking, suspending or denying approval of Kim Jeffery Horowitz, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Kim Jeffery Horowitz, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: AUG 26 2020

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

Complainant

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