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

In the Matter of the Accusation Against: **EVA M. SMITH, M.D.** **P.O. Box 1288** **Hoopa, CA 95546-1288** **Physician's and Surgeon's Certificate No. C 42592,** Respondent.	Case No. 800-2020-067733 **ACCUSATION**

PARTIES

1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 3, 1989, the Board issued Physician's and Surgeon's Certificate Number C 42592 to Eva M. Smith, 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 May 31, 2023, unless renewed.

JURISDICTION

3. 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.

4. Section 2234 of the Code, in pertinent part, 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.

. . .

5. 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."

COST RECOVERY

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

RESPONDENT'S PRACTICE

7. At the time of the events alleged in this Accusation, Respondent practiced as a primary care physician in Hoopa Valley, California. Respondent provided medical treatment at a clinic run by the Indian Health Service.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 1[1])

8. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 1, and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that Respondent committed gross negligence, repeated negligent acts and/or demonstrated incompetence, including but not limited to the following:

9. Respondent assumed care for Patient 1 in 2017. Patient 1 was a 57-year-old woman, who died on May 3, 2019. Patient 1 had a history of dialysis, renal failure, thyroid disease, migraine headaches, secondary hyperparathyroidism, hypertension, anxiety and depression.

10. Respondent wrote 6 prescriptions for benzodiazepines from January 2017 until Patient 1's death in April 2019. This prescribing pattern exceeds short term treatment and increased the risk of addiction and adverse side effects.

11. The preferred treatment for anxiety disorders are selective serotonin reuptake inhibitors. Benzodiazepines may be used for augmentation during acute treatment. However, dependence, tolerance, and escalating doses to get the same effect over the long term can be problematic with use of benzodiazepines. Therefore, short-term prescribing with emphasis on acute management of uncontrolled anxiety is preferred. Short-acting benzodiazepines are not

[1] Patients are referred to by number to protect privacy.

preferred for treatment of anxiety because they have a higher risk of addiction and adverse effects.

12. From January 1, 2017 through May 1, 2019, Patient 1 filled 131 prescriptions for various Schedule II medications including clonazepam, oxycodone, hydromorphone, lorazepam, codeine. Respondent wrote 109 of the 131 prescriptions according to Patient 1's CURES report.[2] Patient 1 filled a 28 day supply of 162 pills of 325 oxycodone[3] Hcl Acetaminophen on April 19, 2019 written by Respondent, resulting in 6 (162/28) pills per day or 30 morphine equivalents.[4] On April 17, 2019, and again on May 1, 2019, Patient 1 filled 14 day supplies of 14 pills of 0.5 mg lorazepam.[5]

13. Respondent failed to utilize urine drug testing before starting opioid therapy for Patient 1.

14. In the year 2019, Respondent wrote eight prescriptions for opioids and benzodiazepines for Patient 1 and none of those prescriptions corresponds to a complete record. There are no corresponding medical records to document the medical encounters that occurred or rationale for the prescribing. The three medical record entries made by Respondent in 2019 were all entered after Patient 1's death.

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[2] CURES "is California's prescription drug monitoring program. By statute, every prescription of a Schedule II, III, or IV controlled substance must be logged in CURES, along with the patient's name, address, telephone number, gender, date of birth, drug name, quantity, number of refills, and information about the prescribing physician and pharmacy. [Citation.]" (*Lewis v. Superior Court* (2017) 3 Cal.5th 561, 565 (*Lewis*).) The Board is authorized to access the CURES database (*id.* at p. 567), which is maintained by the California Department of Justice (*id.* at p. 566).

[3] Oxycodone is an opioid analgesic drug. It acts on the central nervous system (CNS) of the brain, essentially suppressing pain signaling and stimulating the body's own pain managing system.

[4] Opioid dosage is often discussed in terms of "morphine milligram equivalents", or MME. MME per day, MME/d, is a standard measure of the daily dose of any opioid. The MME of morphine is one, meaning that morphine is exactly as potent as morphine. MMEs greater than one signify greater potency, while MMEs less than one signify lesser potency. At the time of the events alleged in this Accusation, the standard of care has been to limit opioid dose to less than 50 MME/d in almost all patients, and to exceed 90 MME/d in only the most unusual circumstances and with only the most careful documentation.

[5] Lorazepam is a benzodiazepine medication. It is used to treat anxiety disorders, insomnia, severe agitation, active seizures including status epilepticus, alcohol withdrawal, and chemotherapy-induced nausea and vomiting.

15. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 1, and is subject to disciplinary action under sections 2234, 2234(b), 2234(c) and/or 2234(d) of the Code in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

A. Respondent prescribed dangerous drugs and controlled substances, without an appropriate evaluation and history and without assessment of the indication for the medications.

B. Respondent prescribed controlled substances in high amounts without documentation of any physical examination to support the care provided, or rationale for the large doses prescribed.

C. Respondent prescribed narcotics in high doses without documenting any substance abuse history.

D. Respondent prescribed controlled substances, over a long period of time and in high doses, without obtaining/and/or documenting informed consent.

E. Respondent prescribed controlled substances, over a long period of time and in high doses, without documenting a treatment plan with specific treatment goals.

F. Respondent continued to prescribe high doses of controlled substances, without documented periodic review or assessment of the efficacy of treatment.

G. Respondent at no time documented a plan to taper Patient 1 off of high doses of opioid medication.

H. Respondent prescribed a benzodiazepine and an opioid throughout 2019 without taking an adequate history and attempting limiting and tapering.

I. Respondent failed to evaluate risk factors for opioid related harms.

J. Respondent failed to review CURES while treating Patient 1.

K. Respondent failed to evaluate urine drug testing and treatment compliance.

L. Respondent prescribed multiple central nervous system depressants concurrently.

M. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing the risk of addiction and adverse side effects.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence – Patient 2)

16. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 2, and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that Respondent committed gross negligence, repeated negligent acts and/or demonstrated incompetence, including but not limited to the following:

17. Patient 2 was a 37-year-old female on November 9, 2020. Her past medical history included endometriosis, back pain and obesity.

18. According to CURES, Respondent wrote 10 prescriptions for Patient 2 between September 2017 and October 2020. According to the medical records, only a single chart entry occurred during that time period – November 9, 2020. This single entry does not correspond to any prescription written by Respondent. The two other entries by Respondent in the medical record are a one-sentence addendum and an acknowledgement of receipt.

19. There is no evidence Respondent ordered or reviewed an EKG before prescribing methadone[6] for Patient 2. Methadone may cause a heart rhythm disorder and EKG screening is required for appropriate risk assessment prior to prescribing. EKG monitoring was performed on March 20, 2018, however Respondent's first prescription for methadone, which appears to be a refill from a different provider, was on September 15, 2017.

20. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 2, and is subject to disciplinary action under sections 2234, 2234(b), 2234(c), and/or 2234(d) of the Code, in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

A. Respondent failed to document treatment with methadone.

B. Respondent failed to conduct EKG screening before prescribing methadone.

[6] Methadone is a medication used to treat Opioid Use Disorder (OUD). Methadone is a long-acting full opioid agonist, and a schedule II controlled medication. Methadone used to treat those with a confirmed diagnosis of OUD can only be dispensed through a Substance Mental Health Services Administration (SAMHSA) certified Opioid Treatment Program (OTP). Other medications may interact with methadone and cause heart conditions.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 3)

21. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 3, and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

22. Patient 3 was a 29-year-old male at the time of his death on May 16, 2021. His past medical history included anxiety and depression, insomnia, chronic pain, overweight, hypertension, mixed hyperlipidemia, tobacco use disorder, and heroin dependence.

23. According to CURES, Respondent wrote 73 prescriptions for Patient 3 between November 2019 and March 2021. However, the medical records only contain a single chart entry – March 4, 2021 – that was signed on June 19, 2021. The prescriptions written do not correspond to the medical records.

24. Respondent wrote 27 prescriptions for benzodiazepines from November 2019 to March 2021. This prescribing pattern exceeds short-term treatment and increases the risk of addiction and adverse side effects. The prescriptions written by Respondent do not correspond to Patient 3's medical record.

25. Benzodiazepines and opioids are central nervous system depressants. When central nervous system depressants are combined there is increased risk of respiratory depression. Use of more than one central nervous system depressant should be avoided. If benzodiazepines and opioids must be used in combination, they should be limited and tapering should be attempted.

26. Between November 2019 and March 2021, Respondent prescribed lorazepam [a benzodiazepine], morphine, oxycodone, hydrocodone and tramadol [opioids], concurrently.

27. Patient 3 tested positive for methamphetamine and amphetamine, which were not prescribed to him. There is no evidence that Respondent discussed discontinuing Patient 3's opioid therapy despite two toxicology results indicating unsanctioned use of opioids and concurrent use of illicit drugs.

28. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 3, and is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) of the Code in that Respondent committed gross negligence and/or repeated negligent acts and/or demonstrated incompetence, including but not limited to the following:

A. Respondent prescribed dangerous drugs and controlled substances, without an appropriate evaluation and history and without assessment of the indication for the medications.

B. Respondent prescribed controlled substances in extremely high amounts without documentation of any physical examination to support the care provided, or rationale for the large doses prescribed.

C. Respondent prescribed narcotics in high doses without documenting any substance abuse history.

D. Respondent prescribed controlled substances, over a long period of time and in high doses, without obtaining and/or documenting informed consent.

E. Respondent prescribed controlled substances, over a long period of time and in high doses, without documenting a treatment plan with specific treatment goals.

F. Respondent continued to prescribe high doses of controlled substances, without documented periodic review or assessment of the efficacy of treatment.

G. Respondent at no time documented a plan to taper Patient 3 off high doses of opioid medication.

H. Respondent prescribed a benzodiazepine and an opioid without taking an adequate history and attempting limiting and tapering.

I. Respondent failed to evaluate risk factors for opioid related harms.

J. Respondent failed to evaluate urine drug testing and treatment compliance.

K. Respondent prescribed multiple central nervous system depressants concurrently.

L. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing the risk of addiction and adverse side effects.

M. Respondent failed to appropriately evaluate drug testing and treatment compliance.

FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 4)

29. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 4, and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

30. Patient 4 was a 58-year-old female in January 2017, when she filled prescriptions for oxycodone and diazepam[7] written by Respondent. Patient 4 has a history of neck pain and thyroid disease.

31. The prescriptions written by Respondent do not correspond to Patient 4's medical records. According to CURES, Respondent wrote 77 prescriptions for diazepam for Patient 4 between January 2017 and January 2022. According to the medical records, there is no documentation as to the indication for diazepam, the dosing, duration, attempts to wean or provide a more effective medication.

32. The prescribing pattern, 77 prescriptions for diazepam over that 5-year period, exceeds short-term treatment and increases the risk of addiction and adverse side effects.

33. During this same time period, January 2017 to January 2022, Respondent prescribed diazepam, a benzodiazepine, and hydrocodone, an opioid, concurrently. Additionally, there is no evidence that Patient 4 underwent urine toxicology testing during this time period, or that Respondent ever requested such testing for Patient 4. Further, there is no evidence that Respondent ever reviewed CURES for Patient 4.

34. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 4, and is subject to disciplinary action under sections 2234, 2234(b), 2234(c), and/or 2234(d) of the Code, in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

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[7] Diazepam, first marketed as Valium, is a medicine of the benzodiazepine family that acts as an anxiolytic. It is commonly used to treat a range of conditions, including anxiety, seizures, alcohol withdrawal syndrome, muscle spasms, insomnia, and restless legs syndrome.

A. Respondent prescribed dangerous drugs and controlled substances, without an appropriate evaluation and history and without assessment of the indication for the medications.

B. Respondent prescribed controlled substances in extremely high amounts without documentation of any physical examination to support the care provided, or rationale for the large doses prescribed.

C. Respondent prescribed narcotics in high doses without documenting any substance abuse history.

D. Respondent prescribed controlled substances, over a long period of time and in high doses, without obtaining and/or documenting informed consent.

E. Respondent prescribed controlled substances, over a long period of time and in high doses, without documenting a treatment plan with specific treatment goals.

F. Respondent continued to prescribe high doses of controlled substances, without documented periodic review or assessment of the efficacy of treatment.

G. Respondent at no time documented a plan to taper Patient 4 off high doses of opioid medication.

H. Respondent prescribed a benzodiazepine and an opioid throughout 2019 without taking an adequate history and attempting limiting and tapering.

I. Respondent failed to evaluate risk factors for opioid related harms.

J. Respondent failed to review CURES while treating Patient 4.

K. Respondent failed to evaluate urine drug testing and treatment compliance.

L. Respondent prescribed multiple central nervous system depressants concurrently.

M. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing the risk of addiction and adverse side effects.

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence - Patient 5)

35. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 5, and is subject to disciplinary action under sections 2234 [unprofessional conduct], 2234(b) [gross negligence], 2234(c) [repeated negligent acts], and/or 2234(d) [incompetence] of the Code, in that

Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

36. Patient 5 was a 62-year-old male in January 2017, when he filled prescriptions for hydrocodone and diazepam written by Respondent. Patient 5 had a history of chronic pain from his knees, shoulders, back, hypertension, benign prostatic hypertrophy, pre diabetes mellitus, anxiety, and liver cancer with surgical resection.

37. Respondent prescribed diazepam on a monthly basis to Patient 5 between January 2017 and January 2022, for a total of 81 prescriptions. The American Geriatrics Society (AGS) strongly recommends avoiding the use of benzodiazepines in adults over the age of 65. They should not be used in combination with opioids, regardless of age, due to the risk of central nervous system depression.

38. Respondent prescribed benzodiazepines and opioids concurrently on a monthly basis between January 2017 and January 2022, exceeding short-term treatment, increasing the risk of addiction and adverse side effects.

39. Respondent is guilty of unprofessional conduct in her care and treatment of Patient 5, and is subject to disciplinary action under sections 2234, 2234(b), 2234(c), and/or 2234(d) of the Code, in that Respondent committed gross negligence, repeated negligent acts, and/or demonstrated incompetence, including but not limited to the following:

A. Respondent prescribed dangerous drugs and controlled substances, without an appropriate evaluation and history and without assessment of the indication for the medications.

B. Respondent prescribed controlled substances in extremely high amounts without documentation of any physical examination to support the care provided, or rationale for the large doses prescribed.

C. Respondent prescribed narcotics in high doses without documenting any substance abuse history.

D. Respondent prescribed controlled substances, over a long period of time and in high doses, without obtaining and/or documenting informed consent.

E. Respondent prescribed controlled substances, over a long period of time and in high doses, without documenting a treatment plan with specific treatment goals.

F. Respondent continued to prescribe high doses of controlled substances, without documented periodic review or assessment of the efficacy of treatment.

G. Respondent at no time documented a plan to taper Patient 5 off opioid medication.

H. Respondent prescribed a benzodiazepine and an opioid without taking an adequate history and attempting limiting and tapering.

I. Respondent prescribed multiple central nervous system depressants concurrently.

J. Respondent prescribed multiple central nervous system depressants to an older adult.

K. Respondent prescribed benzodiazepines exceeding short-term treatment, increasing the risk of addiction and adverse side effects.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

40. Paragraphs 8 through 39 are incorporated by reference as if fully set forth.

41. Respondent is guilty of unprofessional conduct and subject to discipline for violation of sections 2234 [unprofessional conduct] and 2266 [record keeping] of the Code for failure to keep adequate and accurate medical records for Patient 1, Patient 2, Patient 3, Patient 4, and Patient 5.

42. In each case, Respondent's medical records fail to include a complete or even partial assessment of the patients' presenting conditions, an assessment of the patient, the rationale for prescribing, or response to treatment. Respondent failed to document that an appropriate or adequate informed consent was provided to any of the patients, at any time over the course of treatment, or for the types, amounts and combinations of drugs prescribed.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 42592, issued to Respondent Eva M. Smith, M.D.;

2. Revoking, suspending or denying approval of Respondent Eva M. Smith, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Eva M. Smith, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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

DATED: MAY 19 2023

REJI VARGHESE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant