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

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| In the Matter of the Accusation Against:<br><br>**BRITTON ASHLEY AREY, M.D.**<br>950 South Coast Drive, Suite 235<br>Costa Mesa, CA 92626<br><br>Physician's and Surgeon's Certificate No. A90838,<br><br>Respondent. | Case No. 800-2016-028555<br><br>**ACCUSATION** |

## 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 April 13, 2005, the Medical Board issued Physician's and Surgeon's Certificate No. A90838 to Britton Ashley Arey, 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 March 31, 2021, unless renewed.

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## 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 states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> (b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2234 of the Code, states:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

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(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 which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

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

(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

6. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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## FIRST CAUSE FOR DISCIPLINE

**(Gross Negligence)**

7. Respondent has subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that she has committed gross negligence in her care and treatment of one or more patients.[1] The circumstances are as follows:

**Patient A**

8. In or around January 2014, Respondent began providing care and treatment to a then 69-year-old female family member, Patient A, who reportedly complained of pain and anxiety due to reported traumatization from prior cancer treatment.

9. From in or around January 2014 through in or around December 2015, Respondent regularly prescribed high amounts of opioids[2] and benzodiazepines[3] to Patient A, including, but

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[1] Patient identities have been withheld for patient privacy purposes. Respondent is aware of the identities of the patients referred to herein.

[2] Opioids are Schedule II controlled substances pursuant to Health and Safety Code section 11055, subdivision (c), and are dangerous drugs pursuant to Business and Professions Code section 4011. When properly prescribed and indicated, they are generally used for pain management. All opioids carry a Black Box Warning that states, in part, "assess opioid abuse or addiction risk prior to prescribing; monitor all patients for misuse, abuse, and addiction." The combination of opioids with benzodiazepines is among the most common causes of death due to prescription drug overdose. The Black Box Warning for opioids states, "Concomitant opioid use with benzodiazepines... may result in profound sedation, respiratory depression, coma, and death; reserve concomitant use for patients with inadequate alternative treatment options; limit to minimum required dosage and duration."

[3] Benzodiazepines are Schedule IV controlled substances pursuant to Health and Safety Code section 11057, subdivision (d), and are dangerous drugs pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, they are used for the management of anxiety disorders or for the short-term relief of anxiety.

not limited to: hydrocodone/acetaminophen,[4] oxycodone/acetaminophen,[5] alprazolam,[6] clonazepam,[7] and promethazine.[8]

10. Respondent failed to perform and/or document the performance of a complete history and physical examination of Patient A to rule out any medical etiology for Patient A's anxiety and pain.

11. Respondent failed to coordinate and/or document any coordination of care with Patient A's oncologist or a pain management specialist.

12. Respondent failed to perform and/or document the performance of a full mental status exam of Patient A.

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[4] The drug combination of hydrocodone and acetaminophen, brand names Vicodin and Norco, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is used for the treatment of moderate to moderately severe pain. The DEA has identified opioids, such as hydrocodone, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2017 Edition), at p. 38.)

[5] The drug combination of oxycodone/acetaminophen, brand name Percocet, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. Oxycodone belongs to a class of drugs known as opioids. When properly prescribed and indicated, it is used for the treatment of moderate to severe pain.

[6] Alprazolam, brand name Xanax, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. Alprazolam is a short-acting benzodiazepine. When properly prescribed and indicated, it is commonly used to relieve anxiety.

[7] Clonazepam, brand name Klonopin, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an anti-anxiety medication in the benzodiazepine family.

[8] Promethazine with codeine phosphate, brand name Phenergan, is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022. When properly prescribed and indicated, it is commonly used to treat nausea and vomiting.

13. Respondent failed to review and/or document her review of Patient A's California Controlled Substance Utilization Review and Evaluation System (CURES)[9] patient activity report.

14. From on or about January 2014 through on or about December 2015, the CURES database lists regular prescriptions for several controlled substances as having been issued by Respondent and filled to Patient A, as follows:

| Date Filled | Drug Name | Strength | Qty | Days Supply |
|---|---|---|---|---|
| 01/13/14 | Promethazine HCL / Codeine Phosphate | 6.25-10/5 | 240 | 5 |
| 01/13/14 | Hydrocodone / acetaminophen | 10/325 | 90 | 15 |
| 01/27/14 | Hydrocodone / acetaminophen | 10/325 | 90 | 15 |
| 01/27/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 02/09/14 | Hydrocodone / acetaminophen | 10/325 | 90 | 17 |
| 02/23/14 | Oxycodone / acetaminophen | 10/325 | 90 | 22 |
| 03/12/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 04/05/14 | Promethazine HCL / Codeine Phosphate | 6.25-10/5 | 240 | 8 |
| 04/24/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 06/02/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 09/23/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 11/17/14 | Hydrocodone / acetaminophen | 7.5/300 | 60 | 10 |
| 11/17/14 | Alprazolam | 0.5 mg | 90 | 30 |

[9] The Controlled Substance Utilization Review and Evaluation System (CURES) is a program operated by the California Department of Justice (DOJ) to assist health care practitioners in their efforts to ensure appropriate prescribing of controlled substances, and law enforcement and regulatory agencies in their efforts to control diversion and abuse of controlled substances. (Health & Saf. Code, § 11165.) California law requires dispensing pharmacies to report to the DOJ the dispensing of Schedule II, III, and IV controlled substances as soon as reasonably possible after the prescriptions are filled. (Health & Saf. Code, § 11165, subd. (d).) It is important to note that the history of controlled substances dispensed to a specific patient based on the data contained in CURES is available to a health care practitioner who is treating that patient. (Health & Saf. Code, § 11165.1, subd. (a).)

| Date Filled | Drug Name | Strength | Qty | Days Supply |
|---|---|---|---|---|
| 12/21/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 01/25/15 | Alprazolam | 0.5 mg | 90 | 30 |
| 01/26/15 | Hydrocodone / acetaminophen | 7.5/300 | 60 | 5 |
| 02/18/15 | Alprazolam | 1 mg | 60 | 30 |
| 03/13/15 | Alprazolam | 1 mg | 90 | 30 |
| 04/10/15 | Alprazolam | 1 mg | 90 | 30 |
| 04/10/15 | Hydrocodone / acetaminophen | 7.5/300 | 60 | 10 |
| 05/09/15 | Alprazolam | 1 mg | 90 | 30 |
| 06/01/15 | Clonazepam | 1 mg | 60 | 30 |
| 06/08/15 | Alprazolam | 1 mg | 90 | 30 |
| 07/04/15 | Clonazepam | 1 mg | 60 | 30 |
| 07/06/15 | Alprazolam | 1 mg | 90 | 30 |
| 07/14/15 | Hydrocodone / acetaminophen | 7.5/300 | 60 | 10 |
| 08/03/15 | Alprazolam | 1 mg | 90 | 30 |
| 08/10/15 | Clonazepam | 1 mg | 60 | 30 |
| 09/01/15 | Alprazolam | 1 mg | 90 | 30 |
| 09/30/15 | Alprazolam | 1 mg | 90 | 30 |
| 10/31/15 | Alprazolam | 1 mg | 90 | 30 |
| 11/13/15 | Clonazepam | 1 mg | 60 | 30 |
| 12/15/15 | Alprazolam | 1 mg | 90 | 30 |

15. Respondent committed gross negligence in her care and treatment of Patient A, which included, but is not limited to:

A. Paragraphs 8 through 14, above, are hereby incorporated by reference and realleged as if fully set forth herein;

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B. Respondent provided care and treatment to Patient A over an extended period of time without performing and/or documenting the performance of an adequate history and physical examination, a full mental status examination, coordination of care with Patient A's oncologist, consultation with a pain management specialist, or timely referral to another healthcare provider to assume care and treatment of Patient A's health issues;

C. Respondent prescribed a combination of benzodiazepines and opiates to Patient A over an extended period of time without reviewing and/or documenting a review of Patient A's CURES patient activity report, and without obtaining and/or documenting an agreement regarding the prescribing of controlled substances to Patient A; and

D. Respondent provided care and treatment to Patient A over an extended period of time in an area of medicine, specifically, oncology and pain management, for which Respondent did not possess adequate training and experience.

**Patient B**

16. In or around January 2014, Respondent began providing care and treatment to a then 49-year-old male family member, Patient B, who reportedly complained of pain due to orthopedic knee pain.

17. From in or around January 2014 through in or around December 2015, Respondent regularly prescribed high amounts of opioids and benzodiazepines to Patient B, including, but not limited to, hydrocodone/acetaminophen, alprazolam, clonazepam, zolpidem tartrate,[10] suboxone,[11] eszopiclone.[12]

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[10] Zolpidem Tartrate, brand name Ambien, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. Ambien is a benzodiazepine analog. When properly prescribed and indicated, it is commonly used to treat insomnia.

[11] Suboxone is a brand name for buprenorphine and naloxone, and is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

[12] Eszopiclone, brand name Lunesta, is a Schedule IV controlled substance pursuant to the Federal Register, and a dangerous drug pursuant to Business and Professions Code section 4022. Lunesta is a hypnotic agent approved for the long term treatment of insomnia.

18. Respondent failed to perform and/or document the performance of a complete history and physical examination, including a complex orthopedic exam, of Patient B, to determine the nature and etiology of Patient B's complaints.

19. Respondent failed to coordinate and/or document any coordination of care with Patient B's orthopedist or a pain management specialist.

20. Respondent failed to review and/or document her review of Patient B's CURES patient activity report.

21. From on or about July 2014 through on or about April 2015, the CURES database lists regular prescriptions for several controlled substances as having been issued by Respondent and filled to Patient B, as follows:

| Date Filled | Drug Name | Strength | Qty | Days Supply |
|---|---|---|---|---|
| 07/07/14 | Eszopiclone | 3 mg | 30 | 30 |
| 07/07/14 | Suboxone | 8mg/2mg | 90 | 30 |
| 07/07/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 08/03/14 | Suboxone | 8mg/2mg | 90 | 30 |
| 08/03/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 08/04/14 | Eszopiclone | 3 mg | 30 | 30 |
| 08/21/14 | Zolpidem Tartrate | 12.5 mg | 30 | 30 |
| 08/21/14 | Clonazepam | 0.5 mg | 120 | 30 |
| 08/21/14 | Hydrocodone / acetaminophen | 7.5/300 | 90 | 15 |
| 09/20/14 | Zolpidem Tartrate | 12.5 mg | 30 | 30 |
| 09/20/14 | Clonazepam | 0.5 mg | 120 | 30 |
| 09/24/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 10/26/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 10/26/14 | Suboxone | 8mg/2mg | 90 | 30 |
| 11/17/14 | Clonazepam | 0.5 mg | 90 | 30 |

| Date Filled | Drug Name | Strength | Qty | Days Supply |
|---|---|---|---|---|
| 12/04/14 | Alprazolam | 0.5 mg | 90 | 30 |
| 12/14/14 | Suboxone | 8mg/2mg | 90 | 30 |
| 12/21/14 | Clonazepam | 0.5 mg | 90 | 30 |
| 01/02/15 | Alprazolam | 0.5 mg | 90 | 30 |
| 01/24/15 | Clonazepam | 0.5 mg | 60 | 30 |
| 03/12/15 | Clonazepam | 05. mg | 60 | 30 |
| 04/10/15 | Clonazepam | 05. mg | 60 | 30 |

22. Respondent committed gross negligence in her care and treatment of Patient B, which included, but is not limited to:

A. Paragraphs 16 through 21, above, are hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent provided care and treatment to Patient B over an extended period of time without performing and/or documenting the performance of an adequate history and physical examination, an orthopedic exam, coordination of care with Patient B's orthopedist, consultation with a pain management specialist, or timely referral to another healthcare provider to assume care and treatment of Patient B's health issues;

C. Respondent prescribed a combination of benzodiazepines and opiates to Patient B over an extended period of time without reviewing and/or documenting a review of Patient B's CURES patient activity report, and without obtaining and/or documenting an agreement regarding the prescribing of controlled substances to Patient B; and

D. Respondent provided care and treatment to Patient B over an extended period of time in an area of medicine, specifically, orthopedics and pain management, for which Respondent did not possess adequate training and experience.

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## SECOND CAUSE FOR DISCIPLINE

**(Repeated Negligent Acts)**

23. Respondent has further subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that she has committed repeated negligent acts in her care and treatment of one or more patients, as more particularly alleged in paragraphs 7 through 22, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

## THIRD CAUSE FOR DISCIPLINE

**(Violations of the Medical Practice Act)**

24. Respondent has further subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that she has committed violations of provisions of the Medical Practice Act, as more particularly alleged in paragraphs 7 through 23, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

## FOURTH CAUSE FOR DISCIPLINE

**(General Unprofessional Conduct)**

25. Respondent has further subjected her Physician's and Surgeon's Certificate No. A90838 to disciplinary action under sections 2227 and 2234, of the Code, in that she has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 7 through 24, above, which are hereby incorporated by reference and realleged 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 No. A90838, issued to Respondent Britton Ashley Arey, M.D.;

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

3. Ordering Respondent Britton Ashley Arey, 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: November 21, 2019

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

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