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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 8 2017
BY: ANALYST

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

In the Matter of the Accusation Against: **Michael Steven Lebowitz, M.D.** Community Hosp. Box H H Monterey, CA 93940 Physician's and Surgeon's Certificate No. G 23043, Respondent.	Case No. 800-2014-009436 **ACCUSATION**

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about August 21, 1972, the Medical Board issued Physician's and Surgeon's Certificate Number G 23043 to Michael Steven Lebowitz, M.D. (Respondent). The Physician's and Surgeon's Certificate will expire on May 31, 2017, 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 unless otherwise indicated.

4. Section 2227 of the Code, states, in pertinent part:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of 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. 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."

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FIRST CAUSE FOR DISCIPLINE
[Bus. & Prof. Code §2234(b)]
(Unprofessional Conduct/Gross Negligence)

7. Respondent Michael Steven Lebowitz, M.D. is subject to disciplinary action under section 2234(b) of the Code in that he was grossly negligent in the care and treatment of patient D.S. The circumstances are as follows:

8. On or about October 21, 2014, the California Department of Public Health (CDPH) requested an investigation into the quality of psychiatric care and treatment Respondent provided to patient D.S. at Community Hospital of the Monterey Peninsula (CHOMP). The request stated that on or around August 15, 2014, the CDPH followed-up on complaints from patient D.S. where she alleged she was misdiagnosed and inappropriately placed on involuntary hold and received electroconvulsive therapy (ECT) without her consent. Patient D.S. also alleged that she suffered brain damage as a result of the treatment she received from Respondent at CHOMP.

9. On or about August 24, 2015, the Board received certified medical records of patient D.S. from CHOMP. On or about January 5, 2016, the Board received certified medical records of patient D.S. from Sharp Mesa Vista Hospital. An expert reviewer from the Board reviewed Respondent's treatment of patient D.S. and found that his actions constituted an extreme departure from the standard of care based upon the quality of psychiatric care and treatment he provided.

10. Patient D.S. was treated as an outpatient by psychiatrist E.R., MD in San Diego for bipolar disorder. She had been prescribed many psychotropic medications yet became increasingly depressed. As a result, she was referred by Dr. E.R. for outpatient ECT at Sharp Mesa Vista in San Diego. Patient D.S., up to one month prior to the commencement of this series of ECT, had been using cannabis on a daily basis. She had also used cocaine, ecstasy, LSD, alcohol and mushrooms. She was prescribed medication including Adderall (amphetamines) 60 mg daily and Xanax 2 mg daily in addition to lamotrigine, bupropion, zolpidem, and thioridazine. The initial series of ECT was administered voluntarily as an outpatient, but she was considered admitted to Sharp Mesa Vista for each episode of treatment, and discharged home the same day.

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She received 19 sessions of outpatient ECT at Sharp Mesa Vista from March 28 through June 15, 2012. These treatments were bilateral.

11. After 19 outpatient ECT treatments at Sharp, patient D.S. became more depressed and had short term memory difficulties. Patient D.S. considered discontinuing treatment, but instead requested voluntary inpatient admission to Sharp Mesa Vista Hospital. She remained inpatient from July 10 through July 21, 2012, and received 9 additional ECT treatments for a total of 28 ECT sessions. Drs. P.B., D.B. and R.F. administered ECT initially bilaterally. By ECT #25, Dr. R.F., noting patient D.S.'s confusion, planned further ECT as unilateral. Nurse's notes indicated patient D.S. continued to use cannabis prior to her inpatient hospitalization, while she became depressed during outpatient ECT. During her short inpatient stay, patient D.S. reported being sexually harassed by an acquaintance prior to her admission and in the hospital by a peer. She was also stalking a peer, planning to leave with that fellow patient which was unwanted by that patient. Both allegations were found to be meritless.

12. After improvement in her depression while in the hospital at Sharp, patient D.S. was discharged on July 21, 2012, and moved near Monterey, California. She discussed with her psychiatrists and social services at Sharpe her intent to continue ECT treatment in Monterey. Respondent, a psychiatrist with the medical group at CHOMP, reviewed the earlier treatments and recommendations with Dr. E.R.

13. On August 10, 2012, Patient D.S. was admitted voluntarily to outpatient ECT treatment at CHOMP. On that date, she received her first outpatient continuation ECT, unilaterally from Respondent. Respondent attempted to taper down the frequency of ECT, moving to continuation every week, then maintenance every other week, then monthly, but this did not work out. Respondent, observing her increasing depression, decided to use the bilateral mode after ECT #6 at CHOMP (#34 for the year). Several ECTs were administered by Dr. E.J. in October during the vacation of Respondent. At that time, because patient D.S. seemed profoundly more depressed, the ECT increased in frequency in October and was altered to bilateral. She received a total of 30 outpatient ECT sessions at CHOMP. Prior to the first ECT and every month thereafter she was evaluated by Respondent, and then 24 hours later by a

"second opinion" psychiatrist who evaluated her capacity to give informed consent and answer questions and observed her sign the consent for ECT. In all those monthly sessions where she signed the informed consent form, either her mother or father were present. Respondent and Dr. E.J. noted patient D.S. had some memory problems. Memory complaints had occurred when patient D.S. was receiving bilateral ECT at Sharp prior to ECT treatment at CHOMP.

14. There was no formal assessment of cognitive complaints by either Respondent or Dr. E.J. They did not perform the Folstein Mini-Mental Status exam, draw a clock test or the Montreal Cognitive Assessment (MOCA) or similar instrument. Cognitive testing was non-uniform, perfunctory and incomplete. Respondent's failure to systematically, uniformly and thoroughly test for the validity of patient D.S.'s reports of memory problems constitutes a departure from the standard of care.

15. During the nine months that Patient D.S. was treated with ECT her mood and mental state fluctuated from improving to inexplicably worse. This random fluctuation in her psychiatric status was due to substances she was using including cannabis, Adderall, and other drugs. The ECT could not alter the effects of the intoxicating substances. Respondent failed to address patient D.S.'s substance use. Respondent's failure to evaluate the psychiatric effects of substance use and abuse and mis-diagnosing and Respondent's failure to recognize and refer for appropriate treatment of substance abuse are an extreme departure from the standard of care which is using ECT to treat the effects of substance use.

16. Respondent failed to include a referring document from the prior attending psychiatrist in the pre-ECT work up of patient D.S., constituting a departure from the standard of care. Further, Respondent omitted an attending psychiatrist evaluation of patient D.S.'s mental status every month confirming or denying the need to continue ECT constituting a departure from the standard of care.

17. Respondent did not document the implications of exceeding 30 ECT treatments. Patient D.S. received an unusually large number of treatments, a total of 58, in approximately nine months. Respondent's failure to refer patient D.S.'s ECT treatment to the ECT peer review committee for discussion is a departure from the standard of care. Further, Respondent omitted

any discussion in the records of the extra-ordinary, prolonged course of ECT, and the usefulness of ECT as a mode of therapy. This is also a departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE
[Bus. & Prof. Code §2234(c)]
(Unprofessional Conduct/Repeated Negligent Acts)

18. Respondent Michael Steven Lebowitz, M.D. is subject to disciplinary action under section 2234(c) of the Code in that he committed acts of repeated negligence in the care and treatment of patient D.S. The circumstances are as follows:

19. Paragraphs 8 through 17 above, are repeated here as if fully set forth.

20. Respondent's care and treatment of patient D.S., as described above, constitutes repeated acts of negligence in the practice of medicine and is unprofessional conduct in violation of section 2234(c) of the Code and thereby provides cause for discipline to Respondent's license.

THIRD CAUSE FOR DISCIPLINE
[Bus. & Prof. Code §2266]
(Unprofessional Conduct/Inadequate and Inaccurate Record Keeping)

21. Respondent Michael Steven Lebowitz, M.D. is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records in the care and treatment of patient D.S. The circumstances are as follows:

22. Paragraphs 8 through 20 above, are repeated here as if fully set forth.

23. Respondent's inadequate and inaccurate medical record keeping in his care and treatment of patient D.S., as described above, constitutes a violation of section 2266 of the Code and thereby provides cause for discipline to Respondent's license.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 23043, issued to Michael Steven Lebowitz, M.D.;

2. Revoking, suspending or denying approval of Michael Steven Lebowitz, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

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3. Ordering Michael Steven Lebowitz, 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: March 8, 2017

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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