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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 5th 2019
BY: *faa* ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
12 Against:
13 **Oghenesume David Umugbe, M.D.**
14 **P.O. Box 1328**
15 **Rancho Cucamonga, CA 91729-1328**
16 **Physician's and Surgeon's Certificate**
17 **No. A 94047,**
18 Respondent.

Case No. 800-2015-012747
OAH No.: 2018120090
FIRST AMENDED ACCUSATION

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about February 10, 2006, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 94047 to Oghenesume David Umugbe, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on January 31, 2020, unless renewed.

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1 JURISDICTION

2 3. This First Amended Accusation is brought before the Medical Board of California
3 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2004 of the Code states:

6 "The board shall have the responsibility for the following:

7 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
8 Act.

9 "(b) The administration and hearing of disciplinary actions.

10 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
11 administrative law judge.

12 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
13 disciplinary actions.

14 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
15 certificate holders under the jurisdiction of the board.

16 "(f) Approving undergraduate and graduate medical education programs.

17 "(g) Approving clinical clerkship and special programs and hospitals for the programs in
18 subdivision (f).

19 "(h) Issuing licenses and certificates under the board's jurisdiction.

20 "(i) Administering the board's continuing medical education program."

21 5. Section 2227 of the Code provides that a licensee who is found guilty under the
22 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
23 one year, placed on probation and required to pay the costs of probation monitoring, or such other
24 action taken in relation to discipline as the board deems proper.

25 6. Section 2234 of the Code, states:

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

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

3 "(b) Gross negligence.

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

7 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 "(d) Incompetence.

15 "(e) The commission of any act involving dishonesty or corruption that is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

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

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

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

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1 **CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts- 2 Patients)**

3 7. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
4 the Code in that he committed repeated negligent acts in his care of Patient 1, and Patient 2.¹ The
5 circumstances are as follows:

6 Patient 1

7 8. Patient 1 is a 37-year-old female who first treated with Respondent in November
8 2013.² Patient 1 was diagnosed with major depressive affective disorder and anxiety. Records
9 indicate that initially, Respondent discussed with the patient about helping her wean off
10 Klonopin, but prescription records indicate that Respondent continued to prescribe Klonopin and
11 Lorazepam for several months after the first visit in November 2013.³

12 9. In February 2014, Patient 1 reported that she was in rehab, and Respondent officially
13 diagnosed the patient as suffering from benzodiazepine dependence on or about February 27,
14 2014.

15 10. On or about March 31, 2014, Respondent was also given notice that Patient 1 may
16 have been obtaining controlled substances (e.g. Lorazepam and Norco) fraudulently. And in a
17 progress note, dated April 29, 2014, Respondent documents a discussion with the patient in which
18 Patient 1 alleges that her sister may have been obtaining controlled substances fraudulently, using
19 Patient 1's name. Despite these warning signs, Respondent continued to prescribe Lorazepam to
20 Patient 1 and other controlled substances after these notices.

21 11. Respondent's treatment of Patient 1 represented simple departures from the standard
22 of care as follows:

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24 ¹ The patients are identified numerically to protect their privacy.

25 ² These are approximate dates, based on the records which were available for review.
Records also indicate that the patient was being treated for addiction beginning in 2012 by
26 another provider per CURES, and that the patient was prescribed Methadone and Suboxone for
her addiction problems.

27 ³ CURES also showed that Respondent prescribed Hydrocodone to Patient 1. Respondent
vehemently denies the prescriptions of Hydrocodone and claims that these prescriptions were
28 obtained fraudulently, and without his knowledge or authorization.

1 a. Respondent failed to accurately diagnose Patient 1's substance abuse disorder in a
2 timely fashion by not obtaining an accurate history before February 2014;

3 b. Respondent continued to treat Patient 1 with multiple benzodiazepine medications,
4 despite her having a dependence on same, and despite receiving notices that medications on
5 behalf of the patient may have been obtained fraudulently;

6 c. Even after diagnosing Patient 1 as having benzodiazepine dependence, Respondent
7 failed to obtain a CURES report, which would have also alerted Respondent regarding the
8 disputed prescriptions for Hydrocodone.

9 Patient 2

10 12. Patient 2 is a 51 -year-old female who first treated with Respondent in January 2014.⁴
11 In the initial intake Patient 2 reported that she had used methamphetamine (a controlled
12 substance) daily beginning at age 28, and last used it at age 30. The patient also noted that she
13 wanted to taper off Xanax. While it does appear that there was some initial attempt to reduce the
14 dosage and quantity of Xanax being used by Patient 2, by November 2014, she was being
15 prescribed doses of Xanax in excess of that which she initially started treatment.

16 13. Respondent failed to meet the standard of care by not adequately treating the patient
17 for her dependence on Xanax, and by his continued prescriptions of Xanax to this patient. This
18 represents a simple departure from the standard of care.

19 PRAYER

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

22 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 94047,
23 issued to Oghenesume David Umugbe, M.D.;

24 2. Revoking, suspending or denying approval of Oghenesume David Umugbe, M.D.'s
25 authority to supervise physician assistants and advanced practice nurses;


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27 ⁴ Again, these are approximate dates, based on the records which were available for
28 review.

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3. Ordering Oghenesume David Umugbe, 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: July 5, 2019


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

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