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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY [Signature] ANALYST

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

11 In the Matter of the Accusation Against:

Case No. 800-2015-016817

12 **David E. Sosin, M.D.**
13 **13362 Newport Avenue, Suite A**
14 **Tustin, CA 92780**

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G13099,**

Respondent.

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18 Complainant alleges:

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20 **PARTIES**

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

24 2. On or about April 19, 1967, the Medical Board issued Physician's and Surgeon's
25 Certificate Number G13099 to David E. Sosin, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on October 31, 2019, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 2004 of the Code states:

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

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

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

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

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

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

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

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

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

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

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

24 6. Section 2234 of the Code, states:

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

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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 which 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."

25 7. Section 2242 of the Code states:

26 "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
27 without an appropriate prior examination and a medical indication, constitutes unprofessional
28 conduct.

1 "(b) No licensee shall be found to have committed unprofessional conduct within the
2 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
3 the following applies:

4 "(1) The licensee was a designated physician and surgeon or podiatrist serving in the
5 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs
6 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
7 of his or her practitioner, but in any case no longer than 72 hours.

8 "(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
9 vocational nurse in an inpatient facility, and if both of the following conditions exist:

10 "(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
11 who had reviewed the patient's records.

12 "(B) The practitioner was designated as the practitioner to serve in the absence of the
13 patient's physician and surgeon or podiatrist, as the case may be.

14 "(3) The licensee was a designated practitioner serving in the absence of the patient's
15 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
16 the patient's records and ordered the renewal of a medically indicated prescription for an amount
17 not exceeding the original prescription in strength or amount or for more than one refill.

18 "(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
19 Code."

20 8. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
21 adequate and accurate records relating to the provision of services to their patients constitutes
22 unprofessional conduct.

23 9. Section 725 of the Code states:

24 "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering
25 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
26 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
27 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
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1 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language
2 pathologist, or audiologist.

3 "(b) Any person who engages in repeated acts of clearly excessive prescribing or
4 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
5 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
6 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
7 imprisonment.

8 "(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or
9 administering dangerous drugs or prescription controlled substances shall not be subject to
10 disciplinary action or prosecution under this section.

11 "(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section
12 for treating intractable pain in compliance with Section 2241.5."

13 10. Section 2052 of the Code states:

14 "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
15 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
16 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
17 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
18 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
19 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
20 authorized to perform the act pursuant to a certificate obtained in accordance with some other
21 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
22 dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
23 Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either
24 imprisonment.

25 "(b) Any person who conspires with or aids or abets another to commit any act described in
26 subdivision (a) is guilty of a public offense, subject to the punishment described in that
27 subdivision.

28 "(c) The remedy provided in this section shall not preclude any other remedy provided by

1 law."

2 11. California Code of Regulations, title 16, section 1360 states:

3 "For the purposes of denial, suspension or revocation of a license, certificate or permit
4 pursuant to Division 1.5 (commencing with Section 475) of the [C]ode, a crime or act shall be
5 considered to be substantially related to the qualifications, functions or duties of a person holding
6 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
7 evidences present or potential unfitness of a person holding a license, certificate or permit to
8 perform the functions authorized by the license, certificate or permit in a manner consistent with
9 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
10 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
11 violation of, or conspiring to violate any provision of the Medical Practice Act."

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Gross Negligence)**

14 12. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
15 the Code for the commission of acts or omissions involving gross negligence in the care and
16 treatment of Patient 1.¹ The circumstances are as follows:

17 13. Respondent, a psychiatrist, treated Patient 1 from about June 11, 2012 through
18 November 26, 2012 for various conditions, but primarily for ADHD (Attention Deficit
19 Hyperactivity Disorder).² During this time period, Respondent started Patient 1 on Adderall, and
20 Ritalin, which are both stimulants used to treat ADHD. Records also indicate that Respondent
21 prescribed to Patient 1 other controlled medications such as Lorazepam (a benzodiazepine
22 medication used to treat anxiety disorder), and Daytrana (a transdermal patch often used to treat
23 pediatric patients (ages 6 to 17) with ADHD).³

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25 ¹ The patient is identified numerically to protect her privacy.

26 ² Respondent diagnosed Patient 1 with ADHD, despite the patient's failure to meet
27 diagnostic criteria for this disorder. Respondent stated in his interview with the Board that "Once
28 [he] diagnose[s] ADD that is the cornerstone of my treatment."

³ Please note that Patient 1 was not a pediatric patient. Apparently, Respondent was using
Daytrana as an "off-label" prescription to treat Patient 1, who was an older patient.

1 14. As treatment began to progress, the patient would often send Respondent lengthy
2 emails describing the adverse effects she was experiencing from taking the medications, which
3 were prescribed to her by Respondent, such as Adderall and Ritalin.⁴

4 15. Despite learning that Patient 1 was using marijuana and experiencing adverse effects
5 from the medications prescribed, Respondent did not seem to take active steps to stop prescribing
6 more controlled medications to the patient, nor did Respondent immediately cease treatment of
7 the patient until about November 26, 2012, more than five months after Patient 1's first
8 visit/treatment by Respondent.⁵

9 16. The following acts or omissions committed by Respondent in his care and treatment
10 of Patient 1 constituted an extreme departure from the standard of care:

11 a. Failure to timely terminate the doctor-patient relationship with Patient 1, upon
12 learning that she was using marijuana and experiencing adverse effects from the medications
13 prescribed;⁶

14 b. Failure to perform a thorough psychiatric diagnostic evaluation of Patient 1.

15 c. Failure to obtain an adequate history of Patient 1's mood disorder.

16 d. Failure to obtain a thorough medication history.

17 e. Failure to obtain an adequate and complete family history of mental illness.

18 f. Failure to perform a mental status exam.

19 g. Failure to ascertain the reason lamotrigine was prescribed, and the medications that
20 were tried prior to it.

21 ⁴ For example, Respondent's records showed that he was aware (even from the first visit
22 on or about June 11, 2012) that Patient 1 was using marijuana. Also, Patient 1's subsequent
23 emails to Respondent in June of 2012 and thereafter, also confirmed that Patient 1 was consuming
24 "marijuana edibles," and "smoking pot....". Patient 1's emails, as early as June 18, 2012
(approximately one week after the first visit) also revealed that the patient was having adverse
25 effects from the medications prescribed, and that the patient even crashed into a gas station sign.

26 ⁵ In September 2015, Patient 1 filed a complaint against Respondent to the Board, alleging
27 that Respondent had overprescribed stimulants and other narcotics to her, causing severe side
28 effects such as a seizure, which per Patient 1, Respondent said looked "fake."

29 ⁶ Interestingly, in December 2016 (Medical Board case no. 8002013000597), Respondent
30 was disciplined for a similar offense/allegation regarding a different patient whom Respondent
31 had treated from about December 2009 through about July 2013, namely, failure to timely
32 terminate the doctor-patient relationship with said patient, upon learning that the patient was
33 putting Lexapro (an antidepressant) in his wife's food.

- 1 h. Failure to consider a differential diagnosis.
- 2 i. Failure to discuss Patient 1 with her previous psychiatrist or to obtain medical
3 records.
- 4 j. Failure to refer Patient 1 to an addiction specialist.
- 5 k. Failure to adequately mention all of Patient 1's communications and progress (e.g.
6 Patient 1's emails to Respondent, Patient 1's weight loss, etc.).⁷
- 7 l. Failure to consider the risks of prescribing a stimulant to a patient with a mood
8 disorder.
- 9 m. Failure to recognize the mood disorder the stimulant prescriptions were producing.
- 10 n. Failure to provide appropriate mood stabilization treatment.
- 11 o. Prescribing stimulant medication at high dosages at the start of treatment rather than
12 starting at a lower dose and gradually increasing the dosage, if needed.
- 13 p. Failure to recognize the adverse effects caused by the stimulant and antidepressant
14 treatment, and to take effective action.

15 17. Respondent's acts and/or omissions as set forth in paragraphs 13 through 16,
16 inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute
17 gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for
18 discipline exists.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Repeated Negligent Acts)**

21 18. By reason of the facts and allegations set forth in the First Cause for Discipline above,
22 Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in
23 that he committed repeated negligent acts in his care of Patient 1.

24 19. Respondent also committed a simple departure from the standard of care by using an
25 invalidated rating scale of his own creation to make the diagnosis of ADHD in Patient 1.

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27 ⁷ Respondent notes that he would only document "glaring, important pieces of information
28 that would be valuable to anyone that's looking at the chart."

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Inadequate Records)**

3 20. By reason of the facts and allegations set forth in the First and Second Causes for
4 Discipline above, Respondent is subject to disciplinary action under section 2266 of the Code, in
5 that Respondent failed to maintain adequate and accurate records of his care and treatment of
6 Patient 1.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Incompetence)**

9 21. By reason of the facts and allegations set forth in the First and Second Causes for
10 Discipline above, Respondent is subject to disciplinary action under section 2234, subdivision (d),
11 of the Code, in that Respondent showed a lack of knowledge in his care and treatment of Patient
12 1.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Prescribing Without Exam/Indication)**

15 22. By reason of the facts and allegations set forth in the First Cause for Discipline above,
16 Respondent is subject to disciplinary action under section 2242 of the Code, in that Respondent
17 prescribed dangerous drugs to Patient 1 without an appropriate prior examination or medical
18 indication therefor.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(Excessive Prescribing)**

21 23. By reason of the facts and allegations set forth in the First Cause for Discipline above,
22 Respondent is subject to disciplinary action under section 725 of the Code, in that Respondent
23 excessively prescribed dangerous drugs to Patient 1.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(General Unprofessional Conduct)**

26 24. By reason of the facts and allegations set forth in the First and Second Causes for
27 Discipline above, Respondent is subject to disciplinary action under section 2234, of the Code.

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DISCIPLINE CONSIDERATIONS

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2 25. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that effective December 2, 2016 (the “2016” Decision), in a prior
4 disciplinary action entitled *In the Matter of the Accusation Against David E. Sosin, M.D.*, case no.
5 8002013000597, before the Medical Board of California, Respondent's license was placed on five
6 years probation, with terms and conditions. The 2016 Decision is now final and is incorporated
7 by reference as if fully set forth.

8 26. Also, effective June 14, 1999 (the “1999” Decision), in a prior disciplinary action
9 entitled *In the Matter of the Accusation Against David E. Sosin, M.D.*, case no. 04-1996-66892,
10 before the Medical Board of California, Respondent’s license was placed on three (3) years
11 probation with terms and conditions. Moreover, on February 24, 2012, a Public Letter of
12 Reprimand (PLR) was issued against Respondent’s physician’s and surgeon’s certificate for
13 overprescribing stimulants to a patient. The “1999” Decision and PLR are also now final and are
14 incorporated by reference as if fully set forth.

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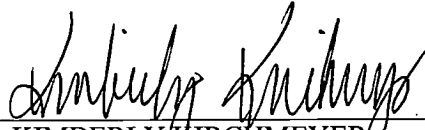
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PRAYER

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

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate Number G13099,
5 issued to David E. Sosin, M.D.;
- 6 2. Revoking, suspending or denying approval of David E. Sosin, M.D.'s authority to
7 supervise physician assistants, pursuant to section 3527 of the Code or advanced practice nurses;
- 8 3. Ordering David E. Sosin, M.D., if placed on probation, to pay the Board the costs of
9 probation monitoring; and
- 10 4. Taking such other and further action as deemed necessary and proper.

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12 DATED: August 7, 2018


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

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