XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
LEANNA E. SHIELDS
Deputy Attorney General
State Bar No. 239872
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9401
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **ABBY MELISSA IRWIN, M.D.** **115 Farley Circle, Suite 304** **Lewisburg, PA 17837-9252** **Physician's and Surgeon's Certificate No. A 109129,** Respondent.	Case No. 800-2016-024914 **ACCUSATION**

Complainant alleges:

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 7, 2009, the Medical Board issued Physician's and Surgeon's Certificate No. A 109129 to Abby Melissa Irwin, M.D. (Respondent). The Physician's and Surgeon's Certificate expired on May 31, 2017, and has not been renewed.

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."

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5. Section 2234 of the Code, states, in pertinent part:

"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.

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6. Section 2242 of the Code states, in pertinent part:

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

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7. 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."

8. Section 118 of the Code states, in pertinent part:

"(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent has subjected her Physician's and Surgeon's Certificate No. A 109129 to disciplinary action under sections 2227 and 2234, as defined by 2234, subdivision (b), of the Code, in that she committed gross negligence in her care and treatment of Patients A, B and C,[1] as more particularly alleged hereinafter:[2]

Patient A

10. On or about 2013, through on or about 2016, Respondent treated Patient A for, among other things, adult attention deficit hyperactivity disorder and depression.

11. From on or about 2013, through on or about 2016, Respondent prescribed several controlled substances to Patient A, including, but not limited to, diazepam[3] and Adderall.[4]

12. During the period from on or about September 9, 2014, through on or about November 20, 2016, according to the Controlled Substance Utilization Review and Evaluation System[5] (CURES) report for Patient A, Respondent issued seven (7) prescriptions for 60 tablets of diazepam (10 mg), two per day, to Patient A.

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[1] To protect the privacy of all patients involved, patient names have not been included in this pleading. Respondent is aware of the identity of the patients referred to herein.

[2] Conduct occurring more than seven (7) years from the filing date of this Accusation is for informational purposes only and is not alleged as a basis for disciplinary action.

[3] Diazepam, brand name Valium, 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. Diazepam is a benzodiazepine commonly used to treat anxiety. Diazepam is also indicated for treatment of withdrawal and seizures.

[4] Adderall is a brand name for dextroamphetamine and amphetamine, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an amphetamine salts used for attention-deficit hyperactivity disorder and narcolepsy. Adderall carries a black box warning indicating that it has high abuse potential.

[5] 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).)

13. During the period from on or about September 10, 2015, through on or about May 29, 2016, according to the CURES report for Patient A, Respondent issued eight (8) prescriptions for 124 tablets of Adderall (20 mg), four per day, to Patient A.

14. Respondent's medical records for Patient A do not indicate any mental status or physical examination was performed by Respondent prior to prescribing diazepam and Adderall to Patient A.

15. Respondent's medical records for Patient A do not adequately indicate the quantities and dosages of the prescriptions for Adderall, a Schedule II controlled substance, issued to Patient A.

16. Respondent committed gross negligence in her care and treatment of Patient A, which included, but is not limited to, failing to perform a mental status or physical examination of Patient A prior to prescribing potentially addictive medication, Adderall, to Patient A.

Patient B

17. On or about 2013, through on or about 2016, Respondent treated Patient B for, among other things, anxiety, attention deficit disorder, depression and fibromyalgia.

18. From on or about 2013 through on or about 2016, Respondent prescribed several controlled substances to Patient B, including, but not limited to, clonazepam,[6] alprazolam,[7] Adderall,[8] and zolpidem.[9]

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[6] 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.

[7] 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, high doses of alprazolam are indicated for panic disorder and severe generalized anxiety disorder.

[8] See Footnote 4, above.

[9] Zolpidem, 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. Zolpidem is a sedative commonly used to treat insomnia.

19. During the period from on or about September 27, 2013, through on or about July 17, 2016, according to the CURES report for Patient B, Respondent issued sixty (60) prescriptions for Adderall to Patient B. The prescriptions were issued monthly and varied in quantity and strength, ranging between thirty (30) and ninety (90) tablets per prescription, and 20 mg to 30 mg in strength.

20. During the period from on or about September 27, 2013, through on or about September 1, 2016, according to the CURES report for Patient B, Respondent issued fifty-four (54) prescriptions for clonazepam to Patient B. The prescriptions were issued monthly and varied in quantity and strength, ranging between sixty (60) and ninety (90) tablets per prescription, and 1 mg to 2 mg in strength.

21. During the period from on or about June 24, 2014, through on or about August 14, 2016, according to the CURES report for Patient B, Respondent issued twenty-eight (28) prescriptions for Xanax to Patient B. The prescriptions were issued monthly and prescribed nintey (90) tablets of Xanax (1 mg), three per day, to Patient B.

22. According to Respondent's medical records for Patient B, on or about September 27, 2013, Patient B reported to have lost his medications or believed his medications had been stolen. Respondent then issued new prescriptions to Patient B for Adderall, clonazepam and Remeron.[10]

23. According to Respondent's medical records for Patient B, on or about January 15, 2014, Patient B reported experiencing increased anxiety. Respondent then verbally contacted Patient B's pharmacy and issued a prescription for sixty (60) tablets of clonazepam, increasing the dose from 1 mg to 2 mg, and issued another prescription for ninety-six (96) tablets of Adderall (20 mg), to Patient B.

24. According to Respondent's medical records for Patient B, on or about April 7, 2014, Patient B reported an unexpected death in the family. Respondent then issued a prescription for

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[10] Remeron is the brand name for mirtazapine, a dangerous drug pursuant to Business and Professions Code section 4022, commonly used to treat depression.

thirty (30) tablets of Adderall XR[11] (20 mg); thirty (30) tablets of Adderall (30 mg); sixty (60) tablets of Clonazepam (2 mg), and Remeron, to Patient B.

25. According to Respondent's medical records for Patient B, on or about September 29, 2014, Patient B reported his roommate had stolen his medications. Respondent then issued a prescription for sixty (60) tablets of Adderall (30 mg), two per day, to Patient B.

26. According to Respondent's medical records for Patient B, no further records were prepared or maintained by Respondent after Patient B's visit on September 29, 2014.

27. According to CURES, Respondent continued prescribing Adderall, clonazepam, and alprazolam, to Patient B through 2016.

28. Respondent's medical records for Patient B do not adequately record a mental status examination, diagnosis, and treatment plan for Patient B. Respondent's medical records for Patient B do not adequately document changes in symptoms, Patient B's response to treatment, changes in treatment plan, medications, or rationale for changes in prescriptions.

29. Respondent's medical records for Patient B do not adequately indicate the quantities and dosages of the prescriptions for Adderall, a Schedule II controlled substance, issued to Patient B.

30. Respondent committed gross negligence in her care and treatment of Patient B, which included, but is not limited to, failing to document her rationale for simultaneously prescribing two separate benzodiazepines, Xanax and Clonazepam, to Patient B, or monitor for adverse side effects or signs of dependence.

Patient C

31. Respondent did not maintain any medical records for Patient C.

32. During the period from on or about April 17, 2014, through on or about January 19, 2016, according to the CURES report for Patient C, Respondent issued eighteen (18) prescriptions for Ambien[12] to Patient B. The prescriptions were issued approximately once per month, each prescribing thirty (30) tablets of Ambien (10 mg), one per day, to Patient C.

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[11] Adderall XR is the extended release version of Adderall. See Footnote 4, above.

[12] Ambien is the brand name for zolpidem. See Footnote 9, above.

33. During the period from on or about April 15, 2014, through on or about April 27, 2015, according to the CURES report for Patient C, Respondent issued eleven (11) prescriptions for ninety (90) tablets of alprazolam (2 mg), three per day, to Patient C.

34. On or about July 9, 2015, August 25, 2015, and October 29, 2015, according to the CURES report for Patient C, Respondent issued three (3) prescriptions for sixty (60) tablets of alprazolam (2 mg), two per day, to Patient C.

35. On or about January 19, 2015, March 12, 2015, and April 17, 2015, according to the CURES report for Patient C, Respondent issued three (3) prescriptions for sixty (60) tablets of Adderall (20 mg), two per day, to Patient C.

36. On or about July 26, 2014, according to the CURES report for Patient C, Respondent issued a prescription for ninety (90) tablets of Valium[13] (10 mg), to Patient C.

37. On or about October 27, 2014, November 26, 2014, and January 19, 2015, according to the CURES report for Patient C, Respondent issued three (3) prescriptions for twelve (12) to fourteen (14) capsules of Librium[14] (25 mg), to Patient C.

38. On or about January 19, 2015, according to the CURES report for Patient C, Respondent issued a prescription for ninety (90) tablets of oxycodone,[15] to Patient C.

39. On or about January 21, 2015, according to pharmacy records for Patient C, Respondent issued a prescription for ninety (90) tablets of Flexeril,[16] to Patient C.

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[13] Valium is the brand name for diazepam. See Footnote 3, above.

[14] Librium is the brand name for chlordiazepoxide. Librium 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. Librium is a benzodiazepine, commonly used to treat anxiety and withdrawal.

[15] Oxycodone 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 Drug Enforcement Administration (DEA) has identified opioids, such as oxycodone, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2015 Edition), at p. 43.)

[16] Flexeril is the brand name for cyclobenzaprine, a dangerous drug pursuant to Business and Professions Code section 4022. Flexeril is a muscle relaxant, commonly used to treat muscle pain.

40. On or about February 15, 2015 and March 14, 2015, according to pharmacy records for Patient C, Respondent issued prescriptions for sixty (60) tablets of Clonidine,[17] to Patient C.

41. On or about November 8, 2016, December 7, 2016, January 3, 2017 and March 6, 2017, according to pharmacy records for Patient C, Respondent issued prescriptions for 120 tablets of Neurontin[18] (300 mg), to Patient C.

42. Respondent committed gross negligence in her care and treatment of Patient C, which included, but were not limited to, the following:

(a) Respondent failed to perform a mental status and/or physical examination of Patient C prior to prescribing potentially addictive medications to Patient C;

(b) Respondent failed to document her rationale for prescribing large quantities of Xanax to Patient C, or her rationale for prescribing Valium and Librium, while also prescribing Xanax, to Patient C;

(c) Respondent failed to maintain adequate and accurate medical records pertaining to her care and treatment provided to Patient C; and

(d) Respondent failed to maintain adequate and accurate medical records pertaining to her prescribing Schedule II controlled substances to Patient C.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

43. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 109129 to disciplinary action under sections 2227 and 2234, as defined by 2234, subdivision (c), of the Code, in that she committed repeated negligent acts in her care and treatment of Patients A, B and C, as more particularly alleged hereinafter:

(a) Paragraphs 10 through 42, above, are hereby incorporated by reference and realleged as if fully set forth herein;

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[17] Clonidine is a dangerous drug pursuant to Business and Professions Code section 4022. Clonidine is commonly used to treat high blood pressure, attention deficit hyperactivity disorder, anxiety and withdrawal.

[18] Neurontin, brand name for gabapentin, is a dangerous drug pursuant to Business and Professions Code section 4022. Neurontin is commonly used to treat nerve pain and seizures.

(b) Respondent failed to maintain adequate and accurate medical records pertaining to her prescribing Schedule II controlled substances, Adderall, to Patient A;

(c) Respondent failed to maintain adequate and accurate medical records pertaining to her prescribing Schedule II controlled substances, Adderall, to Patient B; and

(d) Respondent failed to maintain adequate and accurate medical records pertaining to her care and treatment provided to Patient B.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Without an Appropriate Prior Examination or Medical Indication)

44. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 109129 to disciplinary action under sections 2227, and 2234, as defined by 2242, of the Code, in that she prescribed, dispensed, or furnished dangerous drugs as defined in section 4022 without an appropriate medical indication, in her care and treatment of Patients A and C, as more particularly alleged in paragraphs 10 through 16, and 31 through 42, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

45. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 109129 to disciplinary action under sections 2227 and 2234, as defined by 2266, of the Code, in that she failed to keep adequate and accurate medical records in her care and treatment of Patients A, B and C, as more particularly alleged in paragraphs 10 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Violations of the Medical Practice Act)

46. Respondent has further subjected her Physician's and Surgeon's Certificate No. A 109129 to disciplinary action under sections 2227 and 2234, as defined by 2234, subdivision (a), of the Code, in that she committed a violation or violations of a provision or provisions of the Medical Practice Act in her care and treatment of patients A, B and C, as more particularly

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alleged in paragraphs 10 through 45, 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. A 109129, issued to Respondent Abby Melissa Irwin, M.D.;

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

3. Ordering Respondent Abby Melissa Irwin, 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:
February 20, 2019

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

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