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10	BEFORE THE MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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12	STATE OF C	ALIFORNIA
13	In the Matter of the Accusation Against:	Case No. 800-2016-027559
14	J. Eduardo Guzman, M.D.	ACCUSATION
15	420 N Montebello Blvd. #204 Montebello, Ca 90640	·
16	Physician's and Surgeon's Certificate	
17	No. A 38124,	
18	Respondent.	
19		
20	Complainant alleges:	
21	PARTIES	
22	1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official	
23	capacity as the Executive Director of the Medical Board of California (Board).	
24	2. On or about March 8, 1982, the Medical Board issued Physician's and Surgeon's	
25	Certificate No. A 38124 to J. Eduardo Guzman, 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 June 30, 2019, unless renewed.	
28	<i>III</i>	
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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.
- A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.
- B. Section 2229 of the Code states that the protection of the public shall be the highest priority for the Board in exercising their disciplinary authority. While attempts to rehabilitate a licensee should be made when possible, Section 2229(c) states that when rehabilitation and protection are inconsistent, protection shall be paramount.
 - C. Section 2234 of the Code, states in 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.

- "(d) Incompetence."
- D. Section 725 of the Code states in part:
- "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon..."
 - E. Section 11165.1 of the California Health and Safety Code states in part:

"(a)(1)(A)(i) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 shall, before July 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that practitioner the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP)."

PERTINENT DRUGS

- 4. Adderall, a trade name for mixed salts of a single-entity amphetamine product (dextroamphetamine sulphate, dextroamphetamine saccharate, amphetamine sulfate, amphetamine aspartate), is a dangerous drug as defined in Business and Professions Code section 4022 and a schedule II controlled substance as defined by section 11055 of the Health and Safety Code. Adderall is indicated for Attention Deficit Disorder with Hyperactivity and Narcolepsy for Deficit Disorder with Hyperactivity, only in rare cases will it be necessary to exceed a total of 40 mg per day. For Narcolepsy, the usual dose is 5 mg to 60 mg per day in divided doses depending on individual patient response.
- 5. **Ambien**, a Schedule IV controlled substance, is a sedative primarily used to treat insomnia. It is an addictive substance and users should avoid alcohol as serious interactions may occur.

- 6. Ativan, the trade name for lorazepam, is used for anxiety and sedation in the management of anxiety disorder for short-term relief from the symptoms of anxiety or anxiety associated with depressive symptoms. It is a dangerous drug as defined in section 4022 and a Schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. Lorazepam is not recommended for use in patients with primary depressive disorders. Sudden withdrawal from lorazepam can produce withdrawal symptoms including seizures.
- 7. Clonazepam, known by the trade name Klonopin, is an anticonvulsant of the benzodiazepine class of drugs. It is a dangerous drug as defined by section 4022 and a schedule IV controlled substance as defined by section 11057 of the Health and Safety Code. It produces central nervous system depression and should be used with caution with other central nervous system depressant drugs. Like other benzodiazepines, it can produce psychological and physical dependence. Withdrawal symptoms similar to those noted with barbiturates and alcohol have been noted upon abrupt discontinuance of clonazepam. The initial dosage for adults should not exceed 1.5 mg. per day divided in three doses.
- 8. **Phentermine** is a Schedule IV controlled substance as designated by Health and Safety Code section 11057 and a dangerous drug as designated by section 4022. It is a stimulant and used to promote weight loss when used for a short period of time.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence and/or Repeated Negligent Acts and/or Incompetence and/or Excessive Prescribing in the care provided to Patient A) ¹

9. Respondent is subject to disciplinary action under sections 2234, and/or 2234(a), 2234(b) and/or 2234(c), and/or 2234(d) and/or 725 of the Code, in that Respondent committed unprofessional conduct amounting to gross negligence and/or repeated negligent acts and/or incompetence in the care and treatment of Patient A. Respondent is also subject to disciplinary action under section 725 of the Code in that he committed repeated acts of clearly excessive prescribing of drugs to Patient A. The circumstances are as follows:

¹ Letters are used to protect their privacy. Respondent may learn the names of the patients through the discovery process.

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- 10. On or about August 19, 2014, Patient A, a then 35-year old female, was first seen by Respondent after being referred by her primary care physician for medication management. She presented to Respondent with Adderall 90 mg/day.
- 11. Respondent renewed the Adderall prescription monthly until on or about December 2, 2014, at which time Patient A reported that she was having difficulty with her school work and also voiced concern about being overweight. During this visit, Respondent added Phentermine 30 mg/day, which was subsequently increased to 45 mg/day on or about December 23, 2014, then lowered back to 30 mg/day on or about April 28, 2015.
- 12. On or about March 17, 2015, Patient A requested an early refill for Adderall, claiming the medication had been lost. Respondent wrote the prescription. On or about June 9, 2015, Respondent discontinued Phentermine as it had been ineffective.
- 13. On or about March 8, 2016, Patient A again reported losing her prescription of Adderall. Respondent wrote an early refill of Adderall just two weeks after the previous prescription. On or about March 18, 2016, Respondent wrote another prescription for Adderall, and restarted Phentermine at 150 mg/day for weight loss. It appears yet another prescription for Adderall was written just several days later on or about March 22, 2016.
- 14. On or about September 22, 2016, Patient A reported to Respondent that her prescriptions had possibly been stolen while she was moving to Santa Barbara. Respondent wrote an early refill for Adderall and Patient A indicated she would provide him with the police report from the incident.
- 15. On or about May 25, 2017, Patient A reported another lost prescription for Adderall, indicating it was destroyed by her pet bird. Respondent wrote another early refill prescription for Adderall.
- 16. CURES reports for Patient A indicate that she was taking on average 138 mg/day of Adderall and 68 mg/day of Phentermine between August 2017 and January 2018. In 2016, Patient A averaged taking 160 mg/day of Adderall, followed by an average of 116 mg/day of Adderall in 2017. The reports indicate Patient A was filling prescriptions only written by Respondent, and that she filled prescriptions at two (2) different pharmacies.

- 17. At no time did Respondent request prior medical records for Patient A despite admitting that he knew she came to his practice on high doses of Adderall. Respondent further acknowledged that he never requested CURES reports for his patients, including Patient A, because he did not know what a CURES report was or how to obtain one. Had Respondent obtained a CURES report, he would have seen that Patient A likely filled every prescription, even the ones she reported lost or stolen.
- 18. Respondent committed gross negligence and/or repeated acts of negligence and/or incompetence and/or repeated acts of clearly excessive prescribing drugs in his care and treatment of Patient A which included, but was not limited to, the following:
 - (a) Failing to obtain prior medical records or CURES reports for Patient A to verify her presentation of 90 mg/day Adderall;
 - (b) Failing to document any concerns about the high dosage of Adderall, or a treatment plan on decreasing this dosage over time;
 - (c) Adding a stimulant, Phentermine, to another stimulant, Adderall;
 - (d) Continuously providing early refill prescriptions to Patient A for Adderall, despite alerts that she was consuming more than her prescribed amount of 90 mg/day, including multiple reports by Patient A of lost or stolen prescriptions; and
 - (e) Failing to follow-up on alerts that Patient A may have been fabricating her reporting of lost or stolen prescriptions, including reviewing CURES reports which would have revealed that Patient A was in fact filling the prescriptions that she claimed were lost or stolen.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts and/or Excessive Prescribing in the care provided to Patient B)

19. Respondent is subject to disciplinary action under sections 2234, and/or 2234(a), and/or 2234(c) and/or 725 of the Code, in that Respondent committed unprofessional conduct amounting to repeated negligent acts and/or repeated acts of clearly excessive prescribing of drugs in the care and treatment of Patient B. The circumstances are as follows:

- 20. On or about April 30, 2015, Patient B, a then 53-year old male, was first evaluated by Respondent and presented with symptoms of depression and taking Ativan 0.5 mg/day. Respondent noted nine (9) alcoholic beverages weekly. Patient B was diagnosed with Major Depressive Disorder, Severe, and Generalized Anxiety Disorder. Respondent increased Ativan to 1 mg/day.
- 21. On or about September 1, 2015, Respondent was prescribing Ativan 1.5 mg/day, Ambien 10 mg before bedtime, as well as several other medications to Patient B.
- 22. On or about February 23, 2016, Respondent added Klonopin 1.5 mg/day to Patient B's medication schedule in response to an indication of increasing depression and anxiety.
- 23. Patient B relocated to Maine in July 2016, however, Respondent continued to provide prescriptions through November 2016.
- 24. Respondent committed repeated acts of negligence and/or clearly excessive prescribing in his care and treatment of Patient B which included, but was not limited to, prescribing multiple benzodiazepines to a patient with documented alcohol abuse.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Repeated Negligent Acts and/or Incompetence)

- 25. Respondent is subject to disciplinary action under sections 2234, and/or 2234(a), and/or 2234(c) and/or 2234(d) of the Code, and California Health and Safety Code section 11165.1(a), in that Respondent committed unprofessional conduct amounting to repeated negligent acts and/or incompetence in the care and treatment of his patients. The circumstances are as follows:
- 26. Respondent failed to monitor CURES reports for all his patients, and admitted that he did not know what a CURES report was or how to obtain one.
- 27. Respondent failed to generally request prior medical records for his new patients, which contain critical sources of information that guides ongoing treatment, especially in cases where controlled substances are being prescribed.

PRAYER

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

- 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 38124, issued to J. Eduardo Guzman, M.D.;
- 2. Revoking, suspending or denying approval of J. Eduardo Guzman, M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 3. Ordering J. Eduardo Guzman, 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: August 21, 2018

KIMBERLY KIRCHMEYER, Executive Director

Medical Board of Callfornia State of California

Complainant

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