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

In the Matter of the Accusation Against:

Case No. 800-2017-034874

**YAROSLAV KUSHNIR, M.D.
709 Third Avenue
Chula Vista, CA 91910-5803**

A C C U S A T I O N

**Physician's and Surgeon's Certificate
No. G 24238,**

Respondent.

PARTIES

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

2. On or about April 4, 1973, the Medical Board issued Physician's and Surgeon's Certificate No. G 24238 to Yaroslav Kushnir, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2022, 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 (Code) unless otherwise
4 indicated.

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

9 5. Section 2234 of the Code, states:

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

12 ...

13 (b) Gross negligence.

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

17 ...

18 (d) Incompetence.

19 ...

20 6. Unprofessional conduct under section 2234 is conduct which breaches the rules or
21 ethical code of the medical profession, or conduct which is unbecoming to a member in good
22 standing of the medical profession, which demonstrates an unfitness to practice medicine. (*Shea*
23 *v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

24 7. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
25 adequate and accurate records relating to the provision of services to their patients constitutes
26 unprofessional conduct.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 8. Respondent has subjected his Physician's and Surgeon's Certificate No. G 24238 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
5 the Code, in that he was grossly negligent in his care and treatment of Patient A,¹ as more
6 particularly alleged hereinafter:

7 9. Between in and around 2004, through in and around 2017, Respondent worked as a
8 psychiatrist at Alvarado Parkway Institute (API). Throughout that time, API received numerous
9 complaints from staff and patients regarding Respondent's disruptive behavior and/or sexually
10 inappropriate comments.

11 10. On or about February 1, 2017, Patient A, a then twenty-one year old female patient
12 was brought to API by her father, seeking emergency psychiatric admission due to her increased
13 suicidal ideation and psychiatric behavior. Patient A had a psychiatric history that included
14 diagnoses of bipolar disorder, occupational defiant disorder, and mood disorder, as well as
15 multiple prior hospitalizations and contacts with law enforcement. During her initial evaluation,
16 Patient A was noted to be floridly psychotic, responding to internal stimuli, making bizarre
17 movements, and rambling incoherently. Patient A admitted to using methamphetamines the day
18 prior, and her urine drug screen was positive for methamphetamine and benzodiazepines. Patient
19 A was admitted to API on a voluntary basis under the psychiatric care of Respondent. On that
20 same date, Respondent evaluated the patient and diagnosed her with schizoaffective disorder,
21 bipolar type, and stimulant dependence (methamphetamine).

22 11. Between on or about February 1, 2017, through on or about May 10, 2017,
23 Respondent evaluated Patient A several times each week. Throughout that time period,
24 Respondent's notes in the patient's chart are short, repetitive, and difficult to read, consist of
25 mostly checked boxes on a preexisting form, and contain no discussion regarding the patient's
26 progress or reference to her treatment plan.

27 _____
28 ¹ To protect the privacy of the patient involved, the patient's name has not been included
in this pleading. Respondent is aware of the identity of the patient referred to herein.

1 12. On or about February 2, 2017, Respondent evaluated Patient A and determined her to
2 be loud, disruptive, and with no insight. The patient informed Respondent that she wanted to go
3 home. Respondent then restarted the patient on her prior medications, which included but was
4 not limited to Cogentin,² trazadone,³ Zyprexa,⁴ Lamictal,⁵ Haldol,⁶ and Clozaril.⁷ Respondent
5 and Patient A both signed a "Patient Consent to Receive Psychotropic Medications" form on that
6 date for these medications, but Respondent did not include any documentation in the patient's
7 chart regarding her capacity to give consent for these medications.

8 13. On or about February 3, 2017, Respondent evaluated Patient A and determined her to
9 be loud, psychotic, and with no insight. The patient again informed Respondent that she wanted
10 to go home.

11 14. On or about February 7, 2017, after K.C., M.S.W. (K.C.) informed Respondent that
12 another patient at API wanted to remain under his care after discharge, Respondent stated, "that's
13 what happens when you sleep with your patients."

14 15. On or about February 7, 2017, after A.M., R.N. (A.M.) asked Respondent if he wanted
15 to update K.C. on another patient she was covering for P.P., M.S.W. (P.P.), Respondent replied,

16 _____
17 ² Cogentin (brand name for benztropine) is used to treat symptoms of Parkinson's disease
18 or involuntary movements due to the side effects of certain psychiatric drugs (antipsychotics such
19 as chlorpromazine/haloperidol). Benztropine belongs to a class of medication called
20 anticholinergics, and is a dangerous drug pursuant to Business and Professions Code section
21 4022.

22 ³ Trazodone is an antidepressant that belongs to a group of drugs called selective serotonin
23 reuptake inhibitors. It is used to treat depression, and is a dangerous drug pursuant to Business
24 and Professions Code section 4022.

25 ⁴ Zyprexa (brand name for olanzapine) is an antipsychotic medication used to treat
26 schizophrenia and the symptoms of mood disorders such as bipolar disorder, and is a dangerous
27 drug pursuant to Business and Professions Code section 4022.

28 ⁵ Lamictal (brand name for lamotrigine) is an anticonvulsant medication used to delay
mood episodes in adults with bipolar disorder, and is a dangerous drug pursuant to Business and
Professions Code section 4022.

⁶ Haldol (brand name for haloperidol) is an antipsychotic medicine used to treat
schizophrenia, and is a dangerous drug pursuant to Business and Professions Code section 4022.

⁷ Clozaril (brand name for clozapine) is an antipsychotic medicine used to treat
schizophrenia, and is a dangerous drug pursuant to Business and Professions Code section 4022.

1 "No, [P.P.] is like my wife and [K.C.] is like my mistress. There are certain things that wives do
2 and certain things that mistresses do. My mistress doesn't need to know this."

3 16. On or about February 8, 2017, Respondent evaluated Patient A and determined her to
4 be child-like, with poor judgement, and having no insight. On that same date, Respondent
5 referred the patient for an LPS Conservatorship.⁸

6 17. On or about February 9, 2017, Respondent evaluated Patient A and determined her to
7 be hyper, labile, and with no attention span. Respondent then prescribed the patient Adderall⁹
8 10 mg because she was highly agitated and hyperactive. Respondent and Patient A both signed a
9 "Patient Consent to Receive Psychotropic Medications" form on that date for this medication, but
10 Respondent did not include any documentation in the patient's chart regarding her capacity to
11 give consent for this medication.

12 18. On or about February 12, 2017, Patient A submitted a formal request for a change of
13 physician.

14 19. On or about February 13, 2017, Respondent evaluated Patient A and determined her
15 to be labile, hyperactive, with no insight, and preoccupied with discharge home.

16 20. On or about February 14, 2017, Respondent evaluated Patient A and determined her
17 to be gravely disabled, and unable to plan for food, clothing, or shelter for herself.

18 21. On or about February 17, 2017, Respondent evaluated Patient A and determined her
19 to be loud and labile with no insight. On that date, Respondent increased the patient's Adderall
20 prescription to 20 mg.

21 22. On or about February 24, 2017, Respondent evaluated Patient A and determined her
22 to have no insight. Patient A demanded to be discharged and requested another doctor.

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24 ⁸ The Mental Health Conservatorship is part of the Lanterman-Petris-Short (LPS) Act
25 1967. An LPS Conservatorship is the legal term used in California that gives one adult (the
26 conservator) the responsibility for overseeing the comprehensive medical (mental) treatment for
an adult (conservatee) who has a serious mental illness. Guidelines for the involuntary mental
health treatment are under the California Welfare and Institutions Codes 5200.

27 ⁹ Adderall (brand name for dextroamphetamine and amphetamine) is a Schedule II
28 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.

1 23. On or about February 26, 2017, Patient A informed Respondent again that she wanted
2 another doctor.

3 24. On or about March 1, 2017, Respondent evaluated Patient A and determined her be
4 labile and agitated. On that date, Respondent decreased the patient's Adderall to 10 mg.

5 25. On or about March 4, 2017, Respondent evaluated Patient A and determined her be
6 loud, hyper, labile, and with no insight. On that date, Respondent discontinued the patient's
7 Adderall prescription.

8 26. On or about March 7, 2017, Respondent evaluated Patient A and determined her be
9 loud, with no insight, and preoccupied with discharge. Patient A informed Respondent again that
10 she wanted another doctor.

11 27. On or about March 11, 2017, Patient A submitted another formal request for a change
12 of physician.

13 28. On or about March 13, 2017, Patient A submitted to a psychological evaluation and
14 testing at API, which revealed a finding of severe intellectual impairment.

15 29. On or about March 13, 2017, Respondent attended a meeting with API executive staff
16 regarding complaints they had received about his inappropriate comments towards staff. During
17 this meeting, Respondent did not deny telling a staff member one week earlier that he thinks API
18 should not hire women with children.

19 30. Sometime between on or about February 1, 2017, and on or about March 16, 2017,
20 Respondent asked Patient A for a hug at the conclusion of his evaluation. After doing so,
21 Respondent then turned to a female employee, F.Z., and asked her to turn around so he and
22 Patient A could "make out." Patient A was visibly uncomfortable by the comment and left the
23 room. Later that day, Respondent patted his knee and told F.Z. to come sit on his lap.

24 31. On or about March 28, 2017, Respondent agreed to a corrective action plan with API
25 executive staff.

26 32. On or about May 9, 2017, Patient A reported to her assigned social worker that she
27 was no longer comfortable with receiving treatment from Respondent and claimed he had made
28 multiple inappropriate comments and gestures towards her.

1 33. On or about May 10, 2017, Patient A refused to be seen by Respondent and submitted
2 another formal request for a change of physician.

3 34. On or about May 11, 2017, Patient A began to receive psychiatric care and treatment
4 from another physician at API until she was discharged on or about June 7, 2017.

5 35. Between in and around October 2016, and in and around May 2017, on multiple
6 occasions, Respondent intentionally poured his own urine down the elevator shaft at API.

7 36. On or about July 7, 2017, Respondent resigned from API.

8 37. Respondent committed gross negligence in his care and treatment of Patient A, which
9 included, but was not limited to, the following:

10 (A) Engaging in sexually inappropriate comments and behavior towards the patient;

11 (B) Prescribing amphetamine to a patient who was floridly psychotic from
12 methamphetamine use;

13 (C) Writing illegible, chaotic, and incomplete chart notes for the patient; and

14 (D) Obtaining informed consent for psychotropic medications from a patient who
15 lacked capacity to give informed consent.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Repeated Negligent Acts)**

18 38. Respondent has further subjected his Physician's and Surgeon's Certificate No.
19 G 24238 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
20 subdivision (c), of the Code, in that he committed repeated negligent acts in his care and
21 treatment of Patient A, as more particularly alleged in paragraphs 8 through 37, above, which are
22 hereby incorporated by reference and realleged as if fully set forth herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Records)**

3 39. Respondent has further subjected his Physician's and Surgeon's Certificate No.
4 G 24238 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the
5 Code, in that Respondent failed to maintain adequate and accurate records regarding his care and
6 treatment of Patient A, as more particularly alleged in paragraphs 8 through 37, above, which are
7 hereby incorporated by reference and realleged as if fully set forth herein.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Incompetence)**

10 40. Respondent has further subjected his Physician's and Surgeon's Certificate No.
11 G 24238 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
12 subdivision (d), of the Code, in that he has demonstrated incompetence in his care and treatment
13 of Patient A, as more particularly alleged in paragraphs 8 through 37, above, which are hereby
14 incorporated by reference and re-alleged as if fully set forth herein.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct)**

17 41. Respondent has further subjected his Physician's and Surgeon's Certificate No.
18 G 24238 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the
19 Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical
20 profession, or conduct which is unbecoming a member in good standing of the medical
21 profession, and which demonstrates an unfitness to practice medicine, as more particularly
22 alleged in paragraphs 8 through 37, above, which are hereby incorporated by reference and re-
23 alleged as if fully set forth herein.

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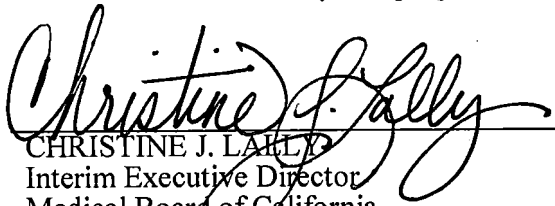
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PRAYER

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. G 24238, issued to Respondent, Yaroslav Kushnir, M.D.;
2. Revoking, suspending or denying approval of Respondent, Yaroslav Kushnir, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent, Yaroslav Kushnir, 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: **MAY 28 2020**


CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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