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

12 In the Matter of the Accusation Against:

Case No. 800-2018-049052

13 **ALAN S. RUTTENBERG, M.D.**
14 **22048 Sherman Way, Suite 214**
Canoga Park, CA 91303

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. C 27473,**

17 Respondent.

18
19 **PARTIES**

20 1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
22 (Board).

23 2. On or about August 30, 1965, the Board issued Physician's and Surgeon's Certificate
24 Number C 27473 to Alan S. Ruttenberg, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on March 31, 2023, unless renewed.

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1 **JURISDICTION**

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 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
8 Practice 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 administrative law judge.

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

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

14 (f) Approving undergraduate and graduate medical education programs.

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

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

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

19 5. Section 2227 of the Code states:

20 (a) A licensee whose matter has been heard by an administrative law judge of
21 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
22 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:

23 (1) Have his or her license revoked upon order of the board.

24 (2) Have his or her right to practice suspended for a period not to exceed one
year upon order of the board.

25 (3) Be placed on probation and be required to pay the costs of probation
26 monitoring upon order of the board.

27 (4) Be publicly reprimanded by the board. The public reprimand may include a
28 requirement that the licensee complete relevant educational courses approved by the
board.

1 (5) Have any other action taken in relation to discipline as part of an order of
2 probation, as the board or an administrative law judge may deem proper.

3 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
4 medical review or advisory conferences, professional competency examinations,
5 continuing education activities, and cost reimbursement associated therewith that are
6 agreed to with the board and successfully completed by the licensee, or other matters
7 made confidential or privileged by existing law, is deemed public, and shall be made
8 available to the public by the board pursuant to Section 803.1.

9 STATUTORY PROVISIONS

10 6. Section 2234 of the Code, states:

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

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

16 (b) Gross negligence.

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

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

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

(d) Incompetence.

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

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

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

7. Section 2241 of the Code states:

(a) A physician and surgeon may prescribe, dispense, or administer prescription
drugs, including prescription controlled substances, to an addict under his or her
treatment for a purpose other than maintenance on, or detoxification from,

1 prescription drugs or controlled substances.

2 (b) A physician and surgeon may prescribe, dispense, or administer prescription
3 drugs or prescription controlled substances to an addict for purposes of maintenance
4 on, or detoxification from, prescription drugs or controlled substances only as set
5 forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and
6 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a
7 physician and surgeon to prescribe, dispense, or administer dangerous drugs or
8 controlled substances to a person he or she knows or reasonably believes is using or
9 will use the drugs or substances for a nonmedical purpose.

10 (c) Notwithstanding subdivision (a), prescription drugs or controlled substances
11 may also be administered or applied by a physician and surgeon, or by a registered
12 nurse acting under his or her instruction and supervision, under the following
13 circumstances:

14 (1) Emergency treatment of a patient whose addiction is complicated by the
15 presence of incurable disease, acute accident, illness, or injury, or the infirmities
16 attendant upon age.

17 (2) Treatment of addicts in state-licensed institutions where the patient is kept
18 under restraint and control, or in city or county jails or state prisons.

19 (3) Treatment of addicts as provided for by Section 11217.5 of the Health and
20 Safety Code.

21 (d)(1) For purposes of this section and Section 2241.5, addict means a person
22 whose actions are characterized by craving in combination with one or more of the
23 following:

24 (A) Impaired control over drug use.

25 (B) Compulsive use.

26 (C) Continued use despite harm.

27 (2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is
28 primarily due to the inadequate control of pain is not an addict within the meaning of
this section or Section 2241.5.

8. Section 2242 of the Code states:

(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
4022 without an appropriate prior examination and a medical indication, constitutes
unprofessional conduct. An appropriate prior examination does not require a
synchronous interaction between the patient and the licensee and can be achieved
through the use of telehealth, including, but not limited to, a self-screening tool or a
questionnaire, provided that the licensee complies with the appropriate standard of
care.

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

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

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

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

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

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

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

20 9. Section 2266 of the Code states:

21 The failure of a physician and surgeon to maintain adequate and accurate
22 records relating to the provision of services to their patients constitutes unprofessional
23 conduct.

24 10. Section 725 of the Code states:

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

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

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

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

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1 11. Section 2239 of the Code states:

2 (a) The use or prescribing for or administering to himself or herself, of any
3 controlled substance; or the use of any of the dangerous drugs specified in Section
4 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
5 or injurious to the licensee, or to any other person or to the public, or to the extent that
6 such use impairs the ability of the licensee to practice medicine safely or more than
7 one misdemeanor or any felony involving the use, consumption, or
8 self-administration of any of the substances referred to in this section, or any
9 combination thereof, constitutes unprofessional conduct. The record of the
10 conviction is conclusive evidence of such unprofessional conduct.

11 ...

12 12. Health and Safety Code section 11170 states:

13 No person shall prescribe, administer, or furnish a controlled substance for
14 himself.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Gross Negligence/Repeated Negligent Acts – 3 Patients)**

17 13. Respondent Alan S. Ruttenberg, M.D. is subject to disciplinary action under section
18 2234, subdivisions (b) and (c), of the Code for the commission of acts or omissions involving
19 gross negligence/repeated negligent acts in the care and treatment of Patients 1, 2, and 3.¹ The
20 circumstances are as follows:

21 **Patient 1**

22 14. Patient 1 (or “patient”) is a sixty-five-year-old female, who was treated by
23 Respondent from approximately 2015 to 2020,² for various maladies including pituitary adenoma,
24 high blood pressure, multiple fainting (passing out) spells, and anxiety (not officially diagnosed
25 by Respondent but presumably from Patient 1’s domestic violence issues). Per CURES
26 (Controlled Substance Utilization Review and Evaluation System, a drug monitoring database for
27 Schedule II through V controlled substances dispensed in California), Respondent prescribed to
28 Patient 1 alprazolam (Xanax), as well as simultaneous benzodiazepine prescriptions for
lorazepam (a sedative used to treat anxiety) and temazepam (a sedative used to treat insomnia).

¹ The patients are identified by number to protect their privacy.

² These are approximate dates based on the medical records which were available to the Board. Patient 1 may have treated with Respondent before or after these dates.

1 While Patient 1 was treating with Respondent, Patient 1 was also regularly getting controlled
2 substances (e.g. morphine sulfate, hydrocodone, oxycodone, etc.) from other physicians.³

3 15. During the above time-period, there was no indication that Respondent conducted
4 regular mental status examinations to assess Patient 1's mood, affect, insight, judgment, thought
5 process, or thought content. Also, Respondent did not document assessing Patient 1 for any
6 particular diagnosis or the progression of that diagnosis. Respondent did not address the issue of
7 domestic violence as a possible threat to Patient 1's safety, and Respondent did not address
8 whether Patient 1 was suicidal, which is a particular issue when prescribing controlled substances.

9 16. Respondent's care and treatment of Patient 1, as outlined above, represents an
10 extreme departure from the standard of care for prescribing two benzodiazepines (e.g. lorazepam
11 and temazepam) simultaneously and on an ongoing basis at high doses. Respondent's care and
12 treatment of Patient 1, as outlined above, also demonstrates an extreme departure from the
13 standard of care with respect to Respondent's incomplete examination, diagnosis, and treatment
14 plans for Patient 1. The above departures also represent repeated acts of negligence.

15 **Patient 2**

16 17. Patient 2 (or "patient") is a fifty-three-year-old male, who was treated by Respondent
17 from approximately 2016 through 2019.⁴ Although Respondent did not document any official
18 diagnoses for Patient 2, records indicate that Patient 2 often had difficulty concentrating,
19 depression, and was on long-term disability. Patient 2 was also seeing a pain management doctor
20 who wanted to adjust the medications which Respondent was prescribing to Patient 2.

21 18. During this time period, Respondent prescribed to Patient 2 temazepam (a sedative
22 used to treat insomnia), lorazepam (a sedative used to alleviate anxiety), trazodone (an
23 antidepressant), Wellbutrin (an antidepressant), Strattera (a cognition-enhancing medication), and
24 zolpidem (Ambien), a sleep aid.

25 ³ The medications prescribed to Patient 1 by Respondent and other physicians are
26 controlled substances, and have serious side effects and risk for addiction. They are also
27 dangerous drugs pursuant to section 4022 of the Code. It should also be noted that Respondent
28 informed the Board that he does not check CURES, but instead relies on pharmacists to let him
know if patients are being prescribed multiple controlled substances.

⁴ Again, these are approximate dates based on the medical records which were available to
the Board. Patient 2 may have treated with Respondent before or after these dates.

1 19. During the above time-period, Respondent did not check CURES, despite Patient 2
2 telling Respondent that he was seeing a pain management doctor who wanted to adjust the
3 medications which Respondent was prescribing. There was no evidence that Respondent
4 assessed Patient 2's school history, work history, or functioning in interpersonal areas in terms of
5 attention to detail, distractibility, and task completion, etc. Respondent did not adequately
6 document assessing Patient 2 for a particular diagnosis, or the progression of that diagnosis.
7 Respondent did not adequately document target symptoms for medications, or justification for
8 increased doses of benzodiazepines. There is no adequate documentation about Patient 2's
9 disability, or the impact the disability had on Patient 2's life.

10 20. The above multiple failures on the part of Respondent demonstrate an extreme
11 departure from the standard of care with respect to Respondent's failure to check CURES and the
12 incomplete examination, diagnosis, and treatment plans for Patient 2. The above departures also
13 represent repeated acts of negligence.

14 **Patient 3**

15 21. Patient 3 (or "patient") is a fifty-seven-year-old female, who treated with Respondent
16 from approximately 2016 through 2019,⁵ for anxiety, panic attacks, and pain.⁶ During this time-
17 period, Respondent prescribed to Patient 3 Lexapro (used to treat depression and anxiety),
18 Wellbutrin, and Xanax (alprazolam).⁷

19 22. During the above time period, Respondent failed to adequately document a solid
20 clinical justification for his long-term prescribing of benzodiazepines to Patient 3, as the patient
21 was on non-benzodiazepine pharmacology (e.g. Lexapro, an SSRI antidepressant), but there was
22 no attempt to increase psychotherapy or to decrease the prescribing of benzodiazepines (e.g.,
23 alprazolam) to Patient 3.

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26 ⁵ Again, these are approximate dates based on the medical records which were available to
the Board.

27 ⁶ Similar to the other patients named in this Accusation, Respondent's records were
unclear as to whether Respondent had an actual diagnosis or diagnoses for Patient 3.

28 ⁷ These medications are also controlled substances, and have serious side effects and risk
for addiction. They are also dangerous drugs pursuant to section 4022 of the Code.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Inadequate Records – 3 Patients)**

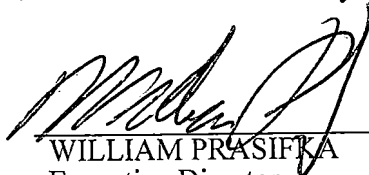
3 28. By reason of the facts and allegations set forth in the First Cause for Discipline above,
4 Respondent Alan S. Ruttenberg, M.D. is subject to disciplinary action under section 2266 of the
5 Code, in that Respondent failed to maintain adequate and accurate records of his care and
6 treatment of Patients 1, 2, and 3, above.

7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 27473,
11 issued to Respondent Alan S. Ruttenberg, M.D.;
- 12 2. Revoking, suspending or denying approval of Respondent Alan S. Ruttenberg, M.D.'s
13 authority to supervise physician assistants and advanced practice nurses;
- 14 3. Ordering Respondent Alan S. Ruttenberg, M.D., if placed on probation, to pay the
15 Board the costs of probation monitoring; and
- 16 4. Taking such other and further action as deemed necessary and proper.

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18 DATED: **OCT 12 2021**

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20 WILLIAM PRASIFKA
21 Executive Director
22 Medical Board of California
23 Department of Consumer Affairs
24 State of California
25 Complainant