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

In the Matter of the Accusation Against: **MARK STEPHEN WAGNER, M.D.** **515 Cabrillo Park Drive, Suite 120** **Santa Ana, CA 92701-5016** **Phsyician's and Surgeon's Certificate No. G 42267,** Respondent.	Case No. 800-2021-078555 **A C C U S A T I O N**

PARTIES

1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 1, 1980, the Medical Board issued Physician's and Surgeon's Certificate Number G 42267 to Mark Stephen Wagner, 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 expired on April 30, 2026.

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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.

4. Section 118 of the Code states:

> (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.
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> (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.
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> (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."

5. Section 2004 of the Code states:

> The board shall have the responsibility for the following:
>
> (a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
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> (b) The administration and hearing of disciplinary actions.
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> (c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
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> (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
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> (e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.
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> (f) Approving undergraduate and graduate medical education programs.
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> (g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).
>
> (h) Issuing licenses and certificates under the board's jurisdiction.

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

6. 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.

STATUTORY PROVISIONS

7. Section 2234 of the Code, states:

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.

(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 no later than 30 calendar days after being notified by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

(h) Any action of the licensee, or another person acting on behalf of the licensee, intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the board or the Department of Consumer Affairs, Health Quality Investigation Unit.

(i) Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.

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

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

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

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

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

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

9. 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.

COST RECOVERY

10. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

FACTUAL ALLEGATIONS

11. Respondent is the owner and director of OC Comprehensive Care, an outpatient clinic in Santa Ana, California.

Patient A[1]

12. Patient A is a forty-four-year-old man who was treated by Respondent on numerous occasions from March 2018 through February 2022.[2] According to Respondent's records, Patient A was being treated for opioid dependency, but was being tapered down per Patient A's request.

13. Throughout the treatment period, Patient A was also seen by a primary care doctor and other physicians. Patient A had a chronic prescription for alprazolam, a Schedule IV benzodiazepine used to treat anxiety and panic disorders. Patient A was also routinely prescribed diazepam, a Schedule IV benzodiazepine used to treat anxiety disorders or alcohol withdrawal symptoms, by other physicians.

14. On or about August 23, 2018, Patient A presented to Respondent for an opiate follow-up. Respondent conducted a urine drug test (UDT) during this visit, which was positive for tetrahydrocannabinol (THC), benzodiazepine, and oxycodone. Buprenorphine was not detected in the drug test. The August 23, 2018 UDT was the only documented test performed by Respondent.

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[1] The patients are identified by letters in this Accusation to address privacy concerns.

[2] Respondent has treated Patient A on dates outside of those listed in this Accusation, but this Accusation is based on the treatment period between 2018 through 2022.

15. Respondent prescribed Patient A Zubsolv[3] on or about February 7, 2022, March 10, 2021, January 13, 2021, June 21, 2019, December 3, 2018, and October 26, 2018.

16. On or about November 28, 2020 and January 12, 2021, Respondent also prescribed Patient A diazepam.

Patient B

17. Patient B is a forty-year-old woman who was treated by Respondent on numerous occasions from November 2018 through April 2022.[4] According to Respondent's records, Patient B was being treated for chronic back and elbow pain.

18. Throughout the treatment period, and beginning September 2018 through April 2022, Respondent prescribed Patient B hydrocodone-acetaminophen,[5] a Schedule II opioid used to treat pain.

19. Throughout the treatment period, and beginning May 2019 through February 2020, Respondent prescribed Patient B carisoprodol, a Schedule IV muscle relaxant.

20. Throughout the treatment period, and beginning November 2019 through December 2021, Respondent prescribed Patient B diazepam.

Patient C

21. Patient C is a thirty-one-year-old man who was treated by Respondent from August 2019 through July 2020.[6] According to Respondent's records, Patient C was initially being treated for a dog bite to the hand. Records also indicate that Patient C suffered from chronic neck and shoulder pain.

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[3] Zubsolv is a Schedule III drug that contains a combination of buprenorphine and naloxone. Buprenorphine is an opioid medication and naloxone blocks the effects of opioid medication. Zubsolv is used to treat opioid addiction.

[4] Respondent may have treated Patient B on dates outside of those listed in this Accusation, but this Accusation is based on the treatment period between 2018 through 2022.

[5] Hydrocodone and acetaminophen is a combination medicine used to relieve moderate to severe pain. Hydrocodone is an opioid pain reliever and cough suppressant, also known as a narcotic analgesic, that works on the central nervous system. Acetaminophen is a non-opioid analgesic used for pain relief and to reduce fever, and increases the effects of hydrocodone. It is a dangerous drug pursuant to section 4022 of the Code.

[6] Respondent may have treated Patient C on dates outside of those listed in this Accusation, but this Accusation is based on the treatment period between 2019 through 2020.

22. On or about September 30, 2019, Respondent prescribed Patient C hydrocodone-acetaminophen.

23. On or about December 18, 2019, Patient C presented to Respondent for a follow-up regarding his neck pain. During this visit, Patient C requested a prescription for Subutex (buprenorphine), a Schedule III opiate replacement therapy used to treat opioid addiction. Patient C indicated that he had taken the medication in the past and wanted to try it again for two weeks. Respondent provided the prescription, which was filled on or about February 27, 2020.

24. On or about February 27, 2020, Respondent also prescribed Patient C diazepam for his anxiety.

25. On or about July 17, 2020 and July 21, 2020, Respondent prescribed Patient C oxycodone-hydrochloride, a Schedule II opioid used to treat moderate to severe pain.

26. On or about July 17, 2020, Respondent prescribed Patient C clonazepam, a Schedule IV benzodiazepine used to treat certain seizure and panic disorders.

STANDARD OF CARE WHEN PRESCRIBING CONTROLLED SUBSTANCES

27. **Controlled Substance Utilization Review and Evaluation System (CURES).** Physicians should check a patient's CURES report when the patient is new to the physician, when first prescribing a new medication to a patient, and at least every six months thereafter.

28. **Medical Records.** Physicians must maintain adequate and accurate medical records. The contents of a patient's medical records should include the patient's medical history and physical examinations results. Medical records should also include lab tests, patient consent and pain management agreements, risk assessments, and results of CURES reports.

29. **Pain Contract.** Patients on long-term opiates, or those needing opiates longer than three months, should have a pain contract that outlines the responsibilities of the patient and provider.

30. **Prescription for Naloxone.** Physicians should educate patients about the danger signs of respiratory depression. Physicians should also offer patients a prescription for naloxone, and educate patients on how to safely administer naloxone, an opiate antagonist used to quickly reverse an opioid overdose.

31. **Patient Consent.** Physicians should discuss the risks and benefits associated with the use of controlled substances. Physicians should document patient consent.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

32. Respondent Mark Stephen Wagner, M.D. is subject to disciplinary action under Code section 2234, subdivision (b), in that Respondent was grossly negligent in his care and treatment of Patients A, B, and C. The circumstances are as follows:

33. Complainant hereby re-alleges the facts set forth in paragraphs 11 through 31, above, as though fully set forth.

Patient A

34. Patient A was being treated for opioid dependency, while he was simultaneously prescribed benzodiazepines. However, there was no documentation indicating that Respondent educated Patient A about the danger signs of respiratory depression, and Respondent failed to prescribe Patient A naloxone. These failures constitute an extreme departure from the standard of care.

Patient B

35. Patient B's medical records indicate that her chronic back pain is the result of a protruding lumbar disc, necessitating the prescription for hydrocodone-acetaminophen. However, the records do not include an adequate medical history or imaging tests to support the diagnosis. The records also fail to discuss non-opiate modalities for managing pain. Furthermore, records indicate that Patient B was breastfeeding, but there is no discussion regarding titrating her opiate medication to limit any risks to the infant. Respondent also failed to document patient consent or risk assessments. Additionally, there was no documentation indicating that Respondent educated Patient B about the danger signs of respiratory depression, and Respondent failed to prescribe Patient B naloxone. These failures constitute an extreme departure from the standard of care.

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Patient C

36. Patient C's medical records do not include imaging, lab or test results, or any documentation supporting the chronic pain diagnosis. Additionally, the records do not include an adequate medical history or an adequate work-up to justify a prescription for opioids. The records also fail to discuss non-opiate modalities for managing pain. Respondent also failed to document patient consent, or a treatment plan and the success or failure of the treatment plan. Respondent's failures constitute an extreme departure from the standard of care.

37. There was no documentation indicating that Respondent educated Patient C about the danger signs of respiratory depression, and Respondent failed to prescribe Patient C naloxone, despite prescribing Patient C a benzodiazepine and opioid. This constitutes an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

38. Respondent Mark Stephen Wagner, M.D. is subject to disciplinary action under Code section 2234, subdivision (c), in that Respondent was repeatedly negligent in his care and treatment of Patients A, B, and C. The circumstances are as follows:

39. The facts and allegations set forth in the First Cause for Discipline are incorporated herein by reference as if fully set forth.

40. Each act of gross negligence set forth in the First Cause for Discipline is also a negligent act.

41. Respondent also committed the following acts of negligence in his care and treatment of Patients A, B, and C:

Patient A

42. Throughout the treatment period, Respondent failed to adequately document Patient A's medical history, which is a simple departure from the standard of care.

43. Respondent failed to document a pain contract or Patient A's compliance with a pain contract, despite prescribing Patient A benzodiazepines and opioids. This failure constitutes a simple departure from the standard of care.

44. Patient A's medical records included several entries that were not legible as written. This constitutes a simple departure from the standard of care.

45. While records indicate that Respondent periodically checked Patient A's CURES report, Respondent prescribed Patient A a benzodiazepine when he already had an active prescription for a benzodiazepine from another physician. Patient A was also receiving opiate replacement therapy from Respondent, despite having an active prescription for an opioid from another physician. Respondent failed to indicate the results of the CURES checks and failed to justify why he provided Patient A prescriptions for controlled substances in light of his other active prescriptions for controlled substances from other providers. Respondent's actions and inactions constitute a simple departure from the standard of care.

Patient B

46. Respondent failed to document a pain contract or Patient B's compliance with a pain contract. This failure constitutes a simple departure from the standard of care.

47. Patient B's medical records included several entries that were not legible as written. This constitutes a simple departure from the standard of care.

48. While records indicate that Respondent periodically checked Patient B's CURES report, Respondent failed to indicate the results of the CURES checks. Respondent's failure to document constitutes a simple departure from the standard of care.

Patient C

49. Respondent failed to document a pain contract or Patient C's compliance with a pain contract. This failure constitutes a simple departure from the standard of care.

50. Patient C's medical records included several entries that were not legible as written. This constitutes a simple departure from the standard of care.

51. Respondent failed to document patient consent. This constitutes a simple departure from the standard of care.

52. While records indicate that Respondent periodically checked Patient C's CURES report, Respondent failed to indicate the results of the CURES checks. Further, Respondent failed to justify why he provided Patient C prescriptions for opioids when Patient C had active

opioid prescriptions from other providers. Respondent's actions and inactions constitute a simple departure from the standard of care.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Medical Records)

53. By reasons of the facts and allegations set forth in the First and Second Causes for Discipline, Respondent Mark Stephen Wagner, M.D. is subject to disciplinary action under Code section 2266 in that Respondent failed to maintain adequate and accurate records of his care and treatment of Patients A, B, and C.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

54. Respondent Mark Stephen Wagner, M.D. is subject to disciplinary action under Code sections 2234, subdivision (a), and 2242 in that Respondent engaged in unprofessional conduct when he prescribed dangerous drugs to Patients A, B, and C without appropriate prior examinations or medical indication thereof. Complainant refers to and, by this reference, incorporates herein, paragraphs 12 through 26, above, as though fully set forth.

55. Respondent's acts and/or omissions as set forth in the First, Second, and Third Causes for Discipline, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to Code section 2234. Therefore, cause for discipline exists.

DISCIPLINARY CONSIDERATIONS

56. To determine the degree of discipline, if any, to be imposed on Respondent Mark Stephen Wagner, M.D., Complainant alleges that on or about November 13, 2020, in a prior disciplinary action titled *In the Matter of the Accusation Against Mark Stephen Wagner, M.D.* before the Medical Board of California, in Case Number 800-2017-030868, Respondent's license was revoked, with the revocation stayed for a period of three (3) years, subject to terms and conditions. This action was taken due to sustained allegations of gross negligence, repeated negligent acts, unprofessional conduct, excessive prescribing, and failure to maintain accurate and adequate medical records. That decision is now final and is incorporated by reference 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 Number G 42267, issued to Respondent Mark Stephen Wagner, M.D.;

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

3. Ordering Respondent Mark Stephen Wagner, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: MAY 31 2024

for

REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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