ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
ROSEMARY F. LUZON
Deputy Attorney General
State Bar No. 221544
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9074
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: **Divyakant J. Kikani, M.D.** **1800 Western Ave., Ste. 404** **San Bernardino, CA 92411-1355** **Physician's and Surgeon's Certificate No. A 34717,** Respondent.	Case No. 800-2023-098151 **ACCUSATION**

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 November 26, 1979, the Board issued Physician's and Surgeon's Certificate No. A 34717 to Divyakant J. Kikani, 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 August 31, 2025, unless renewed.

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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 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. . .

5. 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:
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> (1) Have his or her license revoked upon order of the board.
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> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
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> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
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> (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.
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> (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.
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> . . .

6. 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:
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> . . .
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> (b) Gross negligence.
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> (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.

. . .

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.

COST RECOVERY

8. 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.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent has subjected his Physician's and Surgeon's Certificate No. A 34717 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

10. On or about December 19, 2016, Patient A had her first visit with Respondent.[2] Patient A was referred to Respondent by her therapist for assessment and treatment. According to the therapist, Patient A had a history of trauma related to an auto accident, death of a spouse several years earlier, and recent death of two family members by homicide. The therapist noted that Patient A suffered from depression and anxiety with panic attacks. The therapist believed that Patient A could benefit from psychotropic medication.

11. During the initial visit, Respondent completed a "Behavioral Health Initial Evaluation Coordination of Care Report" form, which was required by Patient's A health care insurance

[1] References to "Patient A" herein are used to protect patient privacy.

[2] Any medical care or treatment rendered by Respondent more than seven years prior to the filing of the instant Accusation is described for informational and contextual purposes only and not pleaded as a basis for disciplinary action.

company. The form had a list of multiple major presenting problems, which Respondent rated by severity. Respondent marked the following problems as moderate in severity: anxiety, depression, sleep disorder, weight change, isolation, obsessive/compulsive, attention problems, concentration difficulty, hallucination auditory, hallucination visual, and dissociative process. Respondent marked the following problems as mild in severity: aggressive behavior, dizziness, paranoia, substance abuse, eating disorder, and symptoms of developmental delay. Respondent diagnosed Patient A with recurrent major depressive disorder and post-traumatic stress disorder (PTSD). Respondent prescribed Topamax,[3] clonazepam,[4] duloxetine,[5] and quetiapine[6] to Patient A.

12. Following the initial visit, Respondent saw Patient A on a near-monthly basis until on or about November 15, 2018. The visits between January 2017, and May 2017, took place on or about January 24, 2017, February 23, 2017, March 21, 2017, and May 23, 2017. The visits from August 2017, and November 2018, took place on or about August 22, 2017, September 26, 2017, October 26, 2017, November 30, 2017, January 2, 2018, February 1, 2018, April 5, 2018, May 3, 2018, June 5, 2018, July 30, 2018, August 28, 2018, October 16, 2018, and November 15, 2018.

13. For each visit with Patient A, Respondent completed a template document entitled, "Medication Progress Note," along with a single-page document containing additional notes. Respondent completed both documents in his own handwriting.

14. Between on or about August 22, 2017, and November 15, 2018, Respondent's handwriting on all progress notes for Patient A was substantially illegible. Moreover, during this timeframe, Respondent did not document any medical history, including any subjective or

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[3] Topamax is an anti-seizure medication and may be used off-label as a mood stabilizer to treat symptoms of PTSD.

[4] Clonazepam (Klonopin) is a benzodiazepine medication used to treat anxiety, panic disorder, and seizures. It 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.

[5] Duloxetine (Cymbalta) is an antidepressant medication and may be used off-label to treat symptoms of PTSD.

[6] Quetiapine (Seroquel) is an antipsychotic medication and may be used off-label to treat symptoms of PTSD.

interval history, treatment plan, or rationale for treatment in any of the progress notes for Patient A. Nor did Respondent document a complete or reconciled list of Patient A's psychiatric and non-psychiatric medications in the progress notes.

15. Between on or about August 22, 2017, and November 15, 2018, Respondent consistently noted the same mental status exam results for Patient A. The results included an "[a]ppropriate" appearance, mood, affect, attention/concentration, and speech. Although "[a]nxious" was listed as a symptom within the category of "mood," Respondent never noted that Patient A had anxiety during this timeframe. In addition, Respondent consistently noted the absence of any sleep problems or drug and alcohol use.

16. As of on or about August 22, 2017, Respondent prescribed clonazepam, temazepam,[7] Topamax, quetiapine, duloxetine, prazosin,[8] and propanolol[9] to Patient A. The prescriptions for clonazepam and temazepam continued on a near-monthly basis until on or about May 3, 2018, however, Respondent did not document any clinical indication for the continued use of these medications, including on a concurrent basis.

17. Beginning on or about April 5, 2018, the dosage for quetiapine increased from 100 mg to 200 mg. Beginning on or about June 5, 2018, the dosage for Topamax increased from 25 mg to 50 mg. In addition, on or about June 5, 2018, Respondent prescribed alprazolam to Patient A, but he did not continue clonazepam and temazepam. On or about the same day, Respondent also added two new medications to Patient A's regimen, mirtazapine[10] and trazodone,[11] but he did not continue quetiapine. The prescriptions for alprazolam continued until on or about November 15, 2018, however, Respondent still did not document any clinical indication for the use of this medication.

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[7] Temazepam (Restoril) is a benzodiazepine medication used to treat insomnia. It 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.

[8] Prazosin is an anti-hypertensive medication and may be used off-label to treat nightmares related to PTSD.

[9] Propanolol (Inderal) is a beta-blocker medication used to treat hypertension and may be used off-label to treat anxiety.

[10] Mirtazapine (Remeron) is an antidepressant medication.

[11] Trazodone is an antidepressant medication and may be used off-label to treat insomnia.

18. On or about November 15, 2018, Patient A had her last visit with Respondent. During this visit, Respondent continued to prescribe alprazolam, Topamax, mirtazapine, trazodone, duloxetine, prazosin, and propanolol to Patient A.

19. Despite prescribing alprazolam to Patient A on or about October 16, 2018, and November 15, 2018, Respondent did not review the Controlled Substance Utilization Review and Evaluation System (CURES) database to determine whether and what controlled substances were prescribed to Patient A by other providers. According to the CURES report for Patient A, Patient A filled a prescription for oxycodone, an opioid medication, on or about October 3, 2018, and November 5, 2018, which her primary care provider prescribed.

20. On or about January 22, 2019, Patient A passed away at her home. The cause of death was accidental acute fentanyl intoxication and the mechanism of death involved respiratory depression.

21. Between on or about August 22, 2017, and November 15, 2018, notwithstanding the continuing prescriptions of medications to Patient A, Respondent did not document the justification or rationale for any of the medications. Moreover, Respondent did not document any of the changes that he made to Patient A's medication regimen or the reasons for the changes.

22. Between on or about August 22, 2017, and November 15, 2018, Respondent continuously prescribed multiple, non-controlled psychotropic medications to Patient A on a concurrent basis, but he did not document discussing the risks and benefits of these medications with Patient A or potential alternative treatments.

23. Between on or about August 22, 2017, and November 15, 2018, Respondent continuously prescribed benzodiazepines to Patient A, including two benzodiazepines concurrently, but he did not document discussing the risks and benefits of these medications with Patient A or potential alternative treatments.

24. Between August 22, 2017, and November 15, 2018, Respondent committed gross negligence in his care and treatment of Patient A, which included, but was not limited to, the following:

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A. For all visits that took place during this timeframe, Respondent failed to maintain adequate and accurate medical records for Patient A in that Respondent's progress notes were substantially illegible; failed to document any medical history, including any subjective or interval history, treatment plan, or justification or rationale for treatment; and failed to document the changes made to the medication regimen and the reasons for the changes;

B. Respondent continuously prescribed multiple, non-controlled psychotropic medications (i.e., Topamax, duloxetine, prazosin, propranolol, quetiapine, mirtazapine, trazodone) to Patient A without documenting any informed consent from Patient A;

C. Respondent continuously prescribed benzodiazepines to Patient A, including two benzodiazepines concurrently, without documenting a medical history, clinical indication, or a complete and reconciled list of medications taken by Patient A; and

D. Respondent continuously prescribed benzodiazepines to Patient A, including two benzodiazepines concurrently, without documenting any informed consent from Patient A.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

25. Respondent has subjected his Physician's and Surgeon's Certificate No. A 34717 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged hereinafter:

26. Paragraphs 10 through 24, above, are hereby incorporated by reference and re-alleged as if fully set forth herein.

27. Between August 22, 2017, and November 15, 2018, Respondent committed repeated negligent acts in his care and treatment of Patient A, which included, but were not limited to, the following:

A. For all visits that took place during this timeframe, Respondent failed to maintain adequate and accurate medical records for Patient A in that Respondent's progress notes were substantially illegible; failed to document any medical history, including any subjective or interval history, treatment plan, or justification or rationale for treatment; and failed to document the changes made to the medication regimen and the reasons for the changes;

B. Respondent continuously prescribed multiple, non-controlled psychotropic medications (i.e., Topamax, duloxetine, prazosin, propranolol, quetiapine, mirtazapine, trazodone) to Patient A without documenting any informed consent from Patient A;

C. Respondent continuously prescribed benzodiazepines to Patient A, including two benzodiazepines concurrently, without documenting a medical history, clinical indication, or a complete and reconciled list of medications taken by Patient A;

D. Respondent continuously prescribed benzodiazepines to Patient A, including two benzodiazepines concurrently, without documenting any informed consent from Patient A; and

E. Respondent prescribed alprazolam to Patient A on or about October 16, 2018, and November 15, 2018, without reviewing the CURES database.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

28. Respondent has subjected his Physician's and Surgeon's Certificate No. A 34717 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records regarding his care and treatment of Patient A, as more particularly alleged in paragraphs 10 through 27, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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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. A 34717, issued to Respondent Divyakant J. Kikani, M.D.;

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

3. Ordering Respondent Divyakant J. Kikani, 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: JUN 11 2024

for

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

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