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

In the Matter of the First Amended Accusation Against: **KHRISTINE ELAINE EROSHEVICH, M.D.** **501 South Beverly Drive, 3rd Floor** **Beverly Hills, CA 90212** **Physician's and Surgeon's Certificate No. C37980** Respondent.	Case No. 17-2009-197998 **First Amended** **ACCUSATION**

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about May 8, 1978, the Medical Board of California issued Physician's and Surgeon's Certificate Number C37980 to Kristine Elaine Eroshevich, M.D. (Respondent). The Physician's and Surgeon's Certificate will expire, unless renewed, on November 30, 2011.

JURISDICTION

3. This First Amended Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section

references are to the Business and Professions Code unless otherwise indicated.

4. 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 division, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

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

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Be publicly reprimanded by the division.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the division 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 division 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."

5. Section 2234 of the Code states:

"The Division of Medical Quality[1] 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 [Chapter 5, the Medical

[1] References to the Division of Medical Quality are deemed to refer to the Medical Board of California pursuant to Business and Professions Code section 2002.

Practice Act].

"(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 which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

6. Section 2261 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

7. Labor Code section 4628 provides as follows:

"(a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:

(1) Taking a complete history.

(2) Reviewing and summarizing prior medical records.

(3) Composing and drafting the conclusions of the report.

"(b) The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing the evaluation was not in compliance with the guidelines established by the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor.

"(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

"(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

"(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

"(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars ($1,000) for each violation to be assessed by a workers' compensation judge or the appeals board. All civil penalties collected under this section shall be deposited in the Workers' Compensation Administration Revolving Fund.

"(g) A physician who is assessed a civil penalty under this section may be terminated,

suspended, or placed on probation as a qualified medical evaluator pursuant to subdivisions (k) and (l) of Section 139.2.

"(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

"(i) Any person billing for medical-legal evaluations, diagnostic procedures, or diagnostic services performed by persons other than those employed by the reporting physician or physicians, or a medical corporation owned by the reporting physician or physicians shall specify the amount paid or to be paid to those persons for the evaluations, procedures, or services. This subdivision shall not apply to any procedure or service defined or valued pursuant to Section 5307.1.

"(j) The report shall contain a declaration by the physician signing the report, under penalty of perjury, stating:

'I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true.'

The foregoing declaration shall be dated and signed by the reporting physician and shall indicate the county wherein it was signed.

"(k) The physician shall provide a curriculum vitae upon request by a party and include a statement concerning the percent of the physician's total practice time that is annually devoted to medical treatment."

8. Title 8, California Code of Regulations, section 49.8 provides as follows:

"A medical evaluation concerning a claim for psychiatric injury (whether specific or cumulative in nature) shall not be completed by a QME in less than one hour of face to face time. One hour is considered the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report the amount of

face to face time actually spent with the injured worker and explain in detail any variance below the minimum amount of face to face time stated in this regulation."

9. Title 8, California Code of Regulations, section 49 provides in pertinent part as follows:

"(b) Face to Face time. "Face to face time" means only that time the evaluator is present with an injured worker. This includes the time in which the evaluator performs such tasks as taking a history, performing a physical examination or discussing the worker's medical condition with the worker. Face to face time excludes time spent on research, records review and report writing. Any time spent by the injured worker with clinical or clerical staff who perform diagnostic or laboratory tests (including blood tests or x-rays) or time spent by the injured worker in a waiting room or other area outside the evaluation room is not included in face to face time."

10. Penal Code section 118, subdivision (a), provides as follows:

"Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

"This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California."

FIRST CAUSE FOR DISCIPLINE

(Dishonest Acts)

11. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that she engaged in dishonest acts by making false statements in a psychiatric report and billing statement regarding a workers compensation claimant and in a psychiatric report and

billing statement regarding an applicant for disability payments. The circumstances are as follows:

Claimant T.P.

A. On or about September 11, 2006, workers compensation claimant T.P. was scheduled for a October 12, 2006, psychiatric evaluation with Respondent. The evaluation was subsequently rescheduled to November 2, 2006.

B. On or about November 2, 2006, claimant T.P. presented to Respondent's office for a psychiatric evaluation. An employee of Respondent, K. Cahoon, an unlicensed and/or non-certified history taker, met with the claimant and took a psychiatric history. A colleague of Respondent, John A. Cahman, Ph.D., met with the claimant and performed a mental status exam. The claimant did not meet with Respondent face to face at any time.

C. On or about November 2, 2006, Respondent signed a Preliminary Report regarding claimant T.P. in which Respondent stated, "The above named patient was examined by me." This statement was false since in truth and fact, Respondent did not examine the patient.

D. On or about November 23, 2006, Respondent provided a 38 page report, entitled "Qualified Medical Evaluation: Psychiatry," regarding claimant T.P. to the State Compensation Insurance Fund. Respondent declared under penalty of perjury as follows: "I, Kristine Eroshevich, M.D., Ph.D., personally took the pertinent history of the applicant and performed the psychiatric examination." This statement was false since in truth and fact, Respondent did not personally take the history nor personally perform the psychiatric examination of claimant T.P. Respondent in the same report also declared under penalty of perjury that "[A]ll tests were administered, scored and interpreted by me (unless otherwise indicated)." This statement was false since in truth and fact, Respondent did not administer any of the tests. Respondent signed the name of John A. Cahman, Ph.D. to the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. without the authorization of John A. Cahman, Ph.D.

E. On or about November 23, 2006, Respondent billed the State Compensation

Insurance Fund for an Initial Complex Psychiatric Evaluation. On the billing statement was written the following: "This report constitutes an ML 103 Complex Med-Legal Evaluation. Over four hours were spent in interviewing the applicant and preparing this report....This is a psychiatric evaluation." This billing statement was false since in truth and fact Respondent did not interview the applicant, claimant T.P.

F. On or about August 28, 2007, Respondent issued a supplemental report, under penalty of perjury, in connection with her evaluation of claimant T.P., in which she admitted that, contrary to her November 23, 2006, statement under penalty of perjury, John A. Cahman, Ph.D. performed the clinical interview of claimant T.P. and that K. Cahoon "assisted in obtaining information" from the claimant, which information was reviewed by John A. Cahman, Ph.D. with claimant T.P.

Claimant L.C.

G. On or about June 22, 2004, disability claimant L.C. was scheduled for a July 16, 2004, psychiatric evaluation with Respondent.

H. On or about July 16 and 23, 2004, claimant L.C. presented to Respondent's office for a psychiatric evaluation. A colleague of Respondent, Thompson Kelly, Ph.D., met with the claimant and took a psychiatric history and performed a psychiatric examination. The claimant did not meet with Respondent face to face at any time.

I. On or about July 23, 2004, Respondent signed a Preliminary Report regarding claimant L.C. in which Respondent stated, "The above named patient was examined by me." This statement was false since in truth and fact, Respondent did not examine the patient.

J. On or about August 23, 2004, Respondent provided a 44 page report, entitled "Psychiatric Evaluation," regarding claimant L.C. to the Los Angeles County Employee Retirement Association (LACERA). (1) Respondent stated on page 1, paragraph 2 as follows: "I took the applicant's history and performed the psychiatric examination." This statement was false since in truth and fact, Respondent did not personally take the history nor personally perform the psychiatric examination of claimant L.C. (2) Respondent in the

same report at page 6, paragraph 2 also stated that "I ask the applicant if she ever reported her stress and/or emotional problems to her employer...." This statement was false since in truth and fact, Respondent did not ask the claimant any questions since Respondent was not present at the examination. (3) In the same report at page 6, paragraph 3, Respondent stated, "When I ask if she had experienced any non-work-related concerns or problems during the course of her employment...." This statement was false since in truth and fact, Respondent did not ask the claimant any questions since Respondent was not present at the examination. (4) In the same report at page 8, paragraph 2, Respondent stated, "When I ask if she would return to her former job if it were available...." This statement was false since in truth and fact, Respondent did not ask the claimant any questions since Respondent was not present at the examination.

K. On or about August 23, 2004, Respondent billed LACERA for a Base Exam using CPT code 99244, which requires a comprehensive history, a comprehensive examination and medical decision making of moderate complexity. This billing statement was false since in truth and fact Respondent did not interview (take a history from) the applicant, claimant L.C., and did not perform an examination of the applicant, claimant L.C. Respondent also billed LACERA for Add Time using CPT code 99354, which requires a prolonged physician service in the office with direct (face-to-face) patient contact beyond the usual service. This billing statement was false since in truth and fact Respondent did not have face-to-face time with the applicant, claimant L.C., either in an interview or for an examination.

SECOND CAUSE FOR DISCIPLINE

(Creation of a False Record)

12. Respondent is subject to disciplinary action under section 2261 of the Code in that she knowingly made and/or signed documents (i.e., psychiatric reports and related documents) directly or indirectly related to the practice of medicine which falsely represented the existence or nonexistence of a state of facts. The circumstances are as follows:

A. The facts and circumstances set forth in paragraph 11 above are incorporated

here as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Dishonest Acts)

13. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that she engaged in dishonest acts by committing perjury within the meaning of Penal Code section 118, subdivision (a). The circumstances are as follows:

A. The facts and circumstances set forth in paragraph 11.A. through 11.D. above are incorporated here as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

14. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that she was grossly negligent in performing evaluations of two individuals. The circumstances are as follows:

A. The facts and circumstances set forth in paragraph 11 above are incorporated here as if fully set forth.

B. On or about November 2, 2006, and thereafter, Respondent was grossly negligent when she failed to conduct a face-to-face psychiatric examination of claimant T.P. in connection with her "Qualified Medical Evaluation: Psychiatry," regarding claimant T.P.

C. On or about November 23, 2006, Respondent was grossly negligent when she authored the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. without first having conducted a face-to-face psychiatric examination of claimant T.P.

D. On or about November 23, 2006, Respondent was grossly negligent when she signed under penalty of perjury the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. in which she declared that she had personally examined claimant T.P. when in fact she had not.

E. On or about November 23, 2006, Respondent was grossly negligent when she signed the name of John A. Cahman, Ph.D. to the "Qualified Medical Evaluation:

Psychiatry" regarding claimant T.P. without the authorization of John A. Cahman, Ph.D.

F. On or about November 23, 2006, Respondent was grossly negligent when she billed for services that she did not personally perform in connection with the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. and overstated the quantity of time spent in rendering those services.

G. On or about July 16 and 23, 2004, and thereafter, Respondent was grossly negligent when she failed to personally examine claimant L.C. in connection with her psychiatric evaluation of claimant L.C.

H. On or about July 16 and 23, 2004, and thereafter, Respondent was grossly negligent when she used an unlicensed and/or non-certified history taker in connection with the psychiatric evaluation of claimant L.C.

I. On or about August 23, 2004, Respondent was grossly negligent when she authored the report entitled "Psychiatric Evaluation" regarding claimant L.C. without first having conducted a face-to-face psychiatric examination of claimant L.C., and misleading the reader of the report to believe that Respondent had in fact examined claimant L.C.

J. On or about August 23, 2004, Respondent was grossly negligent when she took credit in the "Psychiatric Evaluation" report regarding claimant L.C. for the examination performed by Thompson Kelly, Ph.D. and passed it off as her own.

FIFTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

15. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that she engaged in repeated negligent acts in performing evaluations of two individuals. The circumstances are as follows:

A. The facts and circumstances set forth in paragraph 11 above are incorporated here as if fully set forth.

B. On or about November 2, 2006, and thereafter, Respondent was negligent when she failed to conduct a face-to-face psychiatric examination of claimant T.P. in connection with her "Qualified Medical Evaluation: Psychiatry," regarding claimant T.P.

C. On or about November 23, 2006, Respondent was negligent when she authored the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. without first having conducted a face-to-face psychiatric examination of claimant T.P.

D. On or about November 23, 2006, Respondent was negligent when she signed under penalty of perjury the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. in which she declared that she had personally examined claimant T.P. when in fact she had not.

E. On or about November 23, 2006, Respondent was negligent when she signed the name of John A. Cahman, Ph.D. to the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. without the authorization of John A. Cahman, Ph.D.

F. On or about November 23, 2006, Respondent was negligent when she billed for services that she did not personally perform in connection with the "Qualified Medical Evaluation: Psychiatry" regarding claimant T.P. and overstated the quantity of time spent in rendering those services.

G. On or about July 16 and 23, 2004, and thereafter, Respondent was negligent when she failed to personally examine claimant L.C. in connection with her psychiatric evaluation of claimant L.C.

H. On or about July 16 and 23, 2004, and thereafter, Respondent was negligent when she used an unlicensed and/or non-certified history taker in connection with the psychiatric evaluation of claimant L.C.

I. On or about August 23, 2004, Respondent was negligent when she authored the report entitled "Psychiatric Evaluation" regarding claimant L.C. without first having conducted a face-to-face psychiatric examination of claimant L.C., and misleading the reader of the report to believe that Respondent had in fact examined claimant L.C.

J. On or about August 23, 2004, Respondent was negligent when she took credit in the "Psychiatric Evaluation" report regarding claimant L.C. for the examination performed by Thompson Kelly, Ph.D. and passed it off as her own.

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SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

16. Respondent is subject to disciplinary action under section 2234 of the Code in that he engaged in unprofessional conduct. The circumstances are as follows:

A. The facts and circumstances set forth in paragraphs 11 through 15 above are incorporated here as if fully set forth.

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 C37980, issued to Kristine Elaine Eroshevich, M.D.

2. Revoking, suspending or denying approval of Khristine Eroshevich, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. Ordering Khristine Eroshevich, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring;

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

DATED: August 31, 2011

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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