In the Matter of the Accusation
Against:
ROBERT S. SMITH, M.D.
Physician's and Surgeon's Certificate No. A 18081
Respondent

Case No. 8002014002921

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 5, 2016.

IT IS SO ORDERED September 28, 2016.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
   Executive Director
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Case No. 8002014002921;
ROBERT SMITH, M.D. OAH No. 2015120020
2414 Front Street, Unit 26
San Diego, CA 92101

Physician’s and Surgeon’s Certificate
No. A18081,

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (complainant) is the Executive Director of the Medical Board
of California. She brought this action solely in her official capacity and is represented in this
matter by Kamala D. Harris, Attorney General of the State of California, by Harinder K. Kapur,
Deputy Attorney General.

2. Robert Smith, M.D. (respondent) is represented in this proceeding by attorney Robert
W. Frank Esq., whose address is 1010 Second Ave., Ste. 2500, San Diego, CA 92101-4959.
3. On or about July 1, 1958, the Medical Board of California issued Physician’s and Surgeon’s Certificate No. A18081 to respondent Robert Smith, M.D. The Physician’s and Surgeon’s Certificate was in full force and effect at all times relevant to the charges and allegations brought in Accusation No. 8002014002921, will expire on September 30, 2017, unless renewed.

JURISDICTION

4. On or about August 12, 2015, Accusation No. 8002014002921 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against respondent. A true and correct copy of Accusation No. 8002014001921 and all other statutorily required documents were properly served on respondent. Respondent timely filed his Notice of Defense contesting Accusation No. 8002014001921. A true and correct copy of Accusation No. 8002014002921 is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 8002014002921. Respondent also has carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in Accusation No. 8002014002921; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.
CULPABILITY

8. Respondent agrees that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 8002014002921, and that he has thereby subjected his Physician’s and Surgeon’s Certificate No. A18081 to disciplinary action.

9. Respondent further agrees that if he ever petitions for reinstatement of his Physician’s and Surgeon’s Certificate No. A18081, or if an accusation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 8002014002921 shall be deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California or elsewhere.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician’s and Surgeon’s Certificate No. A18081 without further process.

CONTINGENCY

11. Pursuant to Business and Professions Code section 2224, subdivision (b), the Executive Director of the Medical Board of California has been delegated the authority to adopt or reject a stipulation for surrender of a Physician’s and Surgeon’s Certificate.

12. The parties agree that this Stipulated Surrender of License and Order shall be null and void and not binding upon the parties unless approved by the Executive Director on behalf of the Medical Board of California. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Order, the Executive Director and/or the Medical Board may receive oral and written communications from its staff and/or the Attorney General’s Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Medical Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and Order, with the exception of this paragraph, it
shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
that should this Stipulated Surrender of License and Order be rejected for any reason by the
Executive Director on behalf of the Board, Respondent will assert no claim that the Board, or any
member thereof, was prejudiced by its/his/his review, discussion and/or consideration of this
Stipulated Surrender of License and Order or of any matter or matters related hereto.

13. The Executive Director shall have a reasonable period of time in which to consider
and act on this stipulation after receiving it. By signing this stipulation, Respondent fully
understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
prior to the time the Executive Director considers and acts upon it.

ADDITIONAL PROVISIONS

14. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
herein to be an integrated writing representing the complete, final and exclusive embodiment of
the agreement of the parties in the above-entitled matter.

15. The parties understand and agree that copies of this Stipulated Surrender of License
and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of
original documents and signatures and, further, that such copies and signatures shall have the
same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that
the Executive Director of the Medical Board may, without further notice to or opportunity to be
heard by respondent, issue and enter the following Order on behalf of the Board:

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ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A18081, issued to respondent Robert Smith, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against respondent. This stipulation constitutes a record of the discipline and shall become a part of respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 8002014002921 shall be deemed to be true, correct and admitted by respondent when the Board determines whether to grant or deny the petition.

5. If respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 8002014002921 shall be deemed to be true, correct, and admitted by respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney, Robert W. Frank Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A18081. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 7-26-2016

ROBERT SMITH, M.D.
Respondent

I have read and fully discussed with respondent Robert Smith, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 8-1-16

ROBERT W. FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 8/9/2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

Michael J. Yun
Deputy Attorney General
Attorneys for Complainant
ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and
have fully discussed it with my attorney, Robert W. Frank Esq. I understand the stipulation and
the effect it will have on my Physician's and Surgeon's Certificate No. A18081. I enter into this
Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently,
and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: ________________________

ROBERT SMITH, M.D.
Respondent

I have read and fully discussed with respondent Robert Smith, M.D. the terms and
conditions and other matters contained in this Stipulated Surrender of License and Disciplinary
Order. I approve its form and content.

DATED: ________________________

ROBERT W. FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby
respectfully submitted for consideration by the Medical Board of California of the Department of
Consumer Affairs.

Dated: ________________________

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

HARINDER K. KAPUR
Deputy Attorney General
Attorneys for Complainant
In the Matter of the Accusation Against: 

ROBERT SMITH, M.D. 
5030 Camino De La Siesta, Suite 208 
San Diego, CA 92108 

Physician’s and Surgeon’s Certificate No. A18081, 

Respondent. 

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 1, 1958, the Medical Board issued Physician’s and Surgeon’s Certificate Number A18081 to Robert Smith, 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 September 30, 2015, unless renewed.
3. This 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 (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 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."

5. 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:
"...

(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.

"...

6. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

7. 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.

(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 his or her 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."

8. 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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that respondent committed gross negligence in his care and treatment of patient M.K.C., as more particularly alleged hereinafter:

10. Beginning on or about May 15, 2012 and continuing to on or about August 2, 2013, respondent provided patient M.K.C., a physician assistant who was employed at the same medical office with respondent, twenty-two prescriptions, including refills, for controlled substances. The prescriptions were for Adderall\(^1\), Norco\(^2\), Hydrocodone\(^3\), and Lortab\(^4\).

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1 Adderall is a brand name for dextroamphetamine and amphetamine, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It is an amphetamine salts used for attention-deficit hyperactivity disorder and narcolepsy.

2 Norco is a brand name for acetaminophen and hydrocodone bitartrate, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.
11. On or about May 15, 2012, respondent provided patient M.K.C. with a prescription for Hydrocodone 7.5/500 mg, with five refills. Respondent failed to conduct any examination of patient M.K.C. Respondent failed to maintain any documentation regarding his care and treatment of patient M.K.C. on this date, or the medical indication for this prescription.

12. On or about August 7, 2012, respondent provided patient M.K.C. with a prescription for Lortab 7.5/500 mg, with five refills. Respondent failed to conduct any examination of patient M.K.C. Respondent failed to maintain any documentation regarding his care and treatment of patient M.K.C. on this date, or the medical indication for this prescription.


14. On or about January 2, 2013, respondent provided patient M.K.C. with a prescription for Hydrocodone 7.5/500, with one refill. Respondent failed to conduct any examination of patient M.K.C. Respondent failed to maintain any documentation regarding his care and treatment of patient M.K.C. on this date, or the medical indication for this prescription.

15. On or about January 30, 2013, respondent provided patient M.K.C. with a prescription for Hydrocodone 7.5/325, with four refills. Respondent failed to conduct any examination of patient M.K.C. Respondent failed to maintain any documentation regarding his care and treatment of patient M.K.C. on this date, or the medical indication for this prescription.

16. On or about March 27, 2013, respondent provided patient M.K.C. with a prescription for Adderall. A note, also dated March 27, 2013, in patient M.K.C.'s chart states “visited with patient today. Is in need of an Rx for Adderall, 30 mg ER, # 60 @ i bid. Rx written for patient. No vitals were done.”

(...continued)

Code section 4022.

1 Hydrocodone is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

4 Lortab is a brand name for hydrocodone, a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.
respondent denied making this entry in the chart, although he did state that he provided patient M.K.C. with the prescription. Respondent failed to conduct any examination of patient M.K.C. Respondent failed to maintain any documentation regarding his care and treatment of patient M.K.C. on this date, or the medical indication for this prescription.

17. On or about June 7, 2013, respondent prescribed Adderall 30 mg and Norco 7.5/325 mg, with four refills, to patient M.K.C. Respondent failed to conduct any examination of patient M.K.C. Respondent failed to maintain any documentation regarding his care and treatment of patient M.K.C. on this date, or the medical indication for this prescription.

18. On or about August 3, 2013, respondent prescribed Adderall 30 mg to patient M.K.C. Respondent did not conduct any examination of patient M.K.C. Respondent failed to maintain any documentation regarding his care and treatment of patient M.K.C. on this date, or the medical indication for this prescription.

19. According to a CURES report for 2013, respondent prescribed Hydrocodone, Adderall and Norco to patient M.K.C.

20. During an interview with Investigator A.D., on December 4, 2014, respondent stated that he did not consider patient M.K.C. to be his patient; that he never saw patient M.K.C. for a medical visit; and neither did respondent ever conduct an examination of patient M.K.C.


22. Respondent committed gross negligence in his care and treatment of patient M.K.C. which included, but was not limited to, the following:


   B. Respondent failed to maintain adequate and accurate records of the care and treatment that he provided to patient M.K.C.
SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

23. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that respondent committed repeated negligent acts in his care and treatment of patient M.K.C., as more particularly alleged in paragraphs 9 through 22, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE
(Prescribing Without An Appropriate Prior Examination and Medical Indication)

24. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2242, of the Code, in that, without performing an appropriate prior examination and medical indication, respondent prescribed Hydrocodone, Lortab, Adderall and Norco to patient M.K.C. during 2012 and 2013, as more particularly alleged in paragraphs 9 through 22, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE
(Violation of Statutes Regulating Drugs)

25. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the Code, in that, he violated statutes regulating drugs in his care and treatment of patient M.K.C., as more particularly alleged in paragraphs 9 through 22, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

26. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that respondent failed to maintain adequate and accurate records regarding his care and treatment of patient M.K.C., as more particularly alleged in paragraphs 9 through 22, above, which are hereby incorporated by reference and realleged 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 A18081, issued to respondent Robert Smith, M.D.;

2. Revoking, suspending or denying approval of respondent Robert Smith, M.D.’s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering respondent Robert Smith, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: August 12, 2015

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant
Declaration of Socorro Tongco
(in Support of Notice of Provider Suspension)

I, Socorro Tongco, hereby declare and state as follows:

1. I make this declaration of my own personal knowledge and if called to testify, I could and would testify competently to the matters stated herein.

2. I am employed by the State of California, Department of Industrial Relations ("Department"), Office of the Director, as a Special Investigator. I have been an investigator with the Department since 2006. I make this Declaration in support of the "Notice of Provider Suspension - Workers' Compensation" issued by the Acting Administrative Director of the Division of Workers' Compensation, attached herein.

3. As part of my duties as a Special Investigator, I have access to investigative tools and internet-based information databases such as Thomson Reuters Clear, and LexisNexis Accurint. These database resources provide access to public and non-public records that we use as necessary, for purposes of our legal work and representation of the Department in workers' compensation cases and in other litigation, to locate individuals, uncover assets, and verify identities.

4. On or about April 17, 2018, I noted the address of record for Robert S Smith with the State of California, Department of Consumer Affairs, Medical Board as: 2414 Front Street Unit 26, San Diego, CA 92101.

5. On or about May 31, 2018, I ran a search on Mr. Smith in the Lexis Nexis Accurint database. The searches provided the following information: Robert S Smith aka Robert Sydney Smith is associated with two addresses in San Diego, CA and an address in Del Mar, CA (I will not state the addresses so as to not reveal Mr. Smith's home address).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 31st day of May, 2018, in Oakland, California.

Socorro Tongco
Socorro Tongco