

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

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

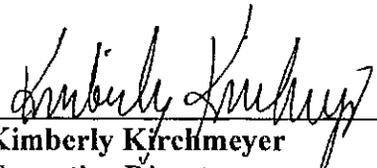
DECISION AND ORDER

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

1 KAMALA D. HARRIS  
Attorney General of California  
2 MATTHEW M. DAVIS  
Supervising Deputy Attorney General  
3 HARINDER K. KAPUR  
Deputy Attorney General  
4 State Bar No. 198769  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
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6 San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

12  
13 **In the Matter of the Accusation Against:**

**Case No. 8002014002921;**  
**OAH No. 2015120020**

14 **ROBERT SMITH, M.D.**  
15 **2414 Front Street, Unit 26**  
16 **San Diego, CA 92101**

**STIPULATED SURRENDER OF**  
**LICENSE AND DISCIPLINARY ORDER**

17 **Physician's and Surgeon's Certificate**  
**No. A18081,**

18 **Respondent.**

19  
20 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 **PARTIES**

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

27 2. Robert Smith, M.D. (respondent) is represented in this proceeding by attorney Robert  
28 W. Frank Esq., whose address is 1010 Second Ave., Ste. 2500, San Diego, CA 92101-4959.



1 CULPABILITY

2 8. Respondent agrees that, at an administrative hearing, complainant could establish a  
3 *prima facie* case with respect to the charges and allegations contained in Accusation No.  
4 8002014002921, and that he has thereby subjected his Physician's and Surgeon's Certificate No.  
5 A 18081 to disciplinary action.

6 9. Respondent further agrees that if he ever petitions for reinstatement of his Physician's  
7 and Surgeon's Certificate No. A 18081, or if an accusation is filed against him before the Medical  
8 Board of California, all of the charges and allegations contained in Accusation No.  
9 8002014002921 shall be deemed true, correct, and fully admitted by respondent for purposes of  
10 any such proceeding or any other licensing proceeding involving respondent in the State of  
11 California or elsewhere.

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

15 CONTINGENCY

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

19 12. The parties agree that this Stipulated Surrender of License and Order shall be null and  
20 void and not binding upon the parties unless approved by the Executive Director on behalf of the  
21 Medical Board of California. Respondent fully understands and agrees that in deciding whether  
22 or not to approve and adopt this Stipulated Surrender of License and Order, the Executive  
23 Director and/or the Medical Board may receive oral and written communications from its staff  
24 and/or the Attorney General's Office. Communications pursuant to this paragraph shall not  
25 disqualify the Executive Director, the Board, any member thereof, and/or any other person from  
26 future participation in this or any other matter affecting or involving Respondent. In the event  
27 that the Executive Director on behalf of the Medical Board does not, in her discretion, approve  
28 and adopt this Stipulated Surrender of License and Order, with the exception of this paragraph, it

1 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied  
2 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees  
3 that should this Stipulated Surrender of License and Order be rejected for any reason by the  
4 Executive Director on behalf of the Board, Respondent will assert no claim that the Board, or any  
5 member thereof, was prejudiced by its/his/his review, discussion and/or consideration of this  
6 Stipulated Surrender of License and Order or of any matter or matters related hereto.

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

11 **ADDITIONAL PROVISIONS**

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

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

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

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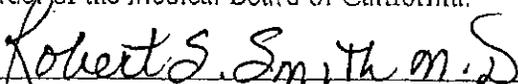


1 ACCEPTANCE

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

7 DATED:

7-26-2016

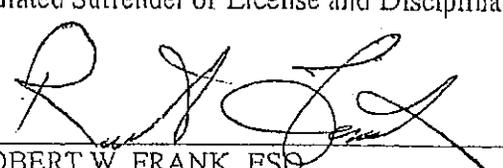
  
ROBERT SMITH, M.D.

Respondent

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

12 DATED:

8-1-16

  
ROBERT W. FRANK, ESQ.

Attorney for Respondent

15 ENDORSEMENT

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

19 Dated:

8/9/2016

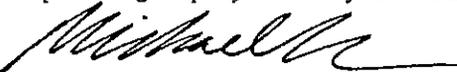
Respectfully submitted,

KAMALA D. HARRIS

Attorney General of California

MATTHEW M. DAVIS

Supervising Deputy Attorney General



Michael J. Yun

~~HARINDER K. KAPUR~~

Deputy Attorney General

Attorneys for Complainant

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**Exhibit A**

**Accusation No. 8002014002921**

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 HARINDER K. KAPUR  
Deputy Attorney General  
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10 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12  
13 **In the Matter of the Accusation Against:**

Case No. 8002014002921

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

**ACCUSATION**

16 **Physician's and Surgeon's Certificate**  
17 **No. A18081,**

**Respondent.**

18  
19 **Complainant alleges:**

20 **PARTIES**

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

24 2. On or about July 1, 1958, the Medical Board issued Physician's and Surgeon's  
25 Certificate Number A18081 to Robert Smith, M.D. (respondent). The Physician's and Surgeon's  
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will  
27 expire on September 30, 2015, unless renewed.

28 **///**

## JURISDICTION

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2       3.     This Accusation is brought before the Medical Board of California (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5       4.     Section 2227 of the Code states:

6       “(a) A licensee whose matter has been heard by an administrative law judge of the Medical  
7 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default  
8 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary  
9 action with the board, may, in accordance with the provisions of this chapter:

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

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

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

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

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

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

25       5.     Section 2234 of the Code, states:

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

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“...”

“(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.



1 11. On or about May 15, 2012, respondent provided patient M.K.C. with a prescription  
2 for Hydrocodone 7.5/500 mg, with five refills. Respondent failed to conduct any examination of  
3 patient M.K.C. Respondent failed to maintain any documentation regarding his care and  
4 treatment of patient M.K.C. on this date, or the medical indication for this prescription.

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

9 13. According to a Controlled Substance Utilization Review & Evaluation System  
10 (CURES) report for 2012, respondent prescribed Hydrocodone and Lortab to patient M.K.C.

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

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

19 16. On or about March 27, 2013, respondent provided patient M.K.C. with a prescription  
20 for Adderall. A note, also dated March 27, 2013, in patient M.K.C.'s chart states "visited with  
21 patient today. Is in need of an Rx for Adderall, 30 mg ER, # 60 @ i bid. Rx written for patient.  
22 No vitals were done." During an interview with Investigator A.D., on December 4, 2014,

23 \_\_\_\_\_  
24 (...continued)  
Code section 4022.

25 <sup>3</sup> Hydrocodone is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision  
26 (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

27 <sup>4</sup> Lortab is a brand name for hydrocodone, a Schedule III controlled substance pursuant to Health and Safety Code  
28 section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 respondent denied making this entry in the chart, although he did state that he provided patient  
2 M.K.C. with the prescription. Respondent failed to conduct any examination of patient M.K.C.  
3 Respondent failed to maintain any documentation regarding his care and treatment of patient  
4 M.K.C. on this date, or the medical indication for this prescription.

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

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

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

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

18 21. Respondent never documented any information regarding his care and treatment of  
19 patient M.K.C. in the clinic's record keeping system. Respondent was unaware that patient  
20 M.K.C. had any records maintained at the practice.

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

23 A. Respondent prescribed controlled substances to patient M.K.C. on or abut May  
24 15, 2012, August 7, 2012, January 2, 2013, January 30, 2013, March 27, 2013, June 7,  
25 2013, and August 3, 2013, without performing an appropriate prior examination and any  
26 medical indication for the prescriptions.

27 B. Respondent failed to maintain adequate and accurate records of the care and  
28 treatment that he provided to patient M.K.C.

1 SECOND CAUSE FOR DISCIPLINE

2 (Repeated Negligent Acts)

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

8 THIRD CAUSE FOR DISCIPLINE

9 (Prescribing Without An Appropriate Prior Examination and Medical Indication)

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

16 FOURTH CAUSE FOR DISCIPLINE

17 (Violation of Statutes Regulating Drugs)

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

22 FIFTH CAUSE FOR DISCIPLINE

23 (Failure to Maintain Adequate and Accurate Records)

24 26. Respondent is further subject to disciplinary action under sections 2227 and 2234, as  
25 defined by section 2266, of the Code, in that respondent failed to maintain adequate and accurate  
26 records regarding his care and treatment of patient M.K.C., as more particularly alleged in  
27 paragraphs 9 through 22, above, which are hereby incorporated by reference and realleged as if  
28 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*

SD2015700730  
81068977.doc

**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 31<sup>th</sup> day of May, 2018, in Oakland, California.

*Socorro Tongco*  
\_\_\_\_\_  
Socorro Tongco