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

11 In the Matter of the Accusation Against:

Case No. 18-2012-226384

12 FREDERICK M. SILVERS, M.D.
10921 Wilshire Blvd., #514
13 Los Angeles, CA 90024

OAH No. 2015101096

**DEFAULT DECISION
AND ORDER**

14 Physician's and Surgeon's Certificate
No. A 23192,

[Gov. Code, § 11520]

15
16 Respondent.

17 FINDINGS OF FACT

18 1. On or about July 30, 2015, Complainant Kimberly Kirchmeyer, in her official
19 capacity as the Executive Director of the Medical Board of California, Department of Consumer
20 Affairs, filed Accusation No. 18-2012-226384 against Frederick M. Silvers, M.D. ("Respondent")
21 before the Medical Board of California.

22 2. On or about February 14, 1969, the Medical Board of California ("Board") issued
23 Physician's and Surgeon's Certificate No. A 23192 to Respondent. That Certificate was in full
24 force and effect at all times relevant to the charges brought herein and will expire on August 31,
25 2017, unless renewed. A true and correct copy of the Certificate of Licensure is attached as
26 Exhibit A, and is incorporated by reference.

27 3. On or about July 30, 2015, Rozana Firdaus, an employee of the Board, served by
28 Certified Mail a copy of Accusation No. 18-2012-226384, Statement to Respondent, Notice of

1 Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7
2 to Respondent's address of record with the Board, which was and is 10921 Wilshire Blvd., #514,
3 Los Angeles, California, 90024. A true and correct copy of the Accusation, the related
4 documents, and Declaration of Service are attached as Exhibit B, and are incorporated by
5 reference.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c).

8 5. On or about August 18, 2015, Respondent's attorney, Alan I. Kaplan, Esq., returned a
9 Notice of Defense to counsel for Complainant, requesting a hearing in this matter. (See
10 Declaration of Deputy Attorney General Claudia Ramirez ("Ramirez Decl.") at ¶ 3, which is
11 attached as Exhibit H, and is incorporated by reference.) On December 8, 2015, a hearing was set
12 for June 13, 2016, through June 21, 2016. (*Ibid.*) A true and correct copy of Respondent's
13 Notice of Defense is attached as Exhibit C, and is incorporated by reference.

14 6. On April 8, 2016, the parties entered into a stipulated settlement. (Ramirez Decl., at
15 ¶ 4.) The Board voted to adopt the stipulated settlement if modified to include additional terms.
16 (*Ibid.*) Respondent did not accept the additional terms proposed by the Board. (*Ibid.*)
17 Accordingly, on September 16, 2016, a five-day hearing was set for March 6, 2017, through
18 March 10, 2017. (*Ibid.*) On that same date, a Notice of Hearing was served by first-class mail
19 and facsimile on Mr. Kaplan and it informed Respondent that a hearing was set for March 6,
20 2017, through March 10, 2017. (*Ibid.*) A true and correct copy of the Notice of Hearing and
21 Declaration of Service are attached as Exhibit C, and are incorporated by reference.

22 7. On December 19, 2016, Mr. Kaplan withdrew as attorney of record for Respondent.
23 (Ramirez Decl., at ¶ 5.) On February 28, 2017, Patricia Egan Daehnke, Esq. entered an
24 appearance as attorney of record for Respondent. (*Ibid.*) On March 1, 2017, Respondent filed a
25 motion to continue trial. (*Ibid.*) On March 3, 2017, the Office of Administrative Hearings denied
26 the motion. (*Ibid.*) On March 4, 2017, Ms. Daehnke withdrew as attorney of record for
27 Respondent. (*Ibid.*)

28 8. On March 6, 2017, Respondent failed to appear at the hearing. (Ramirez Decl., at ¶

1 5.) On that same date, at 9:45 a.m., Administrative Law Judge Howard W. Cohen declared a
2 default and granted Complainant's motion to remand the matter to the Board for action under
3 Government Code section 11520. A true and correct copy of Findings and Declaration of
4 Default; Order of Remand and Declaration of Service are attached as Exhibit C, and is
5 incorporated by reference.

6 9. Government Code section 11506 states, in pertinent part:

7 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
8 notice of defense . . . , and the notice shall be deemed a specific denial of all parts of the
9 accusation . . . not expressly admitted. Failure to file a notice of defense . . . shall constitute a
10 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a
11 hearing"

12 10. Respondent failed to appear for the hearing. He has therefore waived his right to a
13 hearing on the merits of Accusation 18-2012-226384.

14 11. California Government Code section 11520 states, in pertinent part:

15 "(a) If the respondent either fails to file a notice of defense, . . . or to appear at the hearing,
16 the agency may take action based upon the respondent's express admissions or upon other
17 evidence and affidavits may be used as evidence without any notice to respondent. . . ."

18 12. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on
20 Respondent's express admissions by way of default and the evidence before it, contained in
21 Exhibits A through H, finds that the allegations in Accusation No. 18-2012-226384 are true.

22 DETERMINATION OF ISSUES

23 1. Based on the foregoing findings of fact, Respondent Frederick M. Silvers, M.D. has
24 subjected his Physician's and Surgeon's Certificate No. A 23192 to discipline.

25 2. True and correct copies of Respondent's licensing history, Accusation and related
26 documents and Declaration of Service, Notice of Hearing and Declaration of Service, and
27 Findings and Declaration of Default; Order of Remand and Declaration of Service are attached as
28 Exhibits A through C. The declarations of K.R., A.R., Alan A. Abrams, M.D., J.D., FCLM, and

1 Deputy Attorney General Claudia Ramirez in support of the Default Decision and Order are
2 attached as Exhibits D, E, F, and H, respectively. A true and correct copy of the curriculum vitae
3 of Dr. Abrams is attached as Exhibit G.

4 3. The agency has jurisdiction to adjudicate this case by default.

5 4. The Medical Board of California is authorized to revoke Respondent's Physician's
6 and Surgeon's Certificate based upon the following violations alleged in the Accusation:

7 a. Gross Negligence in violation of Business and Professions Code section 2234,
8 subdivision (b).

9 b. General Unprofessional Conduct in violation of Business and Professions Code
10 section 2234.

11 5. In summary, the circumstances are as follows:

12 A. Respondent, a psychiatrist, has been charged with gross negligence and general
13 unprofessional conduct with respect to his care and treatment of two young female patients,
14 Patient K.R. and Patient A.R.

15 Gross-Negligence-Summary

16 B. The gross negligence relates to Respondent's prescribing practices, failure to verify
17 the patients' medical and prescription history, and illegible treatment records.

18 Gross Negligence-Patient K.R.

19 C. The standard of care is that "[p]rescribing abusable controlled substances to a patient
20 with a substance abuse diagnosis should occur when there is a clear medical indication, and
21 alternate treatments are not reasonable. Clear communication with other treatment providers is
22 particularly important to reduce inappropriate prescribing of abusable psychotropic medication."
23 (Abrams Decl., at ¶ 21.)

24 D. Respondent treated K.R. from approximately September of 2011 to approximately
25 November of 2011 (3 months). (Declaration of K.R. ("K.R. Decl."), at ¶¶ 1-2.) K.R. sought
26 treatment from Respondent for Major Depressive Disorder. (*Id.*, at ¶ 2.) Respondent prescribed
27 Adderall (amphetamine and dextroamphetamine), a Schedule II drug and abusable controlled
28 medication to K.R., a patient with a stimulant abuse history, based solely on her self-report that

1 she was taking Adderall. (Abrams Decl., at ¶¶ 24, 28.) Adderall is used to treat narcolepsy and
2 Attention Deficit Hyperactivity Disorder (“ADHD”). (*Id.*, at ¶ 24.) Amphetamines are widely
3 abused and highly addicting. (*Id.*, at ¶ 28.)

4 E. Respondent’s records for K.R. do not contain any discussion of present or prior
5 symptoms to establish the diagnosis of ADHD, or any review of prior treatment records to
6 support the diagnosis of ADHD. (Abrams Decl., at ¶ 24.) K.R. may have ADHD, and Adderall
7 may have been the appropriate treatment, but there is no material in her records that would
8 support that diagnosis. (*Ibid.*) There is no information in her records that Respondent tried to
9 verify a basis for the diagnosis of ADHD. (*Id.*, at ¶¶ 24-25.)

10 F. Respondent prescribing Adderall to K.R., a patient with a stimulant abuse history,
11 based solely on her self-report that she was taking Adderall is an extreme departure from the
12 standard of care. (Abrams Decl., at ¶ 28.)

13 G. Business and Professions Code section 2266 provides: “The failure of a physician and
14 surgeon to maintain adequate and accurate records relating to the provision of services to their
15 patients constitutes unprofessional conduct.” The standard of care is generally that treatment
16 notes must contain sufficient information to allow a new provider to continue the care of the
17 patient. This would require legible treatment records. (Abrams Decl., at ¶ 18.)

18 H. Respondent’s treatment records for K.R. are illegible and would not allow a provider
19 to determine what services were provided to her, what symptoms she had, or the basis for the
20 prescriptions she was provided. (Abrams Decl., at ¶¶ 19-21.) Although Respondent provided a
21 transcription of his handwritten progress notes, the handwritten notes remain illegible and there is
22 no way to verify whether the transcription accurately reflects what is in the handwritten notes.
23 (*Ibid.*) In addition, in the transcription, Respondent states that he cannot follow his own
24 handwritten notes and that he believes notes may be missing. (*Ibid.*) Furthermore, Respondent
25 does not discuss in K.R.’s medical records present or prior symptoms to establish a diagnosis of
26 ADHD. (*Ibid.*) Respondent’s illegible handwritten treatment notes reflects an extreme departure
27 from the standard of care. (Abrams Decl., at ¶ 21.)

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1 Gross Negligence-Patient A.R.

2 I. Respondent treated A.R. from approximately April of 2012 to August 28, 2012 (4
3 months). (Declaration of A.R. ("A.R. Decl."), at ¶ 1.) A.R. sought treatment from Respondent
4 for Attention Deficit Disorder (a.k.a. ADHD), addiction, depression, and sexual trauma. (*Id.*, at ¶
5 2.)

6 J. Respondent's records on A.R. do not contain any discussion of present or prior
7 symptoms to establish the diagnosis of ADHD, or any review of prior treatment records to
8 support the diagnosis of ADHD. (Abrams Decl., at ¶ 46.) A.R. may have had ADHD, but
9 Respondent's records do not address this except to accept A.R.'s report. (*Ibid.*)

10 K. Respondent misunderstood what medications A.R., a substance abusing patient, was
11 taking. (Abrams Decl., at ¶¶ 47-51.) He mistakenly believed she was taking Adderall for
12 ADHD and prescribed it to her. (*Id.*, at ¶ 50.) A.R. was not receiving amphetamines prior to
13 seeing Respondent. (*Id.*, at ¶ 48.) After she began taking Adderall, A.R. shortly thereafter began
14 drinking and self-mutilating. (*Id.*, at ¶ 50.)

15 L. Respondent also mistakenly believed she was taking Zoloft (sertraline) and increased
16 the mistaken prescription to 100 mg per day. (Abrams Decl., at ¶ 49.) She was actually taking
17 Prozac (fluoxetine). (*Id.*, at ¶ 47.) The mistaken substitution of sertraline for fluoxetine reflects
18 the carelessness of Respondent's approach to A.R. (*Id.*, at ¶ 55.)

19 M. Finally, Respondent indicated in his treatment notes that staff from CAST Recovery
20 (an outpatient treatment center for individuals suffering from addiction and other mental health
21 disorders; A.R. was residing at the facility) prescribed Ambien to A.R. and wrote her a
22 prescription for Ambien. (Abrams Decl., at ¶ 51.) However, there is no documentation in his
23 records for A.R. showing that someone from CAST Recovery had in fact prescribed Ambien to
24 A.R. (*Ibid.*)

25 N. Respondent prescribed Adderall to A.R., a patient with a substance abuse history,
26 based solely on his mistaken belief that she was taking Adderall, and gave her increasing doses
27 without clinical support. (Abrams Decl., at ¶ 46.) This reflects an extreme departure from the
28 standard of care. (*Id.* at ¶ 54-55.)

1 O. Respondent's treatment records for A.R. are illegible and would not allow a provider
2 to determine what services were provided to her, what symptoms she had, or the basis for the
3 prescriptions she was provided. (Abrams Decl., at ¶¶ 43-44.) Although Respondent provided a
4 transcription of his handwritten progress notes, the handwritten notes remain illegible and there is
5 no way to verify whether the transcription accurately reflects what is in the handwritten notes.
6 (*Ibid.*) Furthermore, Respondent does not discuss in A.R.'s medical records present or prior
7 symptoms to establish a diagnosis of ADHD. (*Ibid.*) Respondent's illegible handwritten
8 treatment notes reflects an extreme departure from the standard of care. (*Id.*, at ¶ 44.)

9 Unprofessional Conduct-Summary

10 P. The unprofessional conduct concerns Respondent (then seventy-one years old)
11 making a number of intrusive, seductive, and inappropriate sexual comments to both patients
12 (then in their early twenties). (A.R. Decl., at ¶ 2; K.R. Decl., at ¶ 2.)

13 Unprofessional Conduct-Patient K.R. and A.R.

14 Q. Business and Professions Code section 726 provides: "The commission of any act of
15 sexual abuse, misconduct, or relations with a patient, client, or customer constitutes
16 unprofessional conduct and grounds for disciplinary action for any person licensed under this
17 division." (Abrams Decl., at ¶ 14.) Physicians must be sensitive about political, religious, and
18 racial issues in communicating with patients. (*Ibid.*)

19 R. With respect to Patient K.R., Respondent made inappropriate sexual comments,
20 including, but not limited to, the following:

- 21 i. Respondent told her that he belonged to a tennis club and stated, "I could fuck
22 any of the women there. They're all so desperate." He often said a lot of women
23 desired him. Patient K.R. got the impressions that he intended for her to seek him.
24 ii. Respondent told her, "You better not put your hair back like that or I'll get too
25 turned on" and "If you were just a little bit older, my wife would have some real
26 competition."

27 (K.R. Decl., at ¶¶ 4-5.)

28 S. On or about September 7, 2012, K.R. filed a complaint with the Board regarding the

1 inappropriate sexual comments by Respondent and alleged fraudulent billing. (K.R. Decl., at ¶
2 11.)

3 T. If the comments reported by K.R. allegedly made by Respondent, were in fact made,
4 they would represent an extreme departure from the standard of care. (Abrams Decl., at ¶ 16.)
5 While the inappropriate sexual behavior did not progress to sexual battery, Respondent's behavior
6 as described by K.R. constitutes "sexual misconduct" under Business and Professions Code
7 section 726. (*Id.*, at ¶ 17.)

8 Unprofessional Conduct-Patient A.R.

9 U. With respect to Patient A.R., Respondent made inappropriate sexual comments,
10 including, but not limited to, the following:

- 11 i. When speaking about Patient A.R.'s recurring nightmares involving her father,
12 Respondent asked Patient A.R., "Does he turn you on? You know?"
13 ii. Respondent would dwell on the topic of Patient A.R.'s sex life and ask
14 questions such as, "What do you like?" and "Is it rough? You like that?" In response
15 to her answers, Respondent stated, "Oh boy...Dr. Silvers...I'm attracted to you. I
16 really am."
17 iii. In sharing about his sex addiction, Respondent stated, "If I told you, you
18 wouldn't believe it! You wouldn't. Even my doctors [*sic*] said that. How do you
19 have time? I didn't know. I would fuck 3 a night and wake a new one up in the
20 morning. You wouldn't even believe it. Oh boy... You wouldn't."

21 (A.R. Decl., at ¶¶ 10-39.)

22 V. On or about September 19, 2012, A.R. filed a complaint with the Board "due to the
23 numerous and psychologically damaging sexually perverse comments and manipulative actions
24 made by Respondent" to her. (A.R. Decl., at ¶ 41.)

25 W. If the comments reported by A.R. allegedly made by Respondent, were in fact made,
26 they would represent an extreme departure from the standard of care. (Abrams Decl., at ¶ 41.)
27 While the inappropriate sexual behavior did not progress to sexual battery, Respondent's behavior
28 as described by A.R. constitutes "sexual misconduct" under Business and Professions Code

1 section 726. (*Ibid.*)

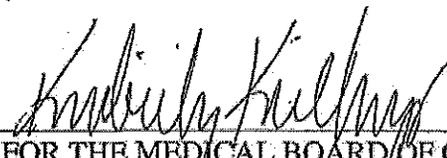
2 ORDER

3 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. A 23192, heretofore
4 issued to Respondent Frederick M. Silvers, M.D., is revoked.

5 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
6 written motion requesting that the Decision be vacated and stating the grounds relied on within
7 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
8 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

9 This Decision shall become effective on June 14, 2017.

10 It is so ORDERED May 15, 2017

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13 _____
14 FOR THE MEDICAL BOARD OF CALIFORNIA
15 DEPARTMENT OF CONSUMER AFFAIRS
16 KIMBERLY KIRCHMEYER
17 Executive Director
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 30 20 15
BY R. FIRDAYS ANALYST

7
8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 18-2012-226384

12 Frederick M. Silvers, M.D.
10921 Wilshire Blvd., #514
13 Los Angeles, California 90024

ACCUSATION

14 Physician's and Surgeon's Certificate
No. A 23192,

15 Respondent.

16
17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about February 14, 1969, the Board issued Physician's and Surgeon's Certificate
24 Number A 23192 to Frederick M. Silvers, M.D. ("Respondent"). That Certificate was in full
25 force and effect at all times relevant to the charges brought herein and will expire on August 31,
26 2015, unless renewed.

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1 JURISDICTION

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

5 4. Section 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
7 one year, placed on probation and required to pay the costs of probation monitoring, or such other
8 action taken in relation to discipline as the Board deems proper.

9 5. Section 2234 of the Code states:

10 "The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter.

15 "(b) Gross negligence.

16 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
17 omissions. An initial negligent act or omission followed by a separate and distinct departure from
18 the applicable standard of care shall constitute repeated negligent acts.

19 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
20 for that negligent diagnosis of the patient shall constitute a single negligent act.

21 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
22 constitutes the negligent act described in paragraph (1), including, but not limited to, a
23 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
24 applicable standard of care, each departure constitutes a separate and distinct breach of the
25 standard of care.

26 "(d) Incompetence.

27 "(e) The commission of any act involving dishonesty or corruption which is substantially
28 related to the qualifications, functions, or duties of a physician and surgeon.

1 10. At the time that Patient A.R. first met with Respondent, she was being prescribed
2 Strattera 100 mg, Klonopin 0.5 mg, and Prozac 10 mg by her primary care physician.

3 11. Respondent diagnosed Patient A.R. with ADHD. With the exception of a Brown
4 ADD Scale² for Patient A.R., Respondent did not discuss in Patient A.R.'s medical records
5 present or prior symptoms to establish a diagnosis of ADHD. Respondent did not review prior
6 treatment records to support the diagnosis of ADHD. Patient A.R. may have had ADHD, but
7 Respondent's records do not address that diagnosis, except to accept Patient A.R.'s self-report.

8 12. Respondent mistakenly believed Patient A.R. was taking Zoloft 50 mg. Zoloft is an
9 antidepressant. Patient A.R. was not taking Zoloft prior to treating with Respondent. On or about
10 May 18, 2012, Respondent increased Patient A.R.'s prescription for Zoloft to 100 mg per day.
11 The mistaken substitution of Zoloft for Prozac (also an antidepressant) reflects the carelessness of
12 Respondent's approach to Patient A.R.

13 13. Respondent also mistakenly believed that Patient A.R. was taking Adderall XR 10
14 mg. Adderall³ is an amphetamine.⁴ Patient A.R. was not taking Adderall prior to treating with
15 Respondent. Amphetamines are widely abused and highly addicting. They can be abused by
16 patients with eating disorders in the belief they promote weight loss. Patients may misreport
17 taking amphetamines to obtain "diet" pills. Prescribers need to be careful about providing
18 abusable controlled medications to identified substance abusers.

19 14. On or about May 24, 2012, Respondent prescribed Adderall 10 mg tabs #60 to be
20 taken bid and a prescription for Adderall 15 mg XR caps #60 without directions on how to take
21 them. Shortly after, Patient A.R. had a relapse. She reported to Respondent that she began
22 drinking alcohol and was self-mutilating.

23
24 ² The Brown ADD Scale is a 40-item frequency scale intended to measure the executive
25 functioning (the mental processes that enable us to plan, focus attention, remember instructions,
and juggle multiple tasks successfully) aspects of cognition associated with ADD/ADHD in
adults.

26 ³ Adderall (Amphetamine) is a Schedule II drug.

27 ⁴ Amphetamine is a stimulant and an appetite suppressant. It stimulates the central
28 nervous system (nerves and brain) by increasing the amount of certain chemicals in the body. This
increases heart rate and blood pressure and decreases appetite, among other effects.
Amphetamine is used to treat narcolepsy and ADHD.

1 15. On or about June 19, 2012, Respondent nevertheless prescribed Adderall XR 15 mg
2 #60. Patient A.R. picked up a prescription for Adderall XR 15 mg on or about July 2, 2014.

3 16. On or about July 11, 2012, Respondent increased Patient A.R.'s Adderall XR to 20
4 mg bid. There is no indication of the number prescribed.

5 17. On or about August 13, 2012, Respondent wrote a prescription for Adderall XR 20
6 mg bid, but did not record the quantity prescribed.

7 18. As stated above, Patient A.R. was not receiving amphetamines prior to treating with
8 Respondent. Respondent made no attempt to contact the inpatient substance abuse rehabilitation
9 program or the psychiatrist who Patient A.R. consulted through the inpatient substance abuse
10 rehabilitation program to obtain medical information. Respondent did not contact Patient A.R.'s
11 primary care physician, did not obtain her prior medical records, and did not verify her medical
12 history or the drugs she was taking.

13 19. Respondent committed gross negligence by prescribing Adderall, an amphetamine
14 and abusable controlled substance, to Patient A.R., a substance abusing patient, by giving her
15 increasing doses without clinical support.

16 20. Respondent also committed gross negligence in that his treatment records for Patient
17 A.R. are illegible and would not allow a provider to determine what services were provided to
18 Patient A.R., what symptoms she had, or the basis for the prescriptions she was provided.
19 Although Respondent provided a transcription of his handwritten progress notes, the handwritten
20 notes remain illegible and there is no way to verify whether the transcription accurately reflects
21 what is in the handwritten notes. Furthermore, Respondent does not discuss in Patient A.R.'s
22 medical records present or prior symptoms to establish a diagnosis of ADHD.

23 Patient K.R.

24 21. Respondent treated Patient K.R. from approximately September 2011 to November
25 2011. Patient K.R. sought treatment for "Major Depressive Disorder." She informed Respondent
26 about her struggles with depression and anxiety. She also told him about her past history of
27 alcohol and drug abuse, including abuse of stimulant class substances. She informed him that she
28

1 was taking Lexapro⁵ and Adderall for her medical conditions. She gave him her prior
2 psychiatrist's name.

3 22. Patient K.R. also told Respondent that she was studying for the Law School
4 Admission Test ("LSAT") and that she needed her medications (namely Adderall) to help her
5 study because the time was getting close for her to take the exam. Respondent increased Patient
6 K.R.'s dose of Adderall 20 mg XR bid by adding Adderall 10 mg for prn use. In his treatment
7 notes, Respondent acknowledged that he prescribed Adderall to help her study at night for the
8 LSAT. The Adderall helped Patient K.R. focus and study.

9 23. Respondent diagnosed Patient K.R. with ADHD. He also diagnosed her with
10 "History of Polysubstance Abuse (ecstasy, cocaine, hallucinogens, alcohol) currently in
11 remission." Respondent did not discuss in Patient K.R.'s medical records present or prior
12 symptoms to support a diagnosis of ADHD. Respondent did not review prior treatment records to
13 support such a diagnosis.

14 24. Patient K.R.'s medical records show that the diagnosis of ADHD was a pretext
15 diagnosis to justify the prescription of stimulant medication to Patient K.R., a known stimulant
16 abuser. Respondent's notes state that the amphetamines helped Patient K.R. focus and study.
17 This is not evidence of ADHD. Prescribing stimulant medications to help a student improve his
18 or her test scores is not a medical indication.

19 25. Respondent committed gross negligence in that he prescribed Adderall, an
20 amphetamine and abusable controlled substance, to Patient K.R., a patient with a substance abuse
21 diagnosis, based only on her self-report. Respondent did not communicate with Patient K.R.'s
22 other providers to learn what medications she was taking, why she was taking them, and what her
23 responses to treatment were. Adderall can be abused by patients with stimulant abuse histories
24 and students preparing for examinations.

25 26. Respondent also committed gross negligence in that his treatment records for Patient
26

27 ⁵ Lexapro is an antidepressant in a group of drugs called selective serotonin reuptake
28 inhibitors. It is used to treat anxiety in adults and major depressive disorder in adults and
adolescents who are at least 12 years old.

1 K.R. are illegible and would not allow a provider to determine what services were provided to
2 Patient K.R., what symptoms she had, or the basis for the prescriptions she was provided.
3 Although Respondent provided a transcription of his handwritten progress notes, the handwritten
4 notes remain illegible and there is no way to verify whether the transcription accurately reflects
5 what is in the handwritten notes. In addition, in the transcription, Respondent states that he
6 cannot follow his own handwritten notes and that he believes notes may be missing. Furthermore,
7 Respondent does not discuss in Patient K.R.'s medical records present or prior symptoms to
8 establish a diagnosis of ADHD.

9 27. Respondent's acts and/or omissions as set forth in paragraphs 7 through 26, inclusive
10 above, whether proven individually, jointly, or in any combination therefore, constitute grossly
11 negligent acts pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for
12 discipline exists.

13 SECOND CAUSE FOR DISCIPLINE

14 (General Unprofessional Conduct – Patients A.R. and K.R.)

15 28. Respondent is subject to disciplinary action under section 2234 of the Code, in that
16 Respondent engaged in acts and omissions in the care and treatment of patients A.R. which
17 constitute unprofessional conduct. Respondent made a number of intrusive, seductive, and
18 inappropriate sexual comments to patients A.R. and K.R. The circumstances are as follows:

19 29. Paragraphs 6 through 27 are incorporated by reference as if fully set forth herein.

20 Patient A.R.

21 30. Patient A.R. was twenty years old when she was treated by Respondent. Her first two
22 psychiatric sessions occurred at his business office. The sessions lasted approximately 30-40
23 minutes, and were psychiatric consultations. During these sessions, Respondent discussed his
24 failing marriage, children, and politics.

25 31. Respondent scheduled the next sessions at his home office. The sessions at his home
26 office were long, lasting approximately 90-120 minutes. The frequency of her appointments were
27 increased to two times per week. Respondent scheduled the appointments late at night, at 9:30
28 p.m. and 10:00 p.m., and usually scheduled her as his last patient. Respondent told her that this

1 scheduling was done intentionally and indicated that she had to see him frequently because she
2 "needed it."

3 32. When Patient A.R. started seeing Respondent at his home office, Respondent began
4 making inappropriate comments to her. Many of the comments were sexual in nature and caused
5 Patient A.R. to feel uncomfortable and embarrassed, which Respondent seemed to like. When
6 she became quiet or noticeably embarrassed, Respondent would say, "You're so cute."

7 33. When speaking about Patient A.R.'s recurring nightmares involving her father,
8 Respondent asked Patient A.R., "Do you want to fuck him?" and "Does he turn you on?"

9 34. Respondent would dwell on the topic of Patient A.R.'s sex life and ask questions such
10 as, "What do you like?" and "Do you like it rough?" In response to her answers, Respondent
11 stated, "Oh boy...Dr. Silvers...I'm attracted to you. I really am."

12 35. On one occasion Respondent told Patient A.R., "I know you want the doctor thing,
13 but you're not ready."

14 36. On at least one occasion Patient A.R. advised Respondent that she was uncomfortable
15 with his frequent sexual comments. In response, Respondent said, "You don't get it. There's not
16 a fucking thing you can do. The way the stars go, we are aligned. You and me, we have
17 something, something really special. And you won't be ready for us for a few years, but it will
18 happen. Once we get you back to having healthy sex."

19 37. On another occasion, Respondent said, "You know, we're something. We've got a
20 special connection. I know this. It's all in the stars. You and I, we [*sic*] wait a few years until
21 you're ready...."

22 38. During sessions, Respondent spent a lot of time talking about his marriage, his
23 personal life and his sex addiction. He talked about religion. He often told Patient A.R. that
24 women gravitated towards him and are attracted to him. Respondent told her that he has had sex
25 with multiple women on the same night.

26 39. Respondent told her of a lingerie party he was invited to. He asked her if he should
27 attend the party and told her that women love doctors and there would be prostitutes at the party.
28 On Patient A.R.'s next visit, Respondent reported that he went to the party late, but the party had

1 been broken up by police by the time he arrived.

2 40. Respondent told Patient A.R. that his wife knew that there was something happening
3 between the two of them and that she was jealous.

4 41. In reply to her need for validation of the opposite sex, Respondent stated, "You know,
5 women just gravitate towards me. They're everywhere! And they just come to me!"

6 42. In sharing about his sex addiction, Respondent stated, "If I told you, you wouldn't
7 believe it! You wouldn't. Even my doctors [*sic*] said that. How do you have time? I didn't
8 know. I would fuck 3 a night and wake a new one up in the morning. You wouldn't even believe
9 it. Oh boy. You wouldn't."

10 43. On her body issues, Respondent commented, "You've got a great body, and you're
11 very sexy. Very. Oh boy.... Oh boy...."

12 44. On her recent nightmare about having sexual intercourse with an old man,
13 Respondent stated, "It was probably me. Women love doctor play. I know you do too. Why
14 wouldn't you? Oh boy.... That old man was me."

15 45. At one session, Respondent lifted his shorts to show Patient A.R. a tattoo of the
16 Virgin Mary that was on his waist/hip-bone area. He grabbed the bottom portion-seam of his
17 shorts and lifted it up towards his waist and showed her the tattoo.

18 46. During Patient A.R.'s last session, she asked Respondent to lower the dosage of her
19 Zoloft. She told Respondent that the dosage she was taking at the time caused her to feel numb to
20 emotion. Respondent refused to lower her dosage and went into an approximately thirty-minute
21 rant, wherein he accused Patient A.R. of not trusting him, compared her to his other patients, who
22 he said did not question his judgment, insulted Patient A.R., by making specific references to her
23 personal problems which she had shared with him over the course of her treatment, and
24 sarcastically indicated that maybe he should stop talking to her, since she was clearly doing just
25 fine.

26 47. Respondent taunted Patient A.R., who had become quiet during his episode, asking
27 her what was wrong and if she could no longer talk and threw the pharmacology desktop book at
28 her lap, and told her, "You don't get it." Patient A.R. left feeling humiliated and unable to trust

1 physicians. She did not return to Respondent for treatment.

2 48. Respondent engaged in unprofessional conduct for making intrusive, seductive, and
3 otherwise inappropriate sexual comments to Patient A.R., which did not relate to her medical
4 treatment. It is inappropriate for a psychiatrist to talk to a patient about the psychiatrist's sexual
5 prowess. It is particularly more egregious when treating a patient like Patient A.R., who has a
6 history of sexual trauma. Respondent embarrassed Patient A.R. and caused her emotional and
7 mental trauma and discomfort.

8 Patient K.R.

9 49. Patient K.R. was twenty-one years old when she was treated by Respondent. Like
10 Patient A.R., Patient K.R. was also the subject of inappropriate sexual, personal, and insensitive
11 comments from Respondent. Among other things, Respondent told her that he belonged to a
12 tennis club and stated, "I could be fucking any of the women there at any time if I wanted to-
13 They are all so desperate." He often said a lot of women desired him.

14 50. Respondent told her "You better not put your hair back like that or I'll get too turned
15 on" and "If you were just a little bit older, my wife would have some real competition."

16 51. Respondent spent the majority of the time during Patient K.R.'s sessions talking about
17 himself, women, and his religious views. He also made frequent inappropriate racial comments
18 about minorities.

19 52. Patient K.R. informed her mother about Respondent's comments. Her mother
20 became upset and did not want her to continue seeing Respondent. Patient K.R. stopped seeing
21 Respondent.

22 53. Patient K.R. and Patient A.R. do not know each other.

23 54. Respondent engaged in unprofessional conduct for making sexual, personal, and
24 insensitive comments to Patient K.R., which did not relate to her medical treatment. It is
25 inappropriate for a physician to talk to a patient about the patient's sexual desirability, the
26 physician's attraction to the patient, or the sexual attraction of other people to the physician.
27 Physicians must be sensitive about political, religious and racial issues in communicating with
28 patients. Respondent embarrassed Patient K.R. and caused her emotional discomfort.

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

In the Matter of the Accusation Against:)
)
Frederick M. Silvers, M.D.)
Physician's and Surgeon's)
Certificate No. A 23192)
)
Petitioner)
)
)
)

Case No. 18-2012-226384

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Nicholas Jurkowitz, Esq., attorney for Frederick M. Silvers, M.D., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on June 14, 2017.

IT IS SO ORDERED: June 14, 2017

Michelle Anne Bholat M.D.

Michelle Anne Bholat, M.D., Chair,
Panel B