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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb. 27 2019
BY [illegible] ANALYST

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

In the Matter of the Second Amended Accusation Against: **Dale Robert Stemple, M.D.** **22150 Vine Ct.** **Palo Cedro, CA 96073-8706** **Physician's and Surgeon's Certificate No. C 36399,** Respondent.	Case No. 800-2015-014255 OAH No. **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Second Amended Accusation (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 March 24, 1975, the Medical Board issued Physician's and Surgeon's Certificate No. C 36399 to Dale Robert Stemple, 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 April 30, 2021, unless renewed.

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JURISDICTION

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

4. Section 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:

"(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.

"(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.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

6. 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."

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FIRST CAUSE FOR DISCIPLINE
(Repeated Negligent Acts –Patient B, D, and E)

7. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the code, in that he committed repeated negligent acts in his care and treatment of Patients B, D, and E as more particularly alleged hereinafter.

Patient B

8. On or about October 13, 2003, Respondent saw Patient B for an initial evaluation. Patient B was a 36-year-old, female patient. Patient B filled out a registration and patient consent form on the same date.

9. Respondent noted that Patient B was subsequently seen on or about July 14, 2005.

10. Patient B had lyme serologies done on or about May 16, 2007 with a positive screen and a negative Western blot.

11. On or about July 19, 2007, Respondent saw Patient B. Respondent documented the chief complaint as "2 mo of right sided facial pain." She was documented to have a positive lyme titer that had been treated with doxycycline and amoxicillin. Patient B was also treated with Tegretol. She had a lymph node biopsy and a positive titer for bartonella henselae diagnostic of Cat Scratch Disease.

12. During the period of May 2007 through December 2008, Respondent saw Patient B multiple times for multiple issues including but not limited to facial pain, lyme disease and trigeminal neuralgia.

13. On or about October 17, 2013, Respondent saw Patient B for an office visit. Respondent documented the chief complaint as "fatigue, wellness." Respondent documented that "[Patient B] feels she is going downhill; her tremors have intensified. She feels exhausted. She has more pain in her joints and muscles. She is ready to go back on antibiotics for lyme disease. We will give one mo. of high dose amoxicillin followed by one mo. of Zithromax and Tindamax."

14. During the period of 2013 to 2015, Respondent treated Patient B for Lyme disease. Despite multiple courses of antibiotics, Patient B's symptoms did not significantly improve.

Respondent failed to document a written consult with a specialist. Patient B has had continued antibiotics with minimal improvement of her symptoms.

15. Respondent committed repeated negligent acts in his care and treatment of Patient B which included, but were not limited to the following:

A. Respondent failed to adequately obtain and/or document additional lyme disease evaluations and consultations for Patient B.

Patient D

16. On or about August 2, 2012, Respondent saw Patient D for an initial evaluation. Patient D was a 75-year-old male who was seen for diabetes mellitus, renal failure, coronary artery disease, chronic back pain and degenerative joint disease of both lower extremities.

17. Patient D passed away at his home on or about January 30, 2016. He was found to have a large quantity of unused fentanyl patches in his home at the time of his death. His pain had been managed with topical fentanyl. Respondent failed to utilize and/or document urine screens.

18. Respondent committed repeated negligent acts in his care and treatment of Patient D which included, but were not limited to, failing to administer, monitor and/or document a urine test.

Patient E

19. On or about September 16, 2009, Respondent saw Patient E for an office visit. Patient E was a 45-year-old female who complained of lumbar and cervical spine disease. Her pain medications were managed with monthly visits and she had a variety of other medications used over the five years she was managed. She had a TENS unit and an application for a power wheelchair.

20. Patient E reported that her medications were stolen on August 12, 2010 and on multiple occasions tried other people's pain medications. Respondent reprimanded Patient E for non-compliance. She continued to have modifications in her medications, and on or about July 20, 2011, she was "weaned down" on her MS Contin. She had problems with depression and had some improvement with Wellbutrin. She had a pelvic fracture on or about November 25, 2012,

which significantly increased her pain medications by other providers and Respondent made efforts to taper her narcotics with marginal success.

21. On or about May 30, 2014, Patient E had a urinary drug screen done and was positive for hydromorphone, but negative for opioids prescribed to her by Respondent. She had the results explained to her and because she did not comply with her pain contract, she was discharged from the practice.

22. Respondent committed repeated negligent acts in his care and treatment of Patient E which included, but were not limited to:

A. During the period of 2011 to 2015, Respondent failed to perform and/or document an evaluation of previous substance abuse history.

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

23. Respondent is further subject to discipline under sections 2227 and 2234, as defined by section 2266, of the Code, in that during the period of 2011 to 2015, he failed to maintain adequate and accurate medical records in the care and treatment of Patients B, D, and E, as more particularly alleged hereinafter: Paragraphs 7 through 22, above, are hereby incorporated by reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

24. To determine the degree of discipline, if any, to be imposed on Respondent Dale Robert Stemple, M.D., Complainant alleges that on or about August 11, 1999, in a prior disciplinary action entitled *In the Matter of the Accusation Against Dale Robert Stemple, M.D.*, before the Medical Board of California, in Case Number 12-1995-46029, Respondent's license was revoked, revocation stayed, and placed on probation for five (5) years with terms and conditions, including psychotherapy, prohibition from practicing invasive cardiac procedures, education course, ethics course, oral clinical or written examination, psychiatric evaluation, monitoring, proctoring and other standard terms and conditions. It was alleged that Respondent engaged in gross negligence in the treatment and care of ten (10) patients. That decision is now final and is incorporated by reference 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:

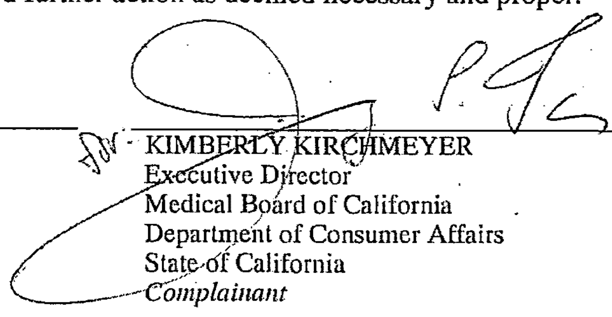
1. Revoking or suspending Physician's and Surgeon's Certificate No. C 36399, issued to Dale Robert Stemple, M.D.;

2. Revoking, suspending or denying approval of Dale Robert Stemple, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Dale Robert Stemple, 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: 2/27/2019



KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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