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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *December 13, 2011*
BY: J. SELCHAK ANALYST

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

12 In the Matter of the Accusation Against:
13 **JUDITH SAPERSTEIN BRAUN, M.D.**
7946 Ivanhoe Avenue, #210
14 **La Jolla, CA 92037**
15 **Physician's and Surgeon's Certificate No.**
G26720
16
17 Respondent.

Case No. 10-2010-207022

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about April 30, 1974, the Medical Board of California issued Physician's
24 and Surgeon's Certificate Number G26720 to Judith Saperstein Braun, M.D. (hereinafter
25 "Respondent"). The Physician's and Surgeon's Certificate was in full force and effect at all times
26 relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

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1 JURISDICTION

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 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, be publicly
8 reprimanded, or have such other action taken in relation to discipline as the Board deems proper.

9 5. Section 2234 of the Code states:

10 “The Division of Medical Quality shall take action against any licensee who is
11 charged with unprofessional conduct.¹ In addition to other provisions of this article,
12 unprofessional conduct² includes, but is not limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting
14 the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the
15 Medical Practice Act].

16 “(b) Gross negligence.

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

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

22
23 ¹ California Business and Professions Code section 2002, as amended and effective
24 January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in
25 the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et. seq.) means the “Medical
Board of California,” and references to the “Division of Medical Quality” and “Division of
Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

26 ² Unprofessional conduct has been defined as conduct which breaches the rules or ethical
27 code of the medical profession, or conduct which is unbecoming a member in good standing of
28 the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v.*
Board of Medical Examiners (1978) 81 Cal.App.3d 654.)

1 “(2) When the standard of care requires a change in the diagnosis, act, or omission
2 that constitutes the negligent act described in paragraph (1), including, but not limited to, a
3 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs
4 from the applicable standard of care, each departure constitutes a separate and distinct
5 breach of the standard of care.

6 “... ”

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

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

10 “... ”

11 6. Section 2238 of the Code states:

12 “A violation of any federal statute or federal regulation or any of the statutes or
13 regulations of this state regulating dangerous drugs or controlled substances constitutes
14 unprofessional conduct.”

15 7. Section 2261 of the Code states:

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

19 8. Section 2262 of the Code states, in pertinent part:

20 “Altering or modifying the medical record of any person, with fraudulent intent, or
21 creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.”

22 9. Section 2242 of the Code states:

23 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
24 4022 without an appropriate prior examination and a medical indication, constitutes
25 unprofessional conduct.

26 “(b) No licensee shall be found to have committed unprofessional conduct within the
27 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished,
28 any of the following applies:

1 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
2 absence of the patient’s physician and surgeon or podiatrist, as the case may be, and if the
3 drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient
4 until the return of his or her practitioner, but in any case no longer than 72 hours.

5 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a
6 licensed vocational nurse in an inpatient facility, and if both of the following conditions
7 exist:

8 “(A) The practitioner had consulted with the registered nurse or licensed vocational
9 nurse who had reviewed the patient’s records.

10 “(B) The practitioner was designated as the practitioner to serve in the absence of the
11 patient’s physician and surgeon or podiatrist, as the case may be.

12 “(3) The licensee was a designated practitioner serving in the absence of the patient’s
13 physician and surgeon or podiatrist, as the case may be, and was in possession of or had
14 utilized the patient’s records and ordered the renewal of a medically indicated prescription
15 for an amount not exceeding the original prescription in strength or amount or for more
16 than one refill.

17 “(4) The licensee was acting in accordance with Section 120582 of the Health and
18 Safety Code.”

19 10. Section 2266 of the Code states: “The failure of a physician and surgeon to
20 maintain adequate and accurate records relating to the provision of services to their patients
21 constitutes unprofessional conduct.”

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Gross Negligence)

24 11. Respondent is subject to disciplinary action under sections 2227 and 2234, as
25 defined by section 2234, subdivision (b), of the Code, in that Respondent committed gross
26 negligence in her care and treatment of patient L.L., as more particularly alleged below:

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1 A. In or about 2003, patient L.L. then a 34-year old female and a physician, started
2 seeing Respondent for anxiety, and was prescribed 10 mg. Prozac.³ Patient L.L. was seen
3 by Respondent on numerous occasions in 2004, 2005, 2006, and 2007. During this time
4 period, Respondent failed to obtain and/or document an adequate history of patient L.L.'s
5 present illness, failed to obtain and/or document a psychiatric history, a medical history or a
6 mental status examination, and failed to generate and/or document a diagnostic impression
7 or treatment plan.⁴

8 B. In or about 2008, Respondent continued to see patient L.L. on a regular basis.
9 On or about January 9, 2008, Respondent prescribed Clonazepam⁵ 0.25 mg. for patient L.L.
10 but wrote the prescription in the name of the patient's husband, S.M. On or about
11 December 10, 2008, Respondent prescribed Klonopin,⁶ 0.25 mg. for patient L.L. but again
12 wrote the prescription in the name of S.M.⁷

13 C. During 2008, Respondent continued to prescribe controlled substances and
14 dangerous drugs for patient L.L. without obtaining and/or documenting an adequate history
15 of patient L.L.'s present illness, without obtaining and/or documenting a psychiatric history,
16 a medical history and a mental status examination, and without generating and/or
17 documenting a diagnostic impression and a treatment plan.

18 ³ Prozac is a brand name for fluoxetine, and a dangerous drug pursuant to Business and
19 Professions Code section 4022.

20 ⁴ Reference to Respondent's acts or omissions related to patient L.L., that are outside the
21 applicable statute of limitations (Bus. & Prof. Code, section 2230.5) are provided for
22 informational purposes only, and are not alleged as grounds for discipline.

23 ⁵ Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety Code
24 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
25 section 4022. It is an anti-anxiety medication in the benzodiazepine family.

26 ⁶ Klonopin is a brand name for clonazepam a Schedule IV controlled substance pursuant
27 to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to
28 Business and Professions Code section 4022.

⁷ In her summary of care statement submitted to the Board's investigator in about May
2011, respondent indicated that she wrote the prescriptions in S.M.'s name because patient L.L.
"was extremely concerned about pharmacy records showing she had been prescribed such
medications because she was certain at the time that she was going to be named in a malpractice
suit and that somebody would incorrectly and unjustly try and link the medication use to the
perceived surgical mistake."

1 D. In or about 2009, Respondent continued to see patient L.L. on a regular basis.
2 On or about June 10, 2009, July 15, 2009, and August 19, 2009, Respondent prescribed
3 Citalopram⁸ 20 mg. for patient L.L. but wrote the prescription in the name of S.M.
4 Respondent also prescribed the following medications for patient L.L. in the name of the
5 patient's mother, A.L.: On or about December 2, 2009, she prescribed Ambien,⁹ 10 mg., on
6 or about December 4, 2009, Citalopram 20 mg. and Clonazepam, 0.25 mg., and on or about
7 December 29, 2009, she prescribed Citalopram 20 mg.

8 E. During 2009, Respondent continued to prescribe controlled substances and
9 dangerous drugs for patient L.L without obtaining and/or documenting an adequate history
10 of patient L.L.'s present illness, without obtaining and/or documenting a psychiatric history,
11 medical history and a mental status examination, and without generating and/or
12 documenting a diagnostic impression and a treatment plan.

13 F. In or about 2010, Respondent continued to see patient L.L. on a regular basis,
14 and she continued to prescribe Citalopram, 20 mg. and Clonazepam, 0.5 mg for patient L.L.
15 Respondent also continued to prescribe Citalopram and Clonazepam for patient L.L. in
16 A.L.'s name.

17 G. During 2010, Respondent continued to prescribe controlled substances and
18 dangerous drugs for patient L.L without obtaining and/or documenting an adequate history
19 of patient L.L.'s present illness, without obtaining and/or documenting a psychiatric history,
20 medical history and a mental status examination, and without generating and/or
21 documenting a diagnostic impression and a treatment plan.

22 H. On or about March 30, 2011, Respondent terminated her physician-patient
23 relationship with patient L.L.
24

25 ⁸ Citalopram which is also known by the brand name Celexa, is a dangerous drug pursuant
26 to Business and Professions Code section 4022. It is an antidepressant.

27 ⁹ Ambien, is a brand name for zolpidem tartrate, a Schedule IV controlled substance
28 pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug
pursuant to Business and Professions Code section 4022.

1 12. Respondent committed gross negligence in her care and treatment of patient
2 L.L., which included, but was not limited to, the following:

3 A. On or about January 9, 2008, Respondent prescribed Clonazepam 0.25 mg. for
4 patient L.L. but wrote the prescription in the name of the patient's husband, S.M.

5 B. On or about December 10, 2008, Respondent prescribed Clonazepam 0.25 mg.
6 for patient L.L. but wrote the prescription in the name of the patient's husband, S.M.

7 C. On or about June 10, 2009, Respondent prescribed Citalopram, 20 mg. for
8 patient L.L. but wrote the prescription in the name of the patient's husband, S.M.

9 D. On or about July 15, 2009, Respondent prescribed Citalopram, 20 mg. for
10 patient L.L. but wrote the prescription in the name of the patient's husband, S.M.

11 E. On or about August 19, 2009, Respondent prescribed Citalopram, 20 mg. for
12 patient L.L. but wrote the prescription in the name of the patient's husband, S.M.

13 F. In or about December, 2009, Respondent prescribed Zolpidem, 10 mg.,
14 Citalopram 20 mg., and Clonazepam, 0.25 mg., for patient L.L. but wrote the prescription in the
15 name of the patient's mother, A.L.

16 G. In or about January, 2010, Respondent prescribed Citalopram, 20 mg., for
17 patient L.L. but wrote the prescription in the name of the patient's mother, A.L.

18 H. In or about February, 2010, Respondent prescribed Citalopram 20 mg., for
19 patient L.L. but wrote the prescription in the name of her mother, patient A.L.

20 I. In or about March, 2010, Respondent prescribed Clonazepam, 0.5 mg., and
21 Citalopram, 20 mg., for patient L.L. but wrote the prescription in the name of the patient's
22 mother, A.L.

23 J. In or about April, 2010, Respondent prescribed Citalopram 20 mg., for patient
24 L.L. but wrote the prescription in the name of the patient's mother, A.L.

25 K. In or about May, 2010, Respondent prescribed Citalopram, 20 mg., for patient
26 L.L. but wrote the prescription in the name of the patient's mother, A.L.

27 L. In or about July, 2010, Respondent prescribed Citalopram, 20 mg., for patient
28 L.L. but wrote the prescription in the name of the patient's mother, A.L.

1 M. In or about August, 2010, Respondent prescribed Citalopram, 20 mg., for
2 patient L.L. but wrote the prescription in the name of the patient's mother, A.L.

3 N. During 2008 and 2009, Respondent wrote prescriptions for controlled
4 substances and dangerous drugs to S.M. without appropriate prior medical examination and
5 without medical indication, as required by section 2242, subdivision (a) of the Code.

6 O. During 2009 and 2010, Respondent wrote prescriptions for controlled
7 substances and dangerous drugs to A.L. without appropriate prior medical examination and
8 without medical indication, as required by section 2242, subdivision (a) of the Code.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Repeated Negligent Acts)

11 13. Respondent is further subject to disciplinary action under sections 2227 and
12 2234, as defined by section 2234, subdivision (c), of the Code, in that she committed repeated
13 negligent acts in her care and treatment of patient L.L., as more particularly alleged hereinafter.

14 A. Paragraphs 11 (A) through 11 (H) above, are hereby incorporated by reference
15 and re-alleged as if fully set forth herein.

16 B. Paragraphs 12 (A) through 12 (O) above, are hereby incorporated by reference
17 and re-alleged as if fully set forth herein.

18 C. During 2008, Respondent prescribed controlled substances and dangerous drugs
19 for patient L.L. without obtaining and/or documenting an adequate history of patient L.L.'s
20 present illness, without obtaining and/or documenting a psychiatric history, a medical
21 history and a mental status examination, and without generating and/or documenting a
22 diagnostic impression and a treatment plan.

23 D. During 2009, Respondent prescribed controlled substances and dangerous drugs
24 for patient L.L. without obtaining and/or documenting an adequate history of patient L.L.'s
25 present illness, without obtaining and/or documenting a psychiatric history, medical history
26 and a mental status examination, and without generating and/or documenting a diagnostic
27 impression and a treatment plan.
28

1 E. During 2010, Respondent prescribed controlled substances and dangerous drugs
2 for patient L.L without obtaining and/or documenting an adequate history of patient L.L.'s
3 present illness, without obtaining and/or documenting a psychiatric history, medical history
4 and a mental status examination, and without generating and/or documenting a diagnostic
5 impression and a treatment plan.

6 **THIRD CAUSE FOR DISCIPLINE**

7 (Acts or Dishonesty or Corruption)

8 14. Respondent is further subject to disciplinary action under sections 2227 and
9 2234, as defined by section 2234, subdivision (e) of the Code, in that Respondent committed act
10 or acts of dishonesty or corruption by writing prescriptions for controlled substances and
11 dangerous drugs for patient L.L. in the names of the patient's mother and husband, as more
12 particularly alleged in Paragraphs 11, 12 and 13, above, which are hereby incorporated by
13 reference and realleged as if fully set forth herein.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 (Violation of Drug Statutes)

16 15. Respondent is further subject to disciplinary action under sections 2227 and
17 2234, as defined by section 2238 and section 2242, subdivision (a), of the Code, in that
18 Respondent wrote prescriptions for controlled substances and dangerous drugs for S.M. and A.L.
19 without appropriate prior medical examination and without medical indication particularly in
20 paragraphs 11, 12, 13 and 14, above, which are hereby incorporated by reference and realleged as
21 if fully set forth herein.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 (False Representations)

24 16. Respondent is further subject to disciplinary action under sections 2227 and
25 2234, as defined by section 2261, of the Code, in that Respondent signed documents that falsely
26 represented the existence or non-existence of a state of facts, in that Respondent wrote
27 prescriptions for controlled substances and dangerous drugs for patient L.L. in the names the
28

1 patient's mother and husband, as more particularly alleged in paragraphs 11, 12, 13, 14 and 15,
2 above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 (Creation of False Medical Records With Fraudulent Intent)

5 17. Respondent is further subject to disciplinary action under sections 2227 and
6 2234, as defined by section 2262, of the Code, in that Respondent created false medical records
7 with fraudulent intent in that, in that Respondent wrote prescriptions for controlled substances
8 and dangerous drugs for patient L.L in the names of the patient's mother and husband, as more
9 particularly alleged in paragraphs 11, 12, 13, 14 and 15, above, which are hereby incorporated by
10 reference and re-alleged as if fully set forth herein.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 (Prescribing Dangerous Drugs Without Appropriate Examination and Medical Indication)

13 18. Respondent is further subject to disciplinary action under sections 2227 and
14 2234, as defined by section 2242, of the Code, in that Respondent prescribed dangerous drugs to
15 S.M. and A.L. without an appropriate prior examination and medical indication, as more
16 particularly alleged in paragraphs 11, 12, 13, 14 and 15, above, which are hereby incorporated by
17 reference and re-alleged as if fully set forth herein.

18 **EIGHTH CAUSE FOR DISCIPLINE**

19 (Failure to Maintain Adequate and Accurate Medical Records)

20 19. Respondent is further subject to disciplinary action under sections 2227 and
21 2234, as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and
22 accurate records regarding her care and treatment of patient L.L., as more particularly alleged
23 hereinafter in Paragraphs 11, 12, 13, 14 and 15, above, which are hereby incorporated by
24 reference and realleged as if fully set forth herein.

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1 **NINTH CAUSE FOR DISCIPLINE**

2 (General Unprofessional Conduct)

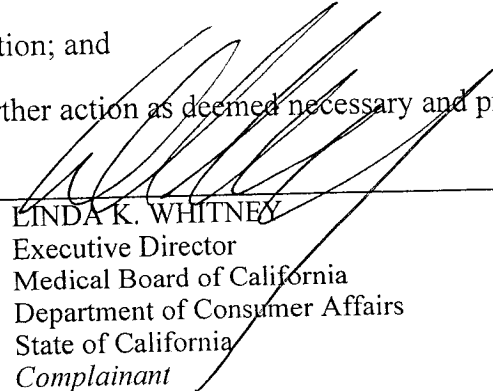
3 20. Respondent has further subjected his license to disciplinary action under
4 section 2234, of the Code in that Respondent engaged in conduct which breached the rules or
5 ethical code of the medical profession or which was unbecoming a member in good standing of
6 the medical profession as more particular alleged paragraphs 11 through 19, above, which are
7 incorporated herein by reference as if realleged as though fully set forth.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Medical Board of California issue a decision:

- 11 1. Revoking or suspending Physician's and Surgeon's Certificate Number
12 G26720, heretofore issued to Respondent Judith Saperstein Braun, M.D.;
- 13 2. Revoking, suspending or denying approval of Respondent Judith Saperstein
14 Braun, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 15 3. Ordering Respondent Judith Saperstein Braun, M.D., to pay the Board the costs
16 of probation monitoring, if placed on probation; and
- 17 4. Taking such other and further action as deemed necessary and proper.

18 DATED: December 13, 2011


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