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9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation
Against:

13 **SUNIL PATEL, M.D.**
14 9985 Sierra Avenue
Fontana, CA 92335

15 Physician's and Surgeon's
16 Certificate No. A 52005

17 Respondent.

Case No. 09-2002-135285

OAH No. 2004040660

FIRST AMENDED
ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. David Thornton (Complainant) brings this First Amended Accusation
22 solely in his official capacity as the Executive Director of the Medical Board of California,
23 Department of Consumer Affairs.
- 24 2. On or about June 7, 1993, the Medical Board of California issued
25 Physician's and Surgeon's Certificate No. A 52005 to SUNIL PATEL, M.D. (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
27 charges brought herein and will expire on June 30, 2005, unless renewed.

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Jan 11* 20 *05*
BY *Linda K. Ketchum* ANALYST

JURISDICTION

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

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

5. Section 2234 of the Code states:

"The Division of Medical Quality 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 [Chapter 5, the Medical Practice Act].

"(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.

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

6 "(d) Incompetence.

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
10 certificate."

11 6. Section 2266 of the Code states: "The failure of a physician and surgeon to
12 maintain adequate and accurate records relating to the provision of services to their patients
13 constitutes unprofessional conduct."

14 7. Section 125.3 of the Code provides, in pertinent part, that the Division
15 may request the administrative law judge to direct a licentiate found to have committed a
16 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
17 investigation and enforcement of the case.

18 8. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
19 part:

20 "(a) Upon receipt of written notice from the Medical Board of California, the
21 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
22 that a licensee's license has been placed on probation as a result of a disciplinary action,
23 the department may not reimburse any Medi-Cal claim for the type of surgical service or
24 invasive procedure that gave rise to the probation, including any dental surgery or
25 invasive procedure, that was performed by the licensee on or after the effective date of
26 probation and until the termination of all probationary terms and conditions or until the
27 probationary period has ended, whichever occurs first. This section shall apply except in
28 any case in which the relevant licensing board determines that compelling circumstances

1 warrant the continued reimbursement during the probationary period of any Medi-Cal
2 claim, including any claim for dental services, as so described. In such a case, the
3 department shall continue to reimburse the licensee for all procedures, except for those
4 invasive or surgical procedures for which the licensee was placed on probation.”

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Gross Negligence, Repeated Negligence and Incompetence)

7 9. Respondent is subject to disciplinary action in connection with his care,
8 treatment and management of patient Lois M. The circumstances are as follows:

9 A. On or about September 24, 1998, patient Lois M., a then 71 year-
10 old female, underwent a needle biopsy of the lower abdomen. The pathologist interpreted
11 the biopsy as showing a malignant lymphoma consistent with follicular lymphoma. On or
12 about October 5, 1998, patient Lois M. underwent excisional biopsy of two lymph nodes
13 in the left groin. The final diagnosis from the excisional biopsy was malignant
14 lymphoma, mixed small and large cell, diffuse, with no follicular pattern.

15 B. On or about September 24, 1999, a CT-scan revealed a small
16 pleural effusion on the right.

17 C. On or about October 9, 1998, patient Lois M. was seen in
18 consultation by respondent, an oncologist. Respondent's impression was Stage II
19 follicular small cleaved cell lymphoma, status post excisional biopsy. Respondent also
20 noted the patient had a history of diabetes and hypertension. Respondent ordered four
21 cycles of chemotherapy and patient Lois M. received the therapy on October 12,
22 November 16, and December 21, 1998, and January 22, 1999.

23 D. On or about October 26, 1998, a CT-scan revealed a moderate
24 pleural effusion on the right.

25 E. On or about August 6, 1999, patient Lois M. presented with a mass
26 in her left groin. Respondent deemed this to be a recurrence of lymphoma. He decided to
27 repeat a staging evaluation and chemotherapy. In addition, he prescribed Prednisone,
28 taken orally for five days starting the first day of the first chemotherapy. In connection

1 with the Prednisone, respondent wrote a prescription for 50 mg tablets, 10 tablets, one
2 tablet p.o. b.i.d. with meals, with six refills. Respondent did not note that the tablets were
3 to be taken for only five days following each chemotherapy session.

4 F. On or about August 9, 1999, patient Lois M. began her second
5 round of chemotherapy. On or about August 27, 1999, patient Lois M. returned for a
6 second chemotherapy session. She complained of being confused and it was discovered
7 that she had been taking the Prednisone continuously for 20 days at the rate of 100 mg per
8 day. Respondent advised her to discontinue the Prednisone and canceled the
9 chemotherapy. A CBC taken that day revealed an elevated white count of 12,600 with
10 most of the cells being granulocytes at 96.1%. Creatinine was reported at 1.8 and BUN at
11 50.

12 G. On or about September 18, 1999, patient Lois M died from multi-
13 organ failure due to *Apergillus pneumonia* resulting from inadvertent prolonged use of
14 Prednisone and from Non-Hodgkins lymphoma with contributing causes being diabetes
15 and hypertensive cardiovascular disease.

16 10. Respondent is subject to disciplinary action under Code sections 2234(b),
17 2234(c), and 2234(d) in that he was grossly negligent, repeatedly negligent and incompetent in
18 connection with his care, treatment and management of patient Lois M, as set forth below:

19 A. Paragraph 9 above is incorporated by reference.

20 B. On or about October 9, 1998, respondent misdiagnosed patient
21 Lois M. as having follicular lymphoma (a low grade lymphoma) when, in fact, she
22 suffered from diffuse lymphoma (an intermediate grade lymphoma).

23 C On or about October 9, 1998, respondent failed to take into
24 consideration the results of the October 5, 1998 excisional biopsies.

25 D. Respondent, during patient Lois M.'s first round of chemotherapy
26 continued to fail to take into account the results of the October 5, 1998 excisional
27 biopsies.

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1 E. From in or about October 1998 to in or about January 1999,
2 respondent continued to document patient Lois M.'s disease as low grade lymphoma.

3 F. From in or about October 1998 through in or about January 1999,
4 respondent failed to order sufficiently aggressive chemotherapy for patient Lois M.

5 G. From in or about October 1998 to in or about January 1999,
6 respondent failed to follow up on the CT scan findings of pleural effusion.

7 H. From in or about October 1998 to in or about January 1999,
8 respondent failed to correctly diagnose patient Lois M. as having stage III lymphoma and
9 to treat her for her stage III condition.

10 I. On or about August 6, 1999, respondent failed to note on his
11 prescription for Prednisone that it was to be taken for only five days at a time.

12 J. From in or about August 1999 to in or about September 1999,
13 respondent failed to monitor the side effects of Prednisone on patient Lois M.'s diabetes.

14 K. On or about August 20, 1999, respondent failed to evaluate patient
15 Lois M. for her rising Creatinine and BUN as well as her renal failure. In addition,
16 respondent failed to obtain a blood sugar.

17 L. On or about August 27, 1999, respondent failed to obtain blood
18 sugar and electrolytes levels.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Gross Negligence, Repeated Negligence and Incompetence)

21 11. Respondent is subject to disciplinary action in connection with his care,
22 treatment and management of patient William E. The circumstances are as follows:

23 A. On or about December 1, 1997, patient William E., a then 72 year-
24 old male, underwent a right thoracoscopy with biopsy. The procedure revealed
25 malignant lymphoma.

26 B. On or about December 2, 1997, patient William E. was seen in
27 consultation by respondent. Respondent ordered chemotherapy which began on
28 December 19, 1997.

1 C. On or about March 14, 1998, twelve (12) days after the fourth
2 chemotherapy session, patient William E. was hospitalized with complaints of shortness
3 of breath, fever and a decreased white blood count. Four days later, while still in the
4 hospital, he fell and broke his hip.

5 D. On or about April 10, 1998, after being discharged from the
6 hospital and a nursing facility, patient William E. presented to respondent. Respondent
7 noted that patient William E. was undergoing physical therapy, was wheel-chair bound
8 and that "had near complete response from chemotherapy at this time." Respondent
9 decided to withhold further chemotherapy because of poor performance status and to re-
10 start it when performance improved.

11 E. On or about May 29, 1998, respondent ordered patient William E.
12 to resume chemotherapy and undergo his fifth cycle even though respondent did not
13 document any improved performance status or that the patient was no longer using a
14 wheel chair.

15 F. On or about June 19, 1998, patient William E. underwent his sixth
16 cycle of chemotherapy even though his performance status had deteriorated, his white cell
17 count had risen to 20,700 and he complained of dry mouth.

18 G. On or about June 30, 1998, patient William E. was hospitalized.
19 Despite aggressive treatment, he remained anuric and died on July 1, 1998.

20 12. Respondent is subject to disciplinary action under Code sections 2234(b),
21 2234(c) and 2234(d) in that he was grossly negligent, repeatedly negligent and incompetent in
22 connection with his care, treatment and management of patient William E., as set forth below:

23 A. Paragraph 11 above is incorporated by reference.

24 B. On or about May 29, 1998, respondent failed to withhold
25 chemotherapy despite the fact there was no evidence patient William E.'s performance
26 status had improved and he presented with evidence of dehydration.

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1 C. On or about June 19, 1998, respondent failed to withhold
2 chemotherapy despite the fact there was no evidence patient William E.'s performance
3 status had improved and patient William E. presented with evidence of dehydration.

4 D. On or about May 29 and June 19, 1998, respondent caused patient
5 William E. to undergo further chemotherapy without medical indication.

6 E. On or about June 19, 1998, respondent failed to consider
7 dehydration.

8 **THIRD CAUSE FOR DISCIPLINE**

9 (Gross Negligence, Repeated Negligence and Incompetence)

10 13. Respondent is subject to disciplinary action in connection with his care,
11 treatment and management of patient Dorothy D. The circumstances are as follows:

12 A. On October 13, 1999, patient Dorothy D. was seen by Dr. M. at
13 Kaiser Permanente Medical Center, Fontana. Dr. M noted the patient had chronic iron
14 deficiency anemia and had a single contrast barium enema in February 1998, with small
15 filling defect. Dr. M. noted, "Given continued iron deficiency in spite of claim of taking
16 iron b.i.d., will discuss further with next visit."

17 B. On December 13, 1999, Dr. M. saw Dorothy and his
18 impression was "worsening anemia, probably from a G.I. source. Has had
19 incomplete G.I. work-up (single contrast barium enema and flexible
20 sigmoidoscopy in 1998)." He considered giving the patient I.V. iron therapy, and
21 ordered blood transfusions.

22 C. On December 13, 1999, Dr. M. placed a requisition for
23 colonoscopy, which was received the next day in Gastroenterology, which stated:
24 "Documented iron deficiency anemia, with ferritin of 13 in 1998; Had BE (barium
25 enema) in past, was just single contrast; please do colonoscopy to rule out colonic
26 source."

27 D. On or about January 5, 2000, respondent first saw patient
28 Dorothy D. , a 56 year-old female, in a hematology/oncology consultation.

1 Respondent's impression was that she had "progressive anemia with microcytic
2 indices consistent with iron deficiency anemia; ? blood loss vs. poor absorption of
3 iron." Respondent discussed with the patient that despite the iron supplement she
4 had no improvement in her hemoglobin, and that intravenous iron therapy would
5 be considered. He also stated that he would await the patient's colonoscopy
6 evaluation, and that if it was negative, she would require urologic or gynecologic
7 evaluation to rule out other causes of blood loss, and that if other work-ups are
8 non-diagnostic, that parenteral iron therapy would be continued.

9 E. On or about February 2, 2000, respondent saw Dorothy and again
10 questioned whether she had a G.I. bleed.

11 F. On or about March 1, 2000, respondent saw Dorothy for follow-up
12 of iron deficiency anemia, and noted he was "awaiting colonoscopy."

13 G. On or about April 19, 2000, respondent saw Dorothy and
14 noted the iron deficiency anemia and that oral iron would be given.

15 H. On or about May 17, 2000, respondent saw Dorothy and
16 again noted iron deficiency anemia.

17 I. On or about August 18, 2000, Dorothy had a colonoscopy
18 which was negative.

19 J. On or about September 2000, respondent saw Dorothy who
20 complained of fatigue.

21 K. On October 25, 2000, respondent saw Dorothy and he questioned
22 occult G.I. bleeding and planned to give I.V. iron.

23 L. On February 16, 2001, respondent saw Dorothy and advised I.V.
24 iron therapy for 3 days.

25 M. On March 16, 2001, respondent saw Dorothy and ordered I.V. iron
26 to be given for 2 days.

27 N. On June 11, 2001, a colonoscopy revealed a large, ulcerated mass
28 in the hepatic flexure.

1 O. On July 17, 2001, Dorothy had a right hemicolectomy and
2 cholecystectomy. Pathology revealed a moderately differentiated colonic
3 adenocarcinoma with invasion of the ileum, T4. The tumor was 13.5 cm x 8.5 cm, which
4 extended to the entire thickness of the wall to pericolic adipose tissue; 1/17 nodes were
5 positive for metastases.

6 P. On August 13, 2001, respondent saw Dorothy and noted
7 she had Duke C, Stage III, T4 N1 Mo colon cancer.

8 14. Respondent is subject to disciplinary action under Code sections 2234(b),
9 2234(c) and 2234(d) in that he was grossly negligent, repeatedly negligent and incompetent in
10 connection with his care, treatment and management of patient Dorothy D., as set forth below:

11 A. Paragraph 13 above is incorporated by reference.

12 B. Respondent failed to establish whether Dorothy D. had a
13 correctable disease process in her gastrointestinal tract which was causing her to
14 have chronic iron-deficiency anemia associated with bleeding from the G.I. tract,
15 prior to treating her with intravenous iron therapy;

16 C. Respondent failed to document that patient Dorothy was
17 informed about the possibility that her asthma might be dangerously exacerbated
18 with I.V. iron therapy;

19 D. Respondent failed to document that he made sufficient
20 attempts to expedite the colonoscopy by explaining the reasons for urgency in
21 patient Dorothy whom he knew could have been harboring a malignancy of the
22 colon, and failed to request a formal G.I. consultation when it became apparent
23 that the colonoscopy was being delayed for months;

24 E. When he first saw patient Dorothy in consultation,
25 Respondent failed to consider evaluating the remainder of her G.I. tract in case her
26 colonoscopy turned out to be negative, and planned instead to evaluate her
27 urologically or gynecologically,

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1 F. Respondent failed to carry out his original plan of having
2 her evaluated urologically or gynecologically, once the colonoscopy did turn out
3 to be negative, and never considered to ask that the remainder of her G.I. tract be
4 evaluated after the negative colonoscopy.

5 G. Respondent failed to order additional tests such as Vitamin B12 and
6 folic acid, to determine whether the patient Dorothy had a problem with poor absorption
7 of iron which lead to iron-deficiency anemia.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Adequate and Accurate Records)**

10 15. Respondent is subject to disciplinary action under section 2266 in that he
11 failed to maintain adequate and accurate records in connection with his care, treatment and
12 management of patients Lois M., William E., and Dorothy D. as set forth in paragraphs 9 - 14
13 above which are incorporated herein by reference.

14 **PRAAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

17 A. Revoking or suspending Physician's and Surgeon's Certificate
18 No. A 52005, issued to SUNIL PATEL, M.D.;

19 B. Revoking, suspending or denying approval of SUNIL PATEL, M.D.'s
20 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

21 C. Ordering SUNIL PATEL, M.D. to pay the Division of Medical Quality the
22 reasonable costs of the investigation and enforcement of this case, and, if placed on probation,
23 the costs of probation monitoring;

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

DATED: January 11, 2005



DAVID THORNTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

RDH:cj

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