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

In the Matter of the Accusation Against: **Michael George Fraters, D.O.** **719 Parkwood Drive** **Chico, CA 95928-9158** **Osteopathic Physician's and Surgeon's Certificate No. 20A 10091,** Respondent.	Case No. 900-2024-000106 OAH No. **A C C U S A T I O N**

PARTIES

1. Erika Calderon (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Osteopathic Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 20, 2007, the Medical Board issued Osteopathic Physician's and Surgeon's Certificate No. 20A 10091 to Michael George Fraters, D.O. (Respondent). The Osteopathic 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 August 31, 2026, unless renewed.

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JURISDICTION

3. This 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 3600 of the Code states that the law governing licentiates of the Board is found in the Osteopathic Act and in Chapter 5 of Division 2, relating to medicine.

5. Section 3600-2 of the Code states:

> "The Osteopathic Medical Board of California shall enforce those portions of the Medical Practice Act identified as Article 12 (commencing with Section 2220), of Chapter 5 of Division 2 of the Business and Professions Code, as now existing or hereafter amended, as to persons who hold certificates subject to the jurisdiction of the Osteopathic Medical Board of California ..."

6. Section 2452 of the Code provides that the Medical Practice Act applies to the Osteopathic Medical Board of California so far as it is consistent with the Osteopathic Act.

7. Section 2450.1 of the Code states:

> "Protection of the public shall be the highest priority for the Osteopathic Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

8. 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 Board deems proper.

STATUTORY PROVISIONS

9. Section 820 of the Code states:

> Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more

physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

10. Section 821 of the Code provides that the licentiate's failure to comply with an order issued under section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

11. Section 822 of the Code states:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

12. Section 824 of the Code provides that the licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections.

13. Section 2234 of the Code, states:

The board shall take action against any licensee who is charged with unprofessional conduct. [1] 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.

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[1] Unprofessional conduct has been defined as conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

(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 that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

(g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board no later than 30 calendar days after being notified by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

(h) Any action of the licensee, or another person acting on behalf of the licensee, intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the board or the Department of Consumer Affairs, Health Quality Investigation Unit.

(i) Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.

14. Section 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Medical Board may order discipline of the licensee in accordance with Section 2227 or the Medical Board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

15. Section 4021 of the Code states: 'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

16. Section 4022 of the Code states: 'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"...

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

COST RECOVERY

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

PERTINENT DRUG INFORMATION

18. Butalbital (Fiorinal®) is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022. Butalbital is a barbiturate which may be habit-forming. Tolerance, psychological dependence, and physical dependence may occur especially following prolonged use of high doses of barbiturates.

19. Codeine is a Schedule II controlled substance and narcotic as defined by section 11055 of the Health and Safety Code, and a Schedule II controlled substance by Section 1308.12 (b)(1) of Title 21 of the Code of Federal Regulations, and a dangerous drug as defined in Business and Professions Code section 4022.

20. Fioricet, the brand name for butalbital, a barbiturate, with acetaminophen and caffeine, is a Schedule III controlled substance pursuant to Code of Federal Regulations Title 21

section 1308.13, as defined in Health and Safety Code section 11056, and is a dangerous drug pursuant to Business and Professions Code section 4022. Fioricet is used in the treatment of tension headaches and migraines.

FACTUAL ALLEGATIONS

21. On or about March 3, 2024, the Board received an anonymous online complaint alleging Respondent was engaged in drug diversion at his place of employment, Enloe Medical Center (EMC), while functioning as an emergency room physician. The complaint further alleged Respondent was manipulating staff members to obtain narcotic prescriptions, specifically Fioricet, for his own use, and that Respondent's drug diversion had been previously investigated by EMC, but the issue persisted.

22. On or about April 26, 2024, the Board's investigator obtained Respondent's CURES[2] Prescriber Activity Report (PAR), in which it was discovered that Respondent prescribed Butalbital to eighteen individuals between May 2023 and May 2024; six of whom were listed on the Department of Consumer Affairs (DCA) Board of Registered Nursing website as registered nurses.

23. On or about May 28, 2024, the Board's investigator obtained Respondent's CURES Report as a patient, which evidenced he received butalbital, acetaminophen, caffeine, and codeine (Fioricet with codeine) medication prescriptions from at least three different physicians between November 2021 and August 2023. Most notably, Respondent's CURES Report as a patient demonstrated that from February 2022 to April 2022, Respondent received prescriptions for butalbital, acetaminophen, caffeine, and codeine from three different physicians that were filled at three different pharmacies.

24. On or about July 12, 2024, the Board's investigator received the returned subpoenaed duces tecum (SDT) documents from EMC pertaining to Respondent. Contained within the SDT documents was:

[2] Controlled Substance Utilization Review and Evaluation System (CURES) is a database maintained by the California Department of Justice, which tracks all controlled drug prescriptions that are dispensed in the State of California

A. A memorandum/note dictated by EMC Chief of Staff dated December 10, 2023, which stated, among other things, the following:

a. The Chief of Staff handled a series of complaints about Respondent's "suspicious prescribing practices and possible misuse of controlled substances, particularly codeine." "The Wellness Committee, responsible for managing such issues, met with [Respondent], who eventually admitted to struggling with narcotic use and withdrawal. Despite these admissions and his agreement to a treatment program, concerns about his honesty and full disclosure emerged, particularly as more staff members reported similar incidents involving him... The situation underscores the ongoing challenges of balancing his recovery, professional responsibilities, and the maintenance of patient safety."

b. The memorandum/note also referenced instances where Respondent solicited a respiratory therapist, a charge nurse, and other staff members in the Emergency Department in EMC if he could write them a prescription for codeine, but then take the prescriptions himself for his personal use.

c. In addition, the memorandum/note stated that Respondent disclosed that his wife had discovered his "stash" a couple of weeks prior and he had already come clean to her and had vowed to stop using the medication.

d. Most concerning was an instance detailing how Respondent was apparently quite ill while working at the EMC Emergency Department and refused to go home, which Respondent later admitted was likely due to narcotic withdrawal, and ultimately resulted in the Emergency Department Director seeing patients, as he felt that this was the safest course for both the efficiency of the Emergency Department and possibly the safety of the patients.

e. Respondent agreed to a proposed leave of absence by the EMC Wellness Committee conditioned on his attendance at the outpatient Hazelton Betty

Ford program in Los Angeles followed by a reduced shift load at EMC, which resulted in Respondent's frustration with the inability to return to work and his concern pertaining to his financial situation. It was also discovered that Respondent had been considering applying for privileges at one of the EMC outlying facilities, as well as at a different local hospital, and when informed that EMC would disclose Respondent's issue/investigation of illegal drugs or substances, Respondent indicated that he would then have to find physicians that were unaware of his current problem.

B. A letter authored by EMC Chief of Staff to Respondent, dated December 14, 2023, which stated, among other things, the following:

   a. That as part of Respondent's plan to return to work at EMC after his leave of absence, Respondent agreed to return to work on a part-time basis, and only work at EMC, in addition to voluntarily submitting to random drug testing by the EMC Wellness Committee.

   b. Should the Wellness Committee report Respondent's failure to comply with any portions of his return-to-work plan, the EMC Medical Executive Committee (MEC) at that time could consider whether to open an investigation and/or possible corrective action against Respondent's medical staff privileges.

   c. The letter also memorialized the Chief of Staff's "disappointment by [Respondent's] continued attempts to take on more shifts [at the] Emergency Department, rather than to take this time to continue [his] recovery."

C. The EMC minutes from the MEC meeting dated January 5, 2024, pertaining to the EMC Wellness Committee update as to the Respondent, which stated the following:

a. "The physician has agreed to a contract with the committee for 3-5 years, which includes random testing and counseling. If he chooses not to participate, it will be reported to the MBC. He volunteered himself to the program and enrolled in a rehab program. He has completed 6 weeks intensive and is working on another 6 weeks of local rehab program."

b. "The physician had taken a leave of absence but has expressed his concerns with financial issues. This is being reported to this committee since he attempted to get another job somewhere else. This is in violation of the contract."

25. On or about August 27, 2024, the Board's investigator received the Pacific Assistance Group's (PAG) progress report for Respondent indicating Respondent enrolled in the monitoring and support program effective December 15, 2023. The documentation further stated that Respondent signed an agreement for five years of monitoring consisting of attendance at community-based self-help meetings, random biological fluid testing, attendance at the Health Professional Support Group, and regular contact with a case manager and/or program administrator. There also was mention that Respondent self-reported attendance at 12-Step meetings through Alcoholics Anonymous however, Respondent's attendance had not been documented.

26. On or about September 3, 2024, the Board's investigator received Respondent's certified medical records from Hazelton Betty Ford, which detailed Respondent's intensive outpatient program from November 6, 2023, to December 11, 2023, and then transitioned to outpatient from December 18, 2023, to February 5, 2024. The records reflected the program's recommendations for Respondent to follow, which included: maintain abstinence from all mood-altering substances, attend at least three 12- Step meetings weekly, find a sponsor within two weeks of discharge, establish a routine of daily recovery practices, participate in 'My Recovery Compass,' maintain regular medical and dental care, and utilize the Hazelden Betty Ford Alumni resources.

27. On or about August 30, 2024, the Board's investigator was informed by the counsel to EMC that Respondent tested positive for alcohol the previous day pursuant to a toxicology study based on a notification to EMC by PAG.

28. On or about September 3, 2024, the Board's investigator sent all of Respondent's medical records and CURES Reports, the returned SDT documents from EMC pertaining to Respondent, PAG's progress report for Respondent, and a draft of her investigative report of Respondent to Dr. T.B., for review in order to aid him in his mental evaluation of Respondent.

29. Prior to meeting with Respondent, Dr. T.B. reviewed the investigative materials provided by the Board investigator which included, but were not limited to, Respondent's medical records and CURES Reports, the returned SDT documents from EMC pertaining to Respondent, PAG's progress report for Respondent, and a draft of the Board's investigative report of Respondent.

30. On or about September 17, 2024, Dr. T.B. conducted a psychiatric evaluation and interview with the Respondent.

31. After reviewing the materials provided by the Board investigator and interviewing Respondent, Dr. T.B. drafted and submitted a written report to the Board with his findings. In that report, Dr. T.B. opined that Respondent has mental health disorders. With reasonable medical certainty, Dr. T.B. determined that due to Respondent's mental health disorders, Respondent was not safe to practice medicine without a litany of restrictions. Those restrictions included Board-oversight of Respondent's monitoring and treatment, which include but are not limited to: maintaining abstinence from illicit drugs, unprescribed controlled substances, and alcohol; regularly attend community-based self-help meetings, and obtain an AA sponsor with weekly contact with him/her; continue involvement in a physician monitoring group; comply with random biological fluid testing with 42 or more tests per year and 2–4 blood tests per year; continue to use the Soberlink remote alcohol monitoring device (portable breath analyzer) four times a day; continue attendance at the Health Professional Support Group Therapy twice weekly; maintain regular contact with Case Manager and/or Program Administrator of PAG; continue

weekly contact with Respondent's current Emergency Room physician monitor at EMC; and continue to meet with the EMC's Physician Well-Being Committee at least on a quarterly basis.

FIRST CAUSE FOR DISCIPLINE

(Mental or Physical Impairment)

32. Respondent Michael George Fraters, D.O. is subject to disciplinary action under section 822 of the Code in that his ability to practice medicine safely is impaired because he is mentally ill or physically ill affecting his competency, as more particularly alleged hereinafter:

33. Complainant realleges paragraphs 21 through 31, and those paragraphs are hereby incorporated by reference as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

34. Respondent Michael George Fraters, D.O. is further subject to disciplinary action under sections 2227 and 2234, as defined by sections 2234 and 2239, of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged hereinafter:

35. Complainant realleges paragraphs 21 through 33, and those paragraphs are hereby 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 Osteopathic Medical Board of California issue a decision:

1. Revoking or suspending Osteopathic Physician's and Surgeon's Certificate No. 20A 10091, issued to Respondent Michael George Fraters, D.O.;

2. Revoking, suspending or denying approval of Respondent Michael George Fraters, D.O.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Michael George Fraters, D.O., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: 12/16/2024

Erika Calderon

ERIKA CALDERON
Executive Director
Osteopathic Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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