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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 2 20 16
BY R. Fordaus ANALYST

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

In the Matter of the Accusation Against: ROBERT SEARS, M.D. 26933 Camino de Estrella Capistrano Beach, California 92624 Physician's and Surgeon's Certificate No. A60936, Respondent.	Case No. 800-2015-012268 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about September 25, 1996, the Medical Board issued Physician's and Surgeon's Certificate Number A60936 to Robert Sears, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought 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

(Gross Negligence)

7. Respondent Robert Sears, M.D. is subject to disciplinary action under section 2234(b) in that he was grossly negligent in his care and treatment of patient J.G., a minor, who he saw for six office visits between April 2014 and May 2015. The circumstances are as follows:

8. On April 3, 2014, two-year-old J.G. presented to Respondent for the first time. He was seen by Respondent for what the medical records describe as a "2 year." The visit of this date includes a summary of the patient's history with a brief description of J.G.'s prior vaccination reaction, as described by the patient's mother. Her description included,' "shut down stools and urine" for 24 hours with 2 month vaccines and limp "like a ragdoll" lasting 24 hours and not himself for up to a week after 3 month vaccines.

9. Respondent wrote a letter dated April, 13, 2014, excusing patient J.G. from all future vaccinations. The letter indicates that the patient's kidneys and intestines shut down after prior vaccination and that at three months the patient suffered what appears to be a severe encephalitis reaction for 24 hours, starting approximately ten minutes after his vaccines, with lethargy, limpness, and poor responsiveness. The letter stated that, "Due to the severity of this second reaction, I recommend no more routine childhood vaccines for the duration of his childhood."

10. The letter dated April 13, 2014, was not maintained in patient J.G.'s medical chart in Respondent's office.

11. On May 14, 2014, patient J.G. had a consult visit with Respondent for constipation. A pertinent history was obtained, the abdominal exam was normal and a detailed treatment plan was devised.

12. On June 23, 2014, patient J.G. presented to Respondent with a chief complaint of headache with a history of patient being "hit on head with hammer" by Dad two weeks prior to the visit. A mention is made of a split lip prior to hammer incident without any additional history. A physical examination indicates, "no residual marks now." No additional physical exam, including neurological testing, was performed and no assessment with plans was recorded.

13. An Emergency Response Notice of Referral Disposition dated June 25, 2014 with "Allegations cannot be substantiated - case closed" outcome is maintained in the patient chart.

14. On January 13, 2015, patient J.G. presented to Respondent with possible flu. He had a history of not eating, fever, and cough for three weeks, with lethargy, and a diagnosis of croup recorded per the nurse. His records indicate that the patient's previous diagnoses were treated with Xopenex and steroids. His OM (otitis media) was treated with Omnicef, all "improved now" with "flu today suddenly." A diagnosis of flu was made and Tamiflu was prescribed.

15. On March 11, 2015, patient J.G. again presented to Respondent. The only history recorded on that date included abdominal pain with a physical exam. Diagnoses made at that time included constipation resolved and mild OM. The plan included miralax, magnesium, aloe, garlic, and testing with urine culture.

16. On May 7, 2015, patient J.G. saw Respondent for the last time. Patient J.G. presented with upper respiratory illness/viral. Serous otitis media was diagnosed and garlic prescribed.

17. The standard of care requires that a physician evaluating a patient for a possible reaction to vaccines obtain a detailed history of the vaccines previously received as well as the reaction/reactions that occurred. Based on that information the physician should provide an evidence-based recommendation for future immunizations.

18. Respondent was grossly negligent and departed from the standard of care in that he did not obtain the basic information necessary for decision making, prior to determining to exclude the possibility of future vaccines, leaving both patient J.G., the patient's mother, and his future contacts at risk for preventable and communicable diseases.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

19. Respondent Robert Sears, M.D. is subject to disciplinary action under section 2234 (c) in that he was repeatedly negligent in his care and treatment of patient J.G. The circumstances are as follows:

20. Paragraphs 7 through 18 are incorporated by reference as though fully set forth.

21. Respondent departed from the standard of care by:

(a) Failing to obtain the basic information necessary to make a decision related to the withholding of future vaccines; and

(b) Failing to conduct neurological testing as part of the physical examination of patient J.G. on June 23, 2014, when he presented to Respondent with complaints of headache, following head trauma.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

22. Respondent Robert Sears, M.D. is subject to disciplinary action under section 2266 in that he failed to maintain adequate and accurate records related to the care and treatment of patient J.G.

23. Specifically, Respondent did not maintain a copy of the letter he prepared exempting patient J.G. from future vaccinations and he failed to document an adequate physical examination of the patient on his visit of April 23, 2014, and merely wrote, "no residual marks."

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 Number A60936, issued to Robert Sears, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. If placed on probation, ordering him to pay the Board the costs of probation monitoring; and

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

DATED: September 2, 2016

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