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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY ANA Palmon ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2016-023866

13 **PATRICK MARK SUTTON, M.D.**
14 **50 Alessandro Pl., #420**
Pasadena, CA 91105

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G 53929,**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 29, 1984, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 53929 to Patrick Mark Sutton, M.D. (Respondent). That certificate was in
25 full force and effect at all times relevant to the charges brought herein and will expire on August
26 31, 2020, unless renewed.

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JURISDICTION

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

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

8 5. Section 2234 of the Code, states:

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

12 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
13 violation of, or conspiring to violate any provision of this chapter.

14 “(b) Gross negligence.

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

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

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

25 “(d) Incompetence.

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

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

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

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12
13 7. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
14 the Code in that he engaged in repeated acts of negligence. The circumstances are as follows:

15 8. Respondent is an obstetrician and gynecologist with a private practice in Pasadena,
16 California. He began treating Patient A¹ in or about 2010.

17 9. On or about January 27, 2016, Patient A presented to Respondent with complaints of
18 a “pea-size ball” near her rectum that caused her pain with sitting. Following examination,
19 Respondent diagnosed Patient A with an infected sebaceous cyst of the left labia. He prescribed
20 vibramycin, an antibiotic, and sitz baths, and instructed Patient A to follow-up in one week.

21 10. Patient A returned to Respondent as instructed on or about February 3, 2016. At this
22 visit, similar to her last, Patient A was instructed to disrobe from the waist down; she was given a
23 paper gown and a paper drape for modesty. She was placed in stirrups and examined by
24 Respondent with a female chaperone present.

25 11. During the physical examination of Patient A Respondent told her that he really could
26 not see “down there” because she was really hairy. Respondent’s comment made Patient A
27 uncomfortable.

28 ¹ The patient is referred to herein as Patient A to protect her privacy.

1 12. Nevertheless, Respondent noted that the sebaceous cyst was healing, had decreased
2 erythema and had no drainage. Following the end of the examination, the chaperone left the
3 examination room to answer the office telephone.

4 13. Respondent was seated on a stool in front of Patient A, who was naked from the waist
5 down under a paper gown and paper drape, he asked her, "Do you have sex?" She replied, "No,"
6 adding that she had an abusive relationship and now dedicated her life to her kids. Respondent
7 then asked Patient A, "Do you enjoy orgasms, you are a very beautiful woman?" Patient A was
8 intimidated and did not know how to get out of the situation. Ultimately, Respondent advised her
9 to follow up as needed and that she should avoid sexual activity for at least two weeks (pelvic
10 rest). Patient A terminated the discussion.

11 14. The standard of care calls for a physician to discuss sexual history with patients.
12 Discussion of orgasms falls into the category of sexual health. During the discussion of sexual
13 topics, the physician should ensure that the patient feels comfortable talking about vulnerable
14 issues. This may mean that the patient needs to be fully clothed during the discussion in order to
15 feel comfortable. The particulars of the discussion, including the recommendations of the
16 physician should be documented in the medical record. The physician should refrain from
17 discussing or commenting on the patient's appearance. Commenting on a patient's appearance is
18 never appropriate in the field of gynecology.

19 15. Respondent told Patient A that she should enjoy orgasms because she was a very
20 beautiful woman. A patient's appearance should not be a part of a discussion of sexual health or
21 sexual issues and is a simple departure from the standard of care.

22 16. The standard of care calls for a physician to be honest with his patient, but to be
23 tactful to avoid patient discomfort or embarrassment. Patient A was already in a compromised
24 situation, naked from the waist down, in stirrups with a physician looking at her genitals.
25 Respondent's criticism of her pubic hair was simple departure from the standard of care.

26 17. The standard of care requires that a physician document all topics discussed during a
27 patient visit. If the patient does not wish to discuss a topic or declines an exam, that should also
28 be documented in the patient's chart.

1 18. Respondent admitted during his interview with Medical Board representatives that he
2 had a brief conversation with Patient A regarding sexual function, but the patient cut the
3 discussion short. Respondent admitted to omitting that discussion from the medical record.

4 19. Respondent's acts and/or omissions as set forth in paragraphs 8 through 18, inclusive,
5 above, whether proven individually, jointly, or in any combination thereof, constitute repeated
6 negligent acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for
7 discipline exists.

8 **SECOND CAUSE FOR DISCIPLINE**

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

10 20. Respondent is subject to disciplinary action under section 2266 of the Code. The
11 circumstances are as follows:

12 21. The allegations set forth in paragraphs 17 and 18 are incorporated by reference as if
13 fully set forth herein.

14 22. Respondent also admitted during his interview with Medical Board representatives
15 that he failed to document the dosage and frequency of the antibiotic (vibramycin) he prescribed
16 for Patient A on or about January 27, 2016.

17 **DISCIPLINARY CONSIDERATIONS**

18 23. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about December 2, 2002, in a prior disciplinary action entitled *In*
20 *the Matter of the Accusation Against Patrick Mark Sutton, M.D.* before the Medical Board of
21 California, in Case Number 17-1999-97314, Respondent's license was placed on probation for
22 four years. That decision is now final and is incorporated by reference as if fully set forth herein.

23 24. To determine the degree of discipline, if any, to be imposed on Respondent,
24 Complainant alleges that on or about November 14, 2011, in a prior disciplinary action entitled *In*
25 *the Matter of the Accusation Against Patrick Mark Sutton, M.D.* before the Medical Board of
26 California, in Case Number 11-2009-197106, Respondent's license was placed on probation for
27 three years. That decision is now final and is incorporated by reference as if fully set forth herein.

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1 **PRAYER**

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

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 53929,
5 issued to Patrick Mark Sutton, M.D.;
- 6 2. Revoking, suspending or denying approval of Patrick Mark Sutton, M.D.'s authority
7 to supervise physician assistants and advanced practice nurses;
- 8 3. Ordering Patrick Mark Sutton, M.D., if placed on probation, to pay the Board the
9 costs of probation monitoring; and
- 10 4. Taking such other and further action as deemed necessary and proper.

11
12 DATED:

13 September 24, 2018



14 KIMBERLY KIRCHMEYER
15 Executive Director
16 Medical Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant

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