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

In the Matter of the Accusation and Petition to Revoke Probation Against: Robert William Sears, M.D. Physician's and Surgeon's Certificate No. A 60936 Respondent.	Case No.: 800-2019-053592

DECISION

The attached Stipulation Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 30, 2022.

IT IS SO ORDERED: August 31, 2022.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **ROBERT WILLIAM SEARS, M.D.** **26933 Camino De Estrella** **Capistrano Beach, California 92624** **Physician's and Surgeon's Certificate No. A 60936,** Respondent.	Case No. 800-2019-053592 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, and by Joseph F. McKenna III, Deputy Attorney General.

2. Respondent Robert William Sears, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, Esq., whose address is: 5440 Trabuco Road, Irvine, California, 92620.

3. On or about September 25, 1996, the Board issued Physician's and Surgeon's Certificate No. A 60936 to Robert William Sears, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on March 31, 2024, unless renewed.

PRIOR DISCIPLINARY HISTORY

4. On July 27, 2018, the Board issued a Decision in a disciplinary action entitled *In the Matter of the Accusation Against: Robert William Sears, M.D.*, Case No. 800-2015-012268, in which Respondent's Physician's and Surgeon's Certificate No. A 60936 was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of thirty-five (35) months, subject to various probation terms and conditions. A true and correct copy of Decision and Order No. 800-2015-012268 is attached hereto as Exhibit A, and is incorporated herein by reference.

5. On July 23, 2020, the Board issued a Decision in a subsequent disciplinary action entitled *In the Matter of the First Amended Accusation Against: Robert William Sears, M.D.*, Case No. 800-2016-024774, in which Respondent's Physician's and Surgeon's Certificate No. A 60936 was revoked. However, the revocation was stayed and Respondent's probation term in his prior disciplinary matter before the Board (Case No. 800-2015-012268) was extended for an additional two (2) years. A true and correct copy of Decision and Order No. 800-2016-024774 is attached hereto as Exhibit B, and is incorporated herein by reference.

JURISDICTION

6. On March 4, 2022, Accusation and Petition to Revoke Probation No. 800-2019-053592 was filed before the Board. A true and correct copy of the Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on March 4, 2022. Respondent timely filed his Notice of Defense contesting the Accusation and Petition to Revoke Probation. A true and correct copy of the Accusation and Petition to Revoke Probation is attached as Exhibit C and is incorporated herein by reference.

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ADVISEMENT AND WAIVERS

7. Respondent has carefully read, discussed with his counsel, and fully understands the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-053592. Respondent has also carefully read, discussed with his counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations contained in the Accusation and Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws, having been fully advised of same by his counsel.

9. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent understands and agrees that the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-053592, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate No. A 60936.

11. Respondent stipulates that, at a hearing Complainant could establish a *prima facie* case or factual basis for the charges and allegations contained in the Accusation and Petition to Revoke Probation; he gives up his right to contest those charges and allegations contained in the Accusation and Petition to Revoke Probation; he has subjected his Physician's and Surgeon's Certificate to disciplinary action; and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly

with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. Respondent agrees that if an accusation is ever filed against him before the Board, all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-053592 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

ADDITIONAL PROVISIONS

14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 60936 issued to Respondent Robert William Sears, M.D., is revoked. However, the revocation is stayed and Respondent is placed on a period of probation to run concurrent with the existing probation term previously ordered in Medical Board Case No. 800-2016-024774, which notwithstanding any future tolling conditions shall end in June 2023, with the following additional terms and conditions:

1. EDUCATION COURSE.

Within sixty (60) calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting the areas of deficient practice or knowledge that are germane to the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-053592, and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which forty (40) hours were in satisfaction of this condition.

2. MEDICAL RECORD KEEPING COURSE.

Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-053592, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3. NOTIFICATION.

Within seven (7) days of the effective date of this Decision, the Respondent shall provide true copies of this Decision and the Accusation and Petition to Revoke Probation No. 800-2019-053592 to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

4. OBEY ALL LAWS.

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

5. INVESTIGATION/ENFORCEMENT COST RECOVERY.

Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, legal review, and subpoena enforcement, as applicable, in the amount of $8,839.00 (eight thousand eight hundred thirty nine dollars). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs, including expert review costs (if applicable).

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6. QUARTERLY DECLARATIONS.

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

7. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent is not prohibited from engaging in the practice of medicine in a residence, whether it be his own residence or a patient's place of residence, as set forth in the stipulated settlement and disciplinary order in Case No. 800-2016-024774.

Respondent shall maintain all records of patients for whom he provides home visits and/or care at a residence, at his medical office. He shall make all records of patients for whom he provides home visits and/or care at their residence, available for immediate inspection and copying at his medical office premises, by his approved practice monitor, at all times during business hours and shall retain the records for the entire term of probation.

License Renewal

Respondent shall maintain a current and renewed California Physician's and Surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any

areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the dates of departure and return.

8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE.

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

9. NON-PRACTICE WHILE ON PROBATION.

Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

10. COMPLETION OF PROBATION.

Respondent shall comply with all financial obligations (e.g., probation cost/cost recovery) not later than one hundred twenty (120) calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

11. VIOLATION OF PROBATION.

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. LICENSE SURRENDER.

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. PROBATION MONITORING COSTS.

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

14. FUTURE ADMISSIONS CLAUSE.

If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 800-2019-053592 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 60936. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 7-25-2022

ROBERT WILLIAM SEARS, M.D.
Respondent

I have read and fully discussed with Respondent Robert William Sears, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: July 25, 2022

RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: July 26, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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Exhibit C

Accusation and Petition to Revoke Probation No. 800-2019-053592

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Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **ROBERT WILLIAM SEARS, M.D.** **26933 Camino De Estrella** **Capistrano Beach, California 92624** **Physician's and Surgeon's Certificate No. A 60936,** Respondent.	Case No. 800-2019-053592 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. William Prasifka (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. On or about September 25, 1996, the Board issued Physician's and Surgeon's Certificate No. A 60936 to Robert William Sears, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on March 31, 2024, unless renewed.

PRIOR DISCIPLINARY HISTORY

3. In a disciplinary action entitled *In the Matter of the Accusation Against: Robert William Sears, M.D.*, Case No. 800-2015-012268, the Board issued a Decision, effective on July 27, 2018, in which Respondent's Physician's and Surgeon's Certificate No. A 60936 was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of thirty-five (35) months subject to various terms and conditions. A true and correct copy of Decision and Order No. 800-2015-012268 is attached as Exhibit A and is incorporated by reference.

4. In a subsequent disciplinary action entitled *In the Matter of the First Amended Accusation Against: Robert William Sears, M.D.*, Case No. 800-2016-024774, the Board issued a Decision, effective on July 23, 2020, in which Respondent's Physician's and Surgeon's Certificate No. A 60936 was revoked. However, the revocation was stayed and Respondent's probation in his prior disciplinary matter before the Board (Case No. 800-2015-012268) was extended for an additional two (2) years. A true and correct copy of Decision and Order No. 800-2016-024774 is attached as Exhibit B and is incorporated by reference.

JURISDICTION

5. This Accusation and Petition to Revoke Probation is brought before the Board under the Board's Decision and Order in the case entitled *In the Matter of Accusation Against Robert Sears, M.D.*, Case No. 800-2014-012268 and the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

6. 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.

7. 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.

...

(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.

...

COST RECOVERY

8. 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.

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FACTUAL ALLEGATIONS

9. **Patient A**[1]

(a) On or about October 12, 2015, Patient A, a then 10-year-old female, was seen by Respondent at his clinic. According to the medical record of this visit, Respondent performed a general physical and then issued a medical exemption from vaccination to Patient A for "the rest of childhood due to a family history of multiple autoimmune disorders and a severe vaccine reaction."

(b) On or about August 20, 2018, Respondent conducted a telephone appointment with Patient A's parents. Patient A's parents were seeking another exemption letter from Respondent. According to the medical records of the telephone appointment, Respondent documented Patient A had no allergies; no pertinent past medical history; a family history of several autoimmune disorders; several neurologic disorders; and an aunt, uncle, and brother with illnesses diagnosed from various vaccines. The intake form documents no past vaccines and no past vaccine reactions for Patient A.

(c) On or about August 20, 2018, Respondent signed an exemption letter prepared on behalf of Patient A, which exempted her from multiple vaccinations, including measles, mumps, rubella, chicken pox, polio, Hib, hepatitis B, diphtheria, tetanus, and pertussis. The reasons given for the exemption in Respondent's letter are "Family history of Adverse Events following vaccination in a family member, Autoimmune Disorders, inflammatory Bowel Disease, Allergic Disorders, Neurological Problems, Neurodevelopmental Disorders, Psychiatric Disorders."

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[1] For patient privacy purposes, Patient A's true name has not been used in the instant Accusation and Petition to Revoke Probation to maintain patient confidentiality. The patient's identity is known to Respondent or will be disclosed to Respondent upon receipt of a duly issued request for discovery in accordance with Government Code section 11507.6.

(d) Respondent signed the August 20, 2018 exemption letter for Patient A twenty-four (24) days after the effective date of the Decision and Order in Case No. 800-2015-012268.[2]

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

10. Respondent has subjected his Physician's and Surgeon's Certificate No. A 60936 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts as more particularly alleged hereinafter.

11. Respondent committed repeated negligent acts in his care and treatment of Patient A, which included, but was not limited to, the following:

(a) Paragraph 9, subparagraphs (b) and (c), above, are hereby incorporated by reference and realleged as if fully set forth herein;

(b) Respondent failed to indicate supported reasons for providing the medical exemptions listed in the August 20, 2018 letter;

(c) Respondent provided exemption to all vaccines listed in the August 20, 2018 letter; and

(d) Respondent provided permanent exemption to all vaccines listed in the August 20, 2018 letter.

SECOND CAUSE FOR DISCIPLINE

(Violations of the Medical Practice Act)

12. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 60936 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that Respondent violated provisions of the Medical Practice Act, as more particularly alleged in paragraphs 9, subparagraphs (b), (c) and (d), 10, and 11, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

[2] Furthermore, Respondent signed the August 20, 2018 exemption letter for Patient A approximately three and a half (3 ½) months after signing the stipulated settlement in Case No. 800-2015-012268.

CAUSE TO REVOKE PROBATION

(Failure to "Obey All Laws")

13. At all times after the effective date of the Board's Decision and Order in Case No. 800-2015-012268, Probation Condition No. 6 provided:

> 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

14. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 6, referenced above, in that Respondent violated sections 2227 and 2234, of the Code, as more particularly alleged in paragraphs 9, subparagraphs (b), (c) and (d), 10, and 11, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

15. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges:

16. **Case No. 800-2015-012268.**

(a) On or about September 2, 2016, a prior disciplinary action entitled *In the Matter of the Accusation Against: Robert William Sears, M.D.*, Case No. 800-2015-012268, was filed before the Board charging Respondent with gross negligence, repeated negligent acts, and failure to maintain adequate and accurate records, in his care and treatment of a single patient.

(b) On or about May 1, 2018, Respondent signed a stipulated settlement agreeing to settle the above-entitled matter subject to various terms and conditions, including "Obey All Laws."

(c) On or about July 27, 2018, Respondent's Physician's and Surgeon's Certificate No. A 60936 was revoked, revocation stayed, and placed on probation for a period of thirty-five (35) months subject to various terms and conditions. That 2018 Decision is now final and is incorporated by reference as if fully set forth herein.

17. **Case No. 800-2016-024774.**

(a) On or about September 10, 2019, a prior disciplinary action entitled *In the Matter of the First Amended Accusation Against: Robert William Sears, M.D.*, Case No. 800-2016-024774, was filed before the Board charging Respondent with repeated negligent acts and failure to maintain adequate and accurate records, in his care and treatment of five (5) patients.

(b) On or about April 8, 2020, Respondent signed a stipulated settlement agreeing to settle the above-entitled matter subject to various terms and conditions, including an extension of probation to the 2018 Decision.

(c) On or about July 23, 2020, Respondent's Physician's and Surgeon's Certificate No. A 60936 was revoked, revocation stayed, and Respondent's existing probation in the 2018 Decision was extended for an additional two (2) years.[3] That 2020 Decision is now final and is incorporated by reference as if fully set forth herein.

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[3] The anticipated termination date of Respondent's existing probation is on or about June 25, 2023.

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 A 60936, issued to Respondent Robert William Sears, M.D.;

2. Revoking, suspending or denying approval of Respondent Robert William Sears, M.D.'s authority to supervise physician assistants pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Robert William Sears, M.D., to pay the Medical Board of California the reasonable 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: MAR 0 4 2022

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order No. 800-2015-012268

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

In the Matter of the Accusation Against:	)	
Robert William Sears, M.D.	)	Case No. 800-2015-012268
Physician's and Surgeon's Certificate No. A 60936	)	
Respondent	)	

DECISION

The attached Stipulation is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 27, 2018.

IT IS SO ORDERED: June 27, 2018.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL,
Supervising Deputy Attorney General
TRINA L. SAUNDERS
Deputy Attorney General
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California Department of Justice
300 South Spring Street, Suite 1702
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Attorneys for Complainant

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

In the Matter of the Accusation Against: ROBERT WILLIAM SEARS, M.D. 26933 Camino de Estrella Capistrano Beach, California 92624 Physician's and Surgeon's Certificate A60936, Respondent.	Case No. 800-2015-012268 OAH No. 2017100889 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Trina L. Saunders, Deputy Attorney General.

2. Respondent Robert William Sears, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is, 5440 Trabuco Road Irvine, California 92620.

3. On September 25, 1996, the Board issued Physician's and Surgeon's Certificate No. A60936 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-012268, and will expire on March 31, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-012268 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 2, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-012268 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-012268. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2015-012268, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED THAT Physician's and Surgeon's Certificate No. A60936 issued to Respondent Robert William Sears, M.D. is revoked. The revocation is stayed and Respondent is placed on probation for thirty-five (35) months on the following terms and

conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later

than 15 calendar days after the effective date of the Decision, whichever is later.

3. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices

are within the standards of practice of medicine and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and

advanced practice nurses.

6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. COMPLIANCE WITH PROBATION UNIT. Respondent shall comply with the Board's probation unit.

9. ADDRESS CHANGES. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

10. PLACE OF PRACTICE. Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

11. LICENSE RENEWAL. Respondent shall maintain a current and renewed California physician's and surgeon's license.

12. TRAVEL OR RESIDENCE OUTSIDE CALIFORNIA. Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

13. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations.

15. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

16. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: May 1, 2018

ROBERT WILLIAM SEARS, M.D.
Respondent

I have read and fully discussed with Respondent ROBERT WILLIAM SEARS, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: May 1, 2018

RAYMOND J. McMAHON
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: May 2, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT McKIM BELL
Supervising Deputy Attorney General

TRINA L. SAUNDERS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

KAMALA D. HARRIS
Attorney General of California
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Attorneys for Complainant

FILED
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 **ACCUSATION**

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

Exhibit B

Decision and Order No. 800-2016-024774

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

In the Matter of the First Amended Accusation Against: Robert William Sears, M.D. Physician's and Surgeons License No. A 60936 Respondent.	Case No. 800-2016-024774

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 23, 2020.

IT IS SO ORDERED: June 23, 2020.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
TRINA L. SAUNDERS
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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: ROBERT WILLIAM SEARS, M.D. 26933 Camino De Estrella Capistrano Beach, CA 92624 Physician's and Surgeon's Certificate No. A 60936, Respondent.	Case No. 800-2016-024774 OAH No. 2019110102 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Trina L. Saunders, Deputy Attorney General.

2. Respondent Robert William Sears, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, whose address is, 5440 Trabuco Road, Irvine, CA 92620.

3. On or about September 25, 1996, the Board issued Physician's and Surgeon's Certificate No. A 60936 to Robert William Sears, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-024774.

4. Respondent's Physician's and Surgeon's Certificate is currently subject to discipline. On June 27, 2018, pursuant to the Board's Decision and Order in Case No. 800-2015-012268, Respondent's Physician's and Surgeon's Certificate was revoked, revocation stayed, and placed on 35-months probation, subject to various terms and conditions.

5. Respondent's Physician's and Surgeon's Certificate No. A 60936, will expire on March 31, 2022, unless renewed.

JURISDICTION

6. First Amended Accusation No. 800-2016-024774 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on September 10, 2019. Respondent timely filed his Notice of Defense contesting the First Amended Accusation.

7. A copy of First Amended Accusation No. 800-2016-024774 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

8. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2016-024774. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

9. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision;

and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

11. Respondent understands and agrees that the charges and allegations in First Amended Accusation No. 800-2016-024774, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

12. For the purpose of resolving the First Amended Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the First Amended Accusation, and that Respondent hereby gives up his right to contest those charges.

13. Respondent agrees the Disciplinary Order below, requiring the disclosure of probation pursuant to Business and Professions Code section 2228.1, serves to protect the public interest.

14. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

15. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal

action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

16. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 60936 issued to Respondent Robert William Sears, M.D., is revoked. However, the revocation is stayed and Respondent's existing 35-month probation as set forth in the Board's Decision and Order in Case No. 800-2015-012268, is hereby extended for an additional two (2) years, on the following terms and conditions:

1. MONITORING – PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability for the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of the receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor

disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Bord or its designee to cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of the monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at

Respondent's expense during the term of probation.

2. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

3. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

4. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

5. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

6. COMPLIANCE WITH PROBATION UNIT. Respondent shall comply with the Board's probation unit.

7. ADDRESS CHANGES. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021 (b).

8. PLACE OF PRACTICE. As of the effective date of the Decision and Order in this stipulated settlement and disciplinary order, Respondent is no longer prohibited from engaging in the practice of medicine in a residence, whether it be his own residence or a patient's place of residence, as set forth in the stipulated settlement and disciplinary order in Case No. 800-2015-012268.

Respondent shall maintain all records of patients for whom he provides home visits and/or care at a residence, at his medical office. He shall make all records of patients for whom he provides home visits and/or care at their residence, available for immediate inspection and copying at his medical office premises, by his approved practice monitor, at all times during business hours and shall retain the records for the entire term of probation.

9. LICENSE RENEWAL. Respondent shall maintain a current and renewed California physician's and surgeon's license.

10. TRAVEL OR RESIDENCE OUTSIDE CALIFORNIA. Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If

Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

13. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,

or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

15. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 4-8-2020

ROBERT WILLIAM SEARS, M.D.
Respondent

I have read and fully discussed with Respondent Robert William Sears, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: April 8, 2020

RAYMOND J. MCMAHON
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: April 8, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

TRINA L. SAUNDERS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2016-024774

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept. 10 20 19
BY A. BARRIOS ANALYST

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

In the Matter of the First Amended Accusation Against: Robert William Sears, M.D. 26933 Camino De Estrella Capistrano Beach, CA 92624 Physician's and Surgeon's Certificate No. A 60936, Respondent.	Case No. 800-2016-024774 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 25, 1996, the Medical Board issued Physician's and Surgeon's Certificate Number A 60936 to Robert William Sears, M.D. (Respondent). The 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 March 31, 2020, unless renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Board, 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 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."

///

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

7. Respondent Robert William Sears, M.D. is subject to disciplinary action under section 2234 (c), in that he was negligent in his treatment of four minor patients. In the case of each patient, he issued a vaccination exemption letter without an appropriate medical basis, leaving these patients and their future contacts at risk for preventable and communicable diseases. The circumstances are as follows:

Patient One

8. Patient One, a then seven-year-old child, was seen by Respondent on one occasion, on May 4, 2016. Patient One was accompanied by his mother. He was seen for a chief complaint of vaccine exemption. His past medical history documented psoriasis and no prior vaccines. No other past medical history was documented. His family history included autoimmune disorders, lupus, psoriasis (in Dad), inflammatory bowel disease, irritable bowel syndrome (in Dad), severe gluten sensitivity in Mom and Aunt, suspected CD in aunt, neurodevelopmental disorders, ADD/ADHD (in Dad), psychiatric disorders, schizophrenia (Dad), bipolar, and depression. No social history was documented. His examination documented, "psoriatic plaques on scalp, back of neck and ears." The rest of the exam is documented as normal. The assessment was that the patient qualified for medical exemption from vaccines for family history of autoimmune disorders (Dad and others), inflammatory bowel disease (Dad), neurodevelopmental disorders (Dad), psychiatric disorders (Dad), and child's own autoimmune disorder. He was diagnosed with viral infection, unspecified, and feeding difficulties.

9. On the same date, a medical exemption letter was generated for Patient One, exempting him from all vaccines for the rest of his childhood, through July 1, 2025.

10. An entry in the medical record maintained by Respondent for Patient One, and dated January 25, 2017, stated that a phone conversation was had with the patient's mom regarding the medical exemption letter. The mom advised Respondent that the patient's father retracted his consent regarding the medical exemption letter. Respondent reminded the mother that consent is required from both custodial parents. Respondent advised that the previously issued vaccine

exemption letter was no longer valid. In order for a new valid exemption letter to be issued for Patient One, both custodial parents would need to appear and consent, and the patient's past medical records were required.

11. Patient One's medical records contain an amended copy of the medical exemption letter dated May 4, 2017, stating the original exemption letter is no longer valid and should be disregarded due to a change in family circumstances and consent.

12. Giving a childhood-long medical vaccine exemption letter to Patient One, based on a diagnosis of psoriasis, without immunosuppressive medication, is a simple departure from the standard of care. The diagnosis and the patient's family history are not a known contraindication or precaution to routine childhood vaccination.

Patient Two

13. Patient Two, who is the sister of Patient One, was seen by Respondent on one occasion, on May 4, 2016. Patient Two was also accompanied to her visit by her mother. She was seen for a chief complaint of "vaccine exemption appt." Her past medical history is only documented as significant for bee sting allergy. Her family history is identical to that of Patient One. It included autoimmune disorders, lupus, psoriasis (Dad), inflammatory bowel disease, irritable bowel syndrome (Dad), severe gluten sensitivity in Mom and Aunt, suspected CD in aunt, neurodevelopmental disorders, ADD/ADHD (Dad), psychiatric disorders, schizophrenia (Dad), bipolar, and depression. No social history was documented. Her examination was normal. Weight and height were documented, but no vital signs were documented. She was diagnosed with viral infection, unspecified, and feeding difficulties. The assessment discussed that Patient Two qualified for a medical exemption from vaccines based on review of her past medical history, family history, and current state of health.

14. On the same date, a medical exemption letter was generated for Patient Two, exempting her from all vaccines for the rest of her childhood.

15. An entry in the medical record maintained by Respondent for Patient Two, and dated January 25, 2017, stated that a phone conversation was had with the patient's mom regarding the medical exemption letter. The mom advised that the patient's father retracted his consent

regarding the medical exemption letter. Respondent reminded the mother that consent is required from both custodial parents. Respondent advised that the previously issued vaccine exemption letter was no longer valid. In order for a new valid exemption letter to be issued for Patient Two, both custodial parents would need to appear and provide consent, and the patient's past medical records were required.

16. Patient Two's medical records contain an amended copy of the medical exemption letter dated May 4, 2017, stating the original exemption letter is no longer valid and should be disregarded due to a change in family circumstances and consent.

17. Giving a childhood-long medical vaccine exemption letter to Patient Two, based on the identified family history alone, is a simple departure from the standard of care.

Patient Three

18. Patient Three was seen by Respondent on one occasion, on August 29, 2016. The minor patient was almost five-years-old, at the time of the visit. She was seen for a chief complaint of vaccine medical exemption. Her medical records show no symptoms, no vaccines, and no past medical history. Her family history is extensive and includes a second cousin having had a severe vaccine reaction with developmental regression and eventual diagnosis of autism spectrum disorder. The patient's family history also included mention of autoimmune disorders, neurological disorders, including seizure disorder (Mom), and 10 relatives with neurodevelopmental disorders including autism, ADHD/ADD and dyslexia (Dad), and OCD (mom). An intake questionnaire completed by a parent confirms this history. Her physical examination was normal. Weight and height were documented, but no vital signs were documented. The assessment discussed that Patient Three qualified for a medical exemption from vaccines based on a family history of vaccine reaction in a family member, autoimmune disorders, inflammatory bowel disease, neurological problems, neurodevelopmental disorders, and psychiatric disorders.

19. Respondent issued a medical exemption letter for Patient Three, for all vaccines through July 1, 2030.

20. Included in the records are brief records from Patient Three's mom, confirming her diagnosis of seizure disorder and from the patient's father, confirming his ADHD diagnosis.

21. Also included in the records are Patient Three's medical records from Valencia Pediatrics.

22. Giving a childhood-long medical vaccine exemption letter to Patient Three, who did not have a documented existing contraindication to routine childhood vaccination, is a simple departure from the standard of care.

Patient Four

23. Patient Four was seen by Respondent on one occasion, on August 8, 2016, for a chief complaint of obtaining a vaccine medical exemption. The patient was twelve-years-old. Her medical records show no current symptoms. However, her past medical history showed that she had all vaccines aside from the pertussis series. She received a DTaP as a first round at two months of age. She had an encephalitis-like reaction with inconsolable high-pitched screaming for more than three hours and off and on crying for another one to two days. Past medical records showed that Patient Four received the DT for the other dosages. Further pertussis dosages were contraindicated in this patient. Patient Four's family history included several autoimmune disorders, neurological disorders including epilepsy, neurodevelopmental disorders, ADD/ADHD, and psychiatric disorders. In addition, one cousin had an encephalitis type reaction. Patient Four's physical examination was normal. The patient's weight and height were documented, but no vital signs were recorded. The assessment discussed that Patient Four qualified for a medical exemption from vaccination due to family history of vaccine reactions in a family member, autoimmune disorders, neurological and neurodevelopmental disorders, psychiatric disorders and the patient's own past severe reaction to vaccines.

24. Respondent issued a medical exemption letter for Patient Four, for all vaccines for the rest of childhood.

25. Respondent requested and obtained Patient Four's prior medical records.

26. Giving a childhood-long medical vaccine exemption letter for all vaccines was not indicated. The family and past medical history are appropriate for an exemption for the pertussis

portion of the tetanus vaccine, but is not a contraindication or precaution to every routine childhood vaccination. Respondent's issuance of a rest of childhood medical vaccine exemption letter for all vaccines is a simple departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Records)

27. Respondent is subject to disciplinary action under Code section 2266 in that he failed to maintain adequate medical records in the case of Patients One, Two, and Five.

28. Paragraphs 8 - 17 are incorporated here as though fully set forth.

Patient Five

29. On October 11, 2017, Patient Five, who was 10-years-old, presented to Respondent with a chief complaint of numbness of bilateral knees for every day of the past month. The physical examination reflects normal bilateral lower extremities, normal DTRs, FROM, non-tender and back/spine WNL. The assessment is "normal exam." The etiology is unclear and the plan is to observe. The documented exam is brief and only focused on the legs and spine. Laboratory results were reviewed and Vitamin D (5000 IU daily) and iron supplements (25 mg daily) were recommended. No follow-up is documented regarding the medication, nor was follow-up blood work recommended regarding the length of treatment with vitamin D and iron supplements.

30. Respondent failed to maintain adequate and accurate records in the case of four patients. In the case of Patient's One and Two, Respondent failed to obtain and document an appropriate and accurate past medical history, physical exam and family/social history. In the case of Patient Five, Respondent failed to document a thorough history and exam, or follow-up instructions related to the vitamins and supplements he recommended that the patient take.

DISCIPLINARY CONSIDERATIONS

31. To determine the degree of discipline, if any, to be imposed on Respondent Robert William Sears, M.D., Complainant alleges that on or about July 27, 2018, in a prior disciplinary action entitled *In the Matter of the Accusation Against Robert William Sears, M.D.*, before the

Medical Board of California, in Case Number 800-2015-012268, Respondent's license was disciplined. Respondent's license is currently subject to a 35-month probation, and he is required to complete education course(s), a professionalism program and have a practice monitor. Discipline was imposed in the prior case for Respondent's failure to obtain necessary information regarding a patient, prior to issuing a childhood vaccination exemption letter. That decision is now final and is 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 Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 60936, issued to Robert William Sears, M.D.;

2. Revoking, suspending or denying approval of Robert William Sears, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Robert William Sears, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: September 10, 2019

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

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