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

In the Matter of the Accusation Against: Michael Terrence O'Brien, M.D. Physician's and Surgeon's Certificate No. G 61152 Respondent.	Case No. 800-2019-051977

DECISION

The attached Stipulated Surrender of License and 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 October 16, 2023.

IT IS SO ORDERED August 11, 2023.

MEDICAL BOARD OF CALIFORNIA

Reji Varghese
Executive Director

ROB BONTA
Attorney General of California
GREG W. CHAMBERS
Supervising Deputy Attorney General
HAMSA M. MURTHY
Deputy Attorney General
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455 Golden Gate Avenue, Suite 11000
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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: **MICHAEL TERRENCE O'BRIEN, M.D.** **20100 Lake Chabot Rd, Suite 3** **Castro Valley, CA 94546** **Physician's and Surgeon's Certificate No. G 61152** Respondent.	Case No. 800-2019-051977 OAH No. 2022120741 **STIPULATED SURRENDER OF LICENSE AND 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. Reji Varghese (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, by Hamsa M. Murthy, Deputy Attorney General.

2. Michael Terrence O'Brien, M.D. (Respondent) is represented in this proceeding by attorney Adam Slote, whose business address is: SLOTE, LINKS & BOREMAN, PC; 50 California Street, 34th Floor; San Francisco, CA 94111.

3. On or about August 24, 1987, the Board issued Physician's and Surgeon's Certificate No. G 61152 to Michael Terrence O'Brien, 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. 800-2019-051977 and will expire on August 31, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-051977 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 January 11, 2022. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2019-051977 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-051977. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. 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.

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

CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 800-2019-051977, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. 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 those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

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 surrender, 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 Surrender 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 Surrender of License and 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 Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 61152, issued to Respondent Michael Terrence O'Brien, M.D., is surrendered as of October 16, 2023, and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If he ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 800-2019-051977 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount $26, 292.50 of prior to issuance of a new or reinstated license.

6. 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 agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2019-051977 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 licensure.

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ACCEPTANCE

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

DATED: 06 / 23 / 2023

MICHAEL TERRENCE O'BRIEN, M.D.
Respondent

I have read and fully discussed with Respondent Michael Terrence O'Brien, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 06 / 23 / 2023

Adam G. Slote
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
GREG W. CHAMBERS
Supervising Deputy Attorney General

HAMSA M. MURTHY
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

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

DATED: _____

MICHAEL TERRENCE O'BRIEN, M.D.
Respondent

I have read and fully discussed with Respondent Michael Terrence O'Brien, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____

Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 6-23-23

Respectfully submitted,

ROB BONTA
Attorney General of California
GREG W. CHAMBERS
Supervising Deputy Attorney General

Hamsa M. Murthy

HAMSA M. MURTHY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2019-051977

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

In the Matter of the Accusation Against: **MICHAEL TERRENCE O BRIEN, M.D.** **20100 Lake Chabot Rd., Suite 3** **Castro Valley, CA 94546** **Physician's and Surgeon's Certificate No. G 61152,** Respondent.	Case No. 800-2019-051977 **ACCUSATION**

PARTIES

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

2. On or about August 24, 1987, the Board issued Physician's and Surgeon's Certificate Number G 61152 to Michael Terrence O Brien, 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 August 31, 2023, unless renewed.

JURISDICTION

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

4. Section 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:
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> (1) Have his or her license revoked upon order of the board.
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> (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, in pertinent parts, 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:
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> . . . (b) Gross negligence.
>
> (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
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> (1) 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.

6. Section 725 of the Code, in pertinent part, states:

(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

. . . (c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5.

7. 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.

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.

FACTUAL ALLEGATIONS

9. At all relevant times, Respondent was a licensed physician and surgeon, with a specialization in Family Medicine, engaged in private practice as a primary care physician and also serving as medical director of skilled nursing facilities.

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Patient 1

10. Patient 1.[1], a 52-year-old female relative of Respondent, began receiving prescriptions for temazepam, 30 mg, #30,[2] in 2016. Respondent did maintain medical records of Patient 1's office visits, which amounted to six documented encounters, but the records lack a pertinent history of the patient's psychological status, suicide risk, substance use or abuse, or concurrent therapy. Patient 1 experienced domestic upheaval in 2017 and her use became chronic, such that she was taking the medication nightly. Respondent continued prescribing temazepam to Patient 1 through July 2019, during which time he did not refer her to another physician for assessment and care. Respondent's records indicate that he ceased prescribing temazepam to Patient 1 in August 2019, when he learned that she was obtaining the sleep medication Ambien from another physician.

Patient 2

11. Patient 2, a 76-year-old female, was under Respondent's care for many years for multiple diagnoses including lumbar disc disease, lumbar spinal stenosis and spondylolisthesis, idiopathic neuropathy, gouty arthritis, and osteoarthritis. Respondent prescribed Norco, 5/325 mg,[3] #180 for her chronic pain from as early as 2015. CURES reports for 2018-2020, show that during this period, Respondent was also prescribing a benzodiazepine (alprazolam, 1 mg) and a hypnotic (zolpidem) to the patient. This combination of drugs that depress the central nervous system (CNS) poses a risk of serious side effects, including slowed or difficult breathing and death. For this reason, physicians typically limit prescribing pain medicines with benzodiazepines or other CNS depressants and warn patients, for whom alternative treatment options are inadequate, about the risks associated with this drug combination. Respondent prescribed a combination of a narcotic analgesic, benzodiazepine, and sleep aid together for a substantial

[1] Patient names are redacted to protect privacy.

[2] Temazepam is a benzodiazepine and controlled substance indicated for short-term treatment of insomnia. Temazepam may cause serious breathing problems if taken in conjunction with alcohol or certain medications. Temazepam may cause a physical dependence.

[3] Norco is a brand name for hydrocodone/acetaminophen. It is a narcotic analgesic which can have serious side effects when combined with a benzodiazepine or other CNS depressant.

period of time but did not document a discussion of the increased risk of concurrent use of these drugs with the patient.

Patient 3

12. Patient 3, a 47-year-old female, was under Respondent's care since 2015. Patient 3 had a medical history significant for Ehlers-Danlos Syndrome, a hereditary disorder of the connective tissue that results in sprains, dislocations, and other medical problems by reason of ligament laxity. CURES[4] reports for 2018-2020 show that Respondent prescribed Percocet, 10 mg, 8 tablets/day,[5] as well as two non-steroidal anti-inflammatory drugs (NSAIDs) for Patient 3's chronic pain. This dosage equaled an estimated morphine milligram equivalent (MME)[6] of 120, which exceeded recommended dosages in guidelines[7] issued by the Centers for Disease Control and Prevention (CDC) and placed the patient at a higher risk of overdose and death. Respondent did not document a justification for the higher dosage opioid therapy. Respondent's notes are scant, consisting primarily of diagnoses, and routinely lack a documented physical examination. There is no documentation that Respondent conducted a review of Patient 3's history of alcohol use, substance abuse, or depression. A documented treatment plan with objectives, informed consent, periodic review of the therapy, and the patient's high MME are also absent. Although the patient was in a high-risk category based on her MME, Respondent did not consider and/or did not document consideration of a pain management consultation.

Patient 4

13. Patient 4, a-39-year-old male was under Respondent's care and treatment for multiple conditions, including low back pain, obstructive sleep apnea (OSA), low testosterone, and

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[4] CURES (Controlled Substance Utilization Review and Evaluation System) is a database of Schedule II, III, IV and V controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement.

[5] Percocet combines an opioid pain reliever (oxycodone) and a non-opioid pain reliever (acetaminophen). It is a controlled substance and a potent short-acting narcotic, with the potential to become habit-forming and be misused/abused.

[6] Morphine milligram equivalents (MME) or morphine equivalent doses (MED) are values that represent the potency of an opioid dose relative to morphine

[7] CDC's Guideline for Prescribing Opioids for Chronic Pain requires that the prescriber carefully reassess evidence of individual benefits and risks when considering increasing dosage to an amount equal or greater than 50 MME and carefully justify a decision to titrate to a dosage equal or greater than 90 MME.

diabetes mellitus. Available records date from December 1, 2017 and indicate that Respondent prescribed methadone, 10 mg, QID, #120,[8] and Norco 10/325 mg, #120 on a monthly basis until October 5, 2018, when Respondent substituted Percocet, 10/325 mg, #120, for Norco. This pattern of prescribing continued until June 27, 2019, when the patient's pharmacy complained that the combined MME was too high. The MME for methadone, 10 mg, QID, is approximately 320 mg, and if Patient 4 took the full available amount of prescribed Norco or Percocet, the MME would increase by 60 mg to 380 mg, or more than four times the maximum dosage per CDC guidelines. Although Respondent's October 5, 2018 note indicates he was considering taking the patient off Norco and Percocet, he did not do so. After the June 27, 2019 and in response to the pharmacist's complaint, Respondent did reduce the patient's methadone dosage by half, i.e. to 5 mg, QID. However, the patient's combined MME from Methadone and Perocet was still 80-140 mg, depending on how much of the available amount of Percocet Patient 4 used. This prescribing pattern continued until January 21, 2021, when Patient 4 relocated to another state.

14. Similar to his records for other patients, Respondent's records for Patient 4 are scant and omit a detailed history, physical examination, and assessment of the patient's level of pain. The records lack documentation of an oral examination pertinent to the patient's OSA and also lack documentation of thyroid or genital examination pertinent to the patient's low testosterone. Respondent's treatment plan with objectives for each of the patient's medical problems is not well documented. Periodic review and reassessment of Patient 4's opioid therapy is not apparent from the records until June 27, 2019, after the pharmacist raised the issue. Given the high MME, informed consent should have been, but was not, documented by Respondent. In a subsequent interview, Respondent stated that Patient 4's "pain control was not very good." However, Respondent did not obtain a pain management consultation.

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[8] Methadone hydrochloride is a controlled substance and an opioid indicated for the treatment of pain severe enough to require around-the-clock long-term opioid management and for which alternative treatments have failed. Methadone exposes users to the risks of opioid addiction, misuse, and abuse, which can lead to overdose and death.

Patient 5

15. Patient 5, a male aged 63 in 2021, was under Respondent's care and treatment for many years. The patient's diagnoses included chronic anxiety, panic attacks, and chronic back and neck pain. CURES reports for 2018-2021 show that Respondent consistently prescribed Acetaminophen-hydrochloride bitartrate (Vicodin)[9] 300/30 mg, in quantities that would allow a daily dosage of 4-6 tablets, and clonazepam,[10] 1 mg, BID (increased to QID in mid-2020). This combination of opioids and benzodiazepines increases the patient's risk of overdose and death. In 2018-2019, Respondent additionally prescribed carisoprodol,[11] 350 mg, QID, which increased the patient's risk of drug interactions and side effects. Respondent's records do not document a discussion with the patient of the risks versus benefits of taking these drugs together or consideration of alternative therapies.

16. Respondent's records for Patient 5 are often illegible and lack essential information in determining whether Respondent had a treatment plan with objectives, conducted periodic reassessment of the patient's conditions, obtained informed consent, or considered appropriate consultations.

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[9] Acetaminophen-hydrochloride bitartrate (Vicodin) is an opioid pain reliever with a potential for habituation and misuse/abuse. Risk of overdose and death are increased when this medication is taken concurrently with benzodiazepines.

[10] Clonazepam (Klonopin) is a benzodiazepine and anticonvulsant medication used, among other things, to treat panic attacks. The risk of side effects, including drowsiness and respiratory depression, may be increased when this medication is taken concurrently with opioid medications.

[11] Carisoprodol (Soma) is used short-term to treat muscle pain and discomfort by relaxing the muscles. Use of this medication with clonazepam and hydrocodone increases the risk of drug interactions, overdose and death.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

17. Respondent Michael Terrence O Brien, M.D. is subject to disciplinary action under section 2234(b) of the Code in that Respondent was grossly negligent in the care of Patients 1, 3, 4 and 5 including, but not limited to, the following:

A. Respondent prescribed opioids, benzodiazepines, and other medications without performing and/or without documenting a complete history, examination, treatment plan with objectives, informed consent, periodic reassessment, or consideration of appropriate consultations;

B. Respondent inappropriately prescribed combinations of opioids and benzodiazepines; and

C. Respondent prescribed high-dose opioid therapy exceeding CDC guidelines.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

18. Respondent Michael Terrence O Brien, M.D. is subject to disciplinary action under section 2234(c) of the Code in that Respondent engaged in repeated acts of negligence in his care and treatment of Patients 1 through 5, inclusive. Said repeated acts of negligence are set forth in paragraphs 10 through 16 above, which Complainant incorporates in this cause for discipline.

THIRD CAUSE FOR DISCIPLINE

(Excessive Prescribing)

19. Respondent Michael Terrence O Brien, M.D. is subject to disciplinary action under section 725 of the Code in that Respondent engaged in excessive prescribing to Patients 3 and 4, which is set forth in paragraphs 12 through 14 above, and which Complainant incorporates in this cause for discipline.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

20. Respondent Michael Terrence O Brien, M.D. is subject to disciplinary action under section 2266 of the Code in that Respondent's records for Patients 3, 4 and 5 are often illegible

and scant in essential information, as more fully set forth in paragraphs 12 through 16 above, which Complainant incorporates 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 G 61152, issued to Respondent Michael Terrence O Brien, M.D.;

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

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

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

DATED: JAN 11 2022

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

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