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

11 In the Matter of the Accusation Against:
12
13 **BARRY JOEL BROCK, M.D.**
14 **150 North Robertson Blvd., Suite 200**
15 **Beverly Hills, CA 90211-2144**
16
17 **Physician's and Surgeon's Certificate**
18 **No. G 36218,**
19
20 Respondent.

Case No. 800-2022-091409

A C C U S A T I O N

17 **PARTIES**

- 18 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
19 the Executive Director of the Medical Board of California, Department of Consumer Affairs
20 (Board).
21 2. On or about April 11, 1978, the Board issued Physician's and Surgeon's Certificate
22 Number G 36218 to Barry Joel Brock, M.D. (Respondent). The Physician's and Surgeon's
23 Certificate was in full force and effect at all times relevant to the charges brought herein and will
24 expire on May 31, 2025, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 2004 of the Code states:

6 The board shall have the responsibility for the following:

7 (a) The enforcement of the disciplinary and criminal provisions of the Medical
8 Practice Act.

9 (b) The administration and hearing of disciplinary actions.

10 (c) Carrying out disciplinary actions appropriate to findings made by a panel or
an administrative law judge.

11 (d) Suspending, revoking, or otherwise limiting certificates after the conclusion
12 of disciplinary actions. . .

13 (e) Reviewing the quality of medical practice carried out by physician and
surgeon certificate holders under the jurisdiction of the board.

14 (f) Approving undergraduate and graduate medical education programs.

15 (g) Approving clinical clerkship and special programs and hospitals for the
16 programs in subdivision (f).

17 (h) Issuing licenses and certificates under the board's jurisdiction.

18 (i) Administering the board's continuing medical education program.

19 5. Section 2227 of the Code states:

20 (a) A licensee whose matter has been heard by an administrative law judge of
21 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
22 into a stipulation for disciplinary action with the board, may, in accordance with the
provisions of this chapter:

23 (1) Have his or her license revoked upon order of the board.

24 (2) Have his or her right to practice suspended for a period not to exceed one
year upon order of the board.

25 (3) Be placed on probation and be required to pay the costs of probation
26 monitoring upon order of the board.

27 (4) Be publicly reprimanded by the board. The public reprimand may include a
28 requirement that the licensee complete relevant educational courses approved by the
board.

1 (5) Have any other action taken in relation to discipline as part of an order of
2 probation, as the board or an administrative law judge may deem proper.

3 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
4 medical review or advisory conferences, professional competency examinations,
5 continuing education activities, and cost reimbursement associated therewith that are
6 agreed to with the board and successfully completed by the licensee, or other matters
7 made confidential or privileged by existing law, is deemed public, and shall be made
8 available to the public by the board pursuant to Section 803.1.

9 STATUORY PROVISIONS

10 6. Section 2234 of the Code states:

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

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

16 (b) Gross negligence.

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

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

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

(d) Incompetence.

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

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

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

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

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

3 7. Section 2266 of the Code states:

4 The failure of a physician and surgeon to maintain adequate and accurate records
5 relating to the provision of services to their patients constitutes unprofessional conduct.

6 **COST RECOVERY**

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Repeated Negligent Acts)**

15 9. Respondent Barry Joel Brock, M.D., is subject to disciplinary action under section
16 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in connection
17 with his care and treatment of Patient A¹. The circumstances are as follows:

18 10. For all times relevant herein, Barry Joel Brock, M.D., was an
19 obstetrician/gynecologist; he failed to appropriately treat Patient A in his office, and failed to
20 provide appropriate follow-up care to Patient A.

21 11. In or around 2010, Patient A, a 47-year-old female, first presented to Respondent.
22 She had type 1 diabetes and Hashimoto's disease².

23 12. On or about April 21, 2015, Patient A saw Respondent for a consult regarding getting
24 pregnant. During subsequent visits with Patient A in or around 2015, Respondent conducted
25 ultrasounds and performed an HSG, and pelvic ultrasounds, and well woman visits, among other
26 things.

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28 ¹ The Patient is referred to by the letter A to protect her identity.

² Hashimoto's disease is an autoimmune disorder that can cause hypothyroidism, or an underactive thyroid.

1 13. On or about September 4, 2015, Respondent conducted a well woman exam on
2 Patient A.

3 14. On or about July 17, 2017, Patient A again presented to Respondent for an
4 examination.

5 15. On or about August 8, 2017, Respondent saw Patient A for a pre-operative visit prior
6 to performing a dilation and curettage (“D&C”)³, to treat her endometrial polyps and
7 metrorrhagia. ⁴

8 16. In or around July of 2018, Patient A’s infertility specialist referred her to see
9 Respondent for continued care after she underwent In Vitro Fertilization (“IVF”) treatment.

10 17. On or about August 31, 2018, an ultrasound was performed in Respondent’s office. It
11 confirmed a blighted ovum. Patient A should have been 7.4 weeks pregnant based on the IVF
12 cycle, but only a sac was seen. No pelvic exam was conducted by Respondent at that time.

13 18. On or about September 13, 2018, Respondent performed a repeat ultrasound on
14 Patient A which confirmed a blighted ovum⁵, missed abortion. Respondent then provided
15 Patient A with treatment options. Patient A decided to undergo a D&C in Respondent’s office.

16 19. On or about September 17, 2018, the day prior to the D&C, Respondent brought
17 Patient A in for placement of laminaria.⁶ Patient A alleged that Respondent had her get undressed
18 in front of him, did not wear gloves, and that there was no chaperone in the room.

19 20. On or about September 18, 2018, Respondent performed a suction D&C in his office.
20 There was no chaperone present. Patient A reported that Respondent did not wear gloves during
21 the procedure. Patient A felt severe pain during the procedure because Respondent did not
22 administer enough pain medication to provide adequate anesthesia. Respondent did not perform a
23 sharp curette, only a suction curette during the surgery. Patient A did not sign any informed
24 consent documents prior to the procedure and the documentation related to the procedure was
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26 ³ A D&C is a surgical procedure in which the cervix is dilated so that the uterine lining
can be scraped with a spoon shaped instrument called a curette, to remove abnormal tissues.

27 ⁴ Metrorrhagia is abnormal bleeding between menstrual cycles.

28 ⁵ An empty gestational sac will not turn into an embryo or baby.

⁶ Laminaria are sterilized dried sticks of seaweed that absorb fluid from the cervix and
slowly expand to dilate the cervix.

1 minimal. No follow up appointment was scheduled for Patient A and she did not receive a phone
2 call to discuss the pathology following the surgery.

3 21. For the two-month period following the procedure, Patient A continued to experience
4 vaginal bleeding.

5 22. On or about November 14, 2018, Patient A presented to a physician's assistant. An
6 endometrial biopsy and ultrasound were performed. They confirmed that Patient A had retained
7 products of conception.

8 23. On or about November 28, 2018, Patient A underwent another suction D&C
9 procedure to remove the remaining products of conception.

10 24. In or around 2020, Patient A underwent IVF treatment again. The treatment resulted
11 in her giving birth to twins in a premature delivery at 32 weeks. It required a cesarean
12 hysterectomy due to a placenta increta and severe hemorrhaging.

13 25. Respondent was negligent in his care of Patient A in that he:

14 A. Failed to administer to her enough pain medication to prevent her from being in
15 pain during an in-office procedure on or about September 18, 2018;

16 B. Failed to remove all of the products of conception during the suction D&C
17 performed on or about September 18, 2018;

18 C. Failed to follow-up with the pathology from the suction D&C performed on or
19 about September 18, 2018, and did and not maintain the pathology report in the patient's chart;
20 and

21 D. Failed to maintain complete and accurate documentation related to office visits
22 and failed to obtain appropriate informed consent.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Failure to Maintain Adequate Records)**

25 26. Respondent Barry Joel Brock, M.D., is subject to disciplinary action under Business
26 and Professions Code section 2266 in that he failed to maintain adequate and accurate records in
27 connection with his care and treatment of Patient A. The circumstances are as follows:
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