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

13 In the Matter of the Accusation Against:

Case No. 800-2021-082631

14 **Tam Ky Nguyen, M.D.**
15 **12221 BROOKHURST ST, STE 100**
GARDEN GROVE, CA 92840

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. A 55848,**

18 Respondent.

19
20 **PARTIES**

21 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
22 the Executive Director of the Medical Board of California, Department of Consumer Affairs
23 (Board).

24 2. On or about March 20, 1996, the Board issued Physician's and Surgeon's Certificate
25 Number A 55848 to Tam Ky Nguyen, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
27 expire on November 30, 2025, unless renewed.

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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:

(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, in pertinent part:

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:

...

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

3 (2) When the standard of care requires a change in the diagnosis, act, or
4 omission that constitutes the negligent act described in paragraph (1), including, but
5 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.

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

11 COST RECOVERY

12 7. Section 125.3 of the Code states:

13 (a) Except as otherwise provided by law, in any order issued in resolution of a
14 disciplinary proceeding before any board within the department or before the
Osteopathic Medical Board, upon request of the entity bringing the proceeding, the
15 administrative law judge may 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.

16
17 (b) In the case of a disciplined licensee that is a corporation or a partnership, the
order may be made against the licensed corporate entity or licensed partnership.

18 (c) A certified copy of the actual costs, or a good faith estimate of costs where
actual costs are not available, signed by the entity bringing the proceeding or its
19 designated representative shall be prima facie evidence of reasonable costs of
investigation and prosecution of the case. The costs shall include the amount of
20 investigative and enforcement costs up to the date of the hearing, including, but not
limited to, charges imposed by the Attorney General.

21
22 (d) The administrative law judge shall make a proposed finding of the amount
of reasonable costs of investigation and prosecution of the case when requested
23 pursuant to subdivision (a). The finding of the administrative law judge with regard to
costs shall not be reviewable by the board to increase the cost award. The board may
24 reduce or eliminate the cost award, or remand to the administrative law judge if the
proposed decision fails to make a finding on costs requested pursuant to subdivision
(a).

25
26 (e) If an order for recovery of costs is made and timely payment is not made as
directed in the board's decision, the board may enforce the order for repayment in any
27 appropriate court. This right of enforcement shall be in addition to any other rights
the board may have as to any licensee to pay costs.

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1 (f) In any action for recovery of costs, proof of the board's decision shall be
conclusive proof of the validity of the order of payment and the terms for payment.

2 (g) (1) Except as provided in paragraph (2), the board shall not renew or
3 reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

4 (2) Notwithstanding paragraph (1), the board may, in its discretion,
5 conditionally renew or reinstate for a maximum of one year the license of any
6 licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid
costs.

7 (h) All costs recovered under this section shall be considered a reimbursement
8 for costs incurred and shall be deposited in the fund of the board recovering the costs
to be available upon appropriation by the Legislature.

9 (i) Nothing in this section shall preclude a board from including the recovery of
10 the costs of investigation and enforcement of a case in any stipulated settlement.

11 (j) This section does not apply to any board if a specific statutory provision in
12 that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 8. Respondent has subjected his Physician's and Surgeon's Certificate No. A 55848 to
16 disciplinary action under sections 2227 and 2234, subdivision (b), of the Code in that he
17 committed gross negligence in the course of his care and treatment of one or more patients. The
18 circumstances are as follows:

19 9. On or about September 27, 2021, this case was initiated after the Board received an
20 805 report from Fountain Valley Regional Hospital (FVRH), alleging that Respondent failed to
21 submit to a psychiatric evaluation, failed to comply with a co-admitting requirement, and sent
22 concerning communications about COVID-19¹ and COVID-19 vaccines² to the FVRH Medical

23 ¹ COVID-19 (coronavirus disease 2019) is a highly contagious disease caused by the
24 SARS-CoV-2 virus. Coronaviruses, like the one that causes COVID-19, are named for the
crown-like spikes on their surface, called spike proteins. COVID-19 most often causes
25 respiratory symptoms that can feel much like a cold, the flu, or pneumonia.

26 ² COVID-19 vaccines assist the body to develop immunity to the virus that causes
COVID-19. Different types of COVID-19 vaccines work in different ways. But with all types of
27 vaccines, the body is left with a supply of "memory" T-lymphocytes as well as B-lymphocytes
that will remember how to fight the COVID-19 virus in the future. It typically takes a few weeks
28 after vaccination for the body to produce T-lymphocytes and B-lymphocytes. Sometimes after
vaccination, the process of building immunity can cause symptoms, such as fever. These
symptoms are generally regarded as normal signs the body is building immunity.

1 Executive Committee (MEC). As a result, on September 9, 2021, the MEC summarily suspended
2 all of Respondent's clinical privileges for an indefinite period, pending receipt of a psychiatric
3 evaluation. Thereafter, FVRH review records and patients' medical records were obtained by the
4 Board. Multiple witnesses who worked with Respondent at FVRH were also interviewed.

5 **Patient A**³

6 10. Patient A was a 67-year-old female at the time she was admitted to FVRH from
7 February 7, 2021, to February 15, 2021, for COVID-19 pneumonia⁴. She was also diagnosed
8 with COVID-19 and admitted to FVRH from July 4, 2021, to July 9, 2021. On both admissions,
9 Patient A was under the care of Respondent.

10 11. Patient A's medical records contain a History of Present Illness section dated July 4,
11 2021, prepared by Respondent, that described her current COVID-19 pneumonia diagnosis as a
12 possible adverse reaction to the Pfizer COVID-19 vaccine that Patient A received two months
13 prior.

14 12. During Patient A's July 2021 hospitalization, Respondent prescribed Plaquenil.⁵
15 Previously, Plaquenil was briefly authorized for COVID-19 treatment, but this emergency
16 authorization was revoked in June 2020, well before Patient A's hospitalization. As such, this
17 medicine should not have been given to Patient A for the purpose of COVID-19 treatment.

18 13. Patient A's medical records indicate that on or about July 6, 2021, an Infectious
19 Disease consulting physician recommended that Patient A stop taking Plaquenil and ivermectin⁶.
20 In response, Respondent documented that he was instead prescribing Plaquenil for Patient A's
21

22 ³ A pseudonym is used to refer to any and all patients in the instant Accusation to preserve
23 the confidentiality of medical information. The true name and identity of any such patients is
24 known to Respondent, or will be provided to Respondent upon Complainant's receipt of a duly
25 issued request for discovery.

26 ⁴ Pneumonia is an infection that inflames the air sacs in one or both lungs. The air sacs
27 may fill with fluid or pus (purulent material), causing cough with phlegm or pus, fever, chills, and
28 difficulty breathing. A variety of organisms, including bacteria, viruses (including COVID-19)
and fungi, can cause pneumonia.

⁵ Plaquenil is the brand name for hydroxychloroquine. Plaquenil is a disease-modifying
anti-rheumatic drug. For example, it can decrease the pain and swelling of arthritis which can
prevent joint damage leading to long-term disability. Plaquenil comes in an oral tablet.

⁶ Ivermectin is an anti-parasite medication used to treat parasitic diseases. It is FDA
approved for use in humans to treat a variety of parasitic infections including parasitic worms,
hookworm and whipworm.

1 rheumatoid arthritis. Respondent did not consult with Rheumatology about this decision. In
2 addition, the Plaquenil dose prescribed to Patient A (800 mg total per day⁷) was twice as high as
3 the usual maximum dose for rheumatoid arthritis.

4 14. Respondent advised Patient A, a high-risk⁸ patient in regard to COVID-19, that she
5 should avoid a COVID-19 booster vaccination.

6 15. Respondent also prescribed zinc during the July 2021 hospitalization. However,
7 Patient A's medical records do not indicate why Respondent did not also prescribe remdesivir⁹.

8 16. Overall, Respondent committed the following acts and/or omissions in his care and
9 treatment of Patient A which represent extreme departures from the standard of care:

10 A. Prescribing and ordering ivermectin for Patient A as a COVID-19 treatment even
11 though it was never recommended, approved, nor authorized as a COVID-19
12 treatment.

13 B. Prescribing and ordering Plaquenil for Patient A as a COVID-19 treatment even
14 though it was no longer recommended, approved, nor authorized as a COVID-19
15 treatment.

16 C. Advising Patient A, a high-risk patient in regards to COVID-19, to avoid a COVID-
17 19 booster.

18 17. The above acts or omissions constitute gross negligence under the Code, and
19 therefore subject Respondent's medical license to discipline.

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23 ⁷ Adult dosing of Plaquenil for rheumatic diseases ranges from 200 mg to 400 mg per day.

24 ⁸ Some people are more likely than others to be at risk for severe illness, including death,
25 from COVID-19. These risk factors include patients who are older, immunocompromised, or
26 have underlying health conditions.

27 ⁹ Remdesivir (international nonproprietary name) is a broad-spectrum FDA-approved
28 antiviral medication that is used to treat COVID-19 for certain patients who are in the hospital.
Remdesivir has been shown to help hospitalized patients reduce the progression and severity of
COVID-19 infection and also shorten the COVID-19 recovery time. Remdesivir may also be
used to treat patients with COVID-19 who are not in the hospital, but are at an increased risk of
progressing to severe COVID-19 complications due to older age, obesity, or other ongoing
medical conditions.

Patient B

18. Patient B was a 58-year-old female with a significant past medical history including hypertension¹⁰, diabetes¹¹, hyperlipidemia¹², hypothyroidism¹³, and depression when she was hospitalized in May 2021.

19. Patient B's medical records, prepared by Respondent, describe and diagnose her May 2021 hospitalization after suffering a stroke as a sudden adverse reaction to the Moderna COVID-19 vaccine.

20. During Patient B's May 2021 hospitalization, Respondent also added immune thrombocytopenic purpura¹⁴ (ITP) as a diagnosis.

21. Patient B was pronounced dead by Respondent on May 19, 2021. On Patient B's Discharge/Death Summary dated May 19, 2021, Respondent lists Patient B's cause of death as respiratory failure and multiple organ failure from Moderna COVID-19 vaccine. Respondent also indicated that Patient B's stroke and vegetative state were acute post vaccine. Respondent also listed as other associated diagnoses "Adverse reaction to MODERN [sic] COVID vaccine" and "Acute ITP." In the Hospital Course section Respondent also states that "ITP is a known major side effect of COVID vaccine."

22. Also, on a Patient Notification of Death form dated May 19, 2021, Respondent identifies Patient B's preliminary cause of death as "MODERNA VACCINE MOF."¹⁵

¹⁰ Hypertension (high blood pressure) is a common condition that affects the body's arteries. Specifically, hypertension is when the force of blood pushing against the artery walls is consistently too high forcing the heart to work harder to pump blood. It can lead to damage to the arteries and heart leading to serious complications such as heart attack and stroke.

¹¹ Diabetes (diabetes mellitus) is a disorder of carbohydrate metabolism characterized by impaired ability of the body to produce or respond to insulin and thereby maintain proper levels of sugar (glucose) in the blood.

¹² Hyperlipidemia (high cholesterol) is an excess of lipids or fats in the blood and can increase a patient's risk of heart attack and stroke.

¹³ Hypothyroidism is a disorder of the endocrine system in which the thyroid gland does not produce enough thyroid hormones. Over time, hypothyroidism that isn't treated can lead to other health problems, including but not limited to, high cholesterol, weight gain, and heart problems.

¹⁴ Immune thrombocytopenic purpura is a blood disorder characterized by a decrease in the number of platelets in the blood that can cause easy bruising, bleeding gums, and internal bleeding. This disease is caused by an immune reaction against one's own platelets.

¹⁵ MOF is a medical abbreviation for "multiple organ failure."

23. Overall, Respondent committed the following acts and/or omissions in his care and treatment of Patient B which represent an extreme departure from the standard of care:

A. Attributing Patient B's death to the Moderna COVID-19 vaccine without any evidence or objective information.

24. The above acts or omissions constitute gross negligence under the Code, and therefore subject Respondent's medical license to discipline.

Patient C

25. Patient C was a 66-year-old male when he was admitted to FVRH from July 4, 2021, to July 6, 2021, for pneumonitis¹⁶, hemoptysis¹⁷, and flu-like weakness. Patient C is a smoker with a history of diabetes melitus and hyperlipidemia. During this admission, Patient C was under the care of Respondent.

26. Patient C's medical records, dated July 5, 2021, and prepared by Respondent, describe Patient C's condition as a "possible adverse autoimmune reaction to COVID vaccine."

27. Patient C's medical records contain a Progress Note on July 6, 2021, that indicates that Respondent advised Patient C to "avoid further COVID vaccine."

28. Patient C's medical records indicate that Pulmonology also saw Patient C every day of the hospitalization. Pulmonology made no mention of the COVID-19 vaccine and consistently documented that Patient C was being treated for pneumonia with antibiotics.

29. Overall, Respondent committed the following acts and/or omissions in his care and treatment of Patient C which represent an extreme departure from the standard of care:

A. Advising Patient C, a high-risk patient in regards to COVID-19, to avoid further COVID-19 vaccines.

30. The above acts or omissions constitute gross negligence under the Code, and therefore subject Respondent's medical license to discipline.

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¹⁶ Pneumonitis is a medical condition characterized by irritated or inflamed lungs (respiratory tract). Pneumonitis has many causes, including but not limited to, germs, medications, breathing in harsh chemical, and allergies.

¹⁷ Hemoptysis is the medical term for coughing up blood from some part of the lungs.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

31. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 55848 to disciplinary action under sections 2227 and 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in the course of his care and treatment of one or more patients.

The circumstances are as follows:

32. Paragraphs 8 to 30 above, are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

33. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 55848 to disciplinary action under sections 2227, 2234, and 2266 of the Code, in that he failed to maintain adequate and accurate records relating to the provision of services to one or more patients, as more particularly alleged in paragraphs 8 through 31, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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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 55848, issued to Respondent Tam Ky Nguyen, M.D.;
2. Revoking, suspending, or denying approval of Respondent Tam Ky Nguyen, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent Tam Ky Nguyen, 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: SEP 26 2024



REJI VARGHESE
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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