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

In the Matter of the Accusation Against: Brent Le Kane, M.D. Physician's & Surgeon's Certificate No G75272 Respondent	Case No. 800-2017-034553

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 March 3, 2021.

IT IS SO ORDERED February 1, 2021.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD

Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
SARAH J. JACOBS
Deputy Attorney General
State Bar No. 255899
California Department of Justice
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
Telephone: (559) 705-2312
Facsimile: (559) 445-5106
Attorneys for Complainant

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

In the Matter of the Accusation Against: **BRENT LE KANE, M.D.** **7370 N. Palm Ave., St. 101** **Fresno, CA 93711-5782** **Physician's and Surgeon's Certificate No. G 75272** Respondent.	Case No. 800-2017-034553 OAH No. 2020040390 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

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 Xavier Becerra, Attorney General of the State of California, by Sarah J. Jacobs, Deputy Attorney General.

2. Respondent Brent Le Kane, M.D. (Respondent) is represented in this proceeding by attorney Robert W. Hodges, whose address is: 3480 Buskirk Avenue, Suite 250, Pleasant Hill, CA 94523.

3. On or about September 29, 1992, the Board issued Physician's and Surgeon's Certificate No. G 75272 to Brent Le Kane, 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. 800-2017-034553, and will expire on March 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-034553 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 February 20, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-034553 is attached as Exhibit A and 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. 800-2017-034553. Respondent has also carefully read, fully discussed with his 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 does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 800-2017-034553 and that he has thereby subjected his Physician's and Surgeon's Certificate No. G 75272 to disciplinary action.

10. Respondent agrees that if an accusation is filed against him before the Board in the future, all of the charges and allegations contained in Accusation No. 800-2017-034553 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.

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 imposition of discipline 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 opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

1. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 75272, issued to Respondent Brent Le Kane, M.D. shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code, section 2227, subdivision (a)(4). This public reprimand is issued in connection with Respondent performing salvage brachytherapy upon a patient who was not an appropriate candidate for the procedure.

2. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, 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. The educational program(s) or course(s) shall be completed by Respondent within one (1) year of the effective date of this Decision, 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. If Respondent fails to enroll, participate in, or successfully complete the education courses within the designated time period, 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 not resume the practice of medicine until he has completed the required courses. Failure to enroll, participate in, or successfully complete the courses within the designated time

period shall constitute unprofessional conduct and grounds for further disciplinary action.

3. 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 offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the program 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 Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course 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 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 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later. Failure to participate in and successfully complete the professionalism program (ethics course) as outlined above shall constitute unprofessional conduct and grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert W. Hodges. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 75272. 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: 12/10/2020

BRENT LE KANE, M.D.
Respondent

I have read and fully discussed with Respondent Brent Le Kane, 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: 12/10/2020

ROBERT W. HODGES, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 12/10/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

SARAH J. JACOBS
Deputy Attorney General
Attorneys for Complainant

FR2020300135
95368963.docx

Exhibit A

Accusation No. 800-2017-034553

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb 20 2020
BY Jana Reeves ANALYST

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General
SARAH J. JACOBS
Deputy Attorney General
State Bar No. 255899
California Department of Justice
2550 Mariposa Mall, Room 5090
Fresno, CA 93721
Telephone: (559) 705-2312
Facsimile: (559) 445-5106
Attorneys for Complainant

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

In the Matter of the Accusation Against: **Brent Le Kane, M.D.** **7370 N. Palm Ave., St. 101** **Fresno, CA 93711-5782** **Physician's and Surgeon's Certificate No. G 75272,** Respondent.	Case No. 800-2017-034553 **ACCUSATION**

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about September 29, 1992, the Medical Board issued Physician's and Surgeon's Certificate Number G 75272 to Brent Le Kane, 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, 2022, 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:

(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.

STATUTORY PROVISIONS

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:

(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.

[¶] ...[¶]

DEFINITIONS

6. Prostate specific antigen (PSA) is a protein produced by the prostate gland. A PSA blood test is used to screen for cancer of the prostate and to monitor treatment of the disease. Typically, a PSA level of 4.0 ng/mL and above causes concern and biopsy recommendations.

7. Gleason scores are used to "grade" or "stage" cancer as they fall into five distinct patterns as they change from normal cells to tumor cells. The cells are graded on a scale of 1 to 5, with 5 being the highest grade. A pathologist looking at a biopsy will assign and add two Gleason scores (e.g., 3 + 4 = 7) based on the two most predominant patterns of tumor cells. The cells are traditionally graded on a scale of 2 to 10. A score of 6 is considered low grade, 7 is intermediate grade, and a score of 8 to 10 is high grade cancer.

8. Brachytherapy is the treatment of cancer, especially prostate cancer, by the insertion of radioactive implants directly into the tissue. It is sometimes referred to as internal radiation.

9. Grays (Gy) is the measurement used for radiation in photon radiation therapy.

FACTUAL ALLEGATIONS

10. Patient A[1] was a 57-year-old male with a history of recurrent prostate cancer. He had a history of abnormal PSA since at least 2005 and a prior history of urinary obstructive symptoms. In March of 2010, his PSA was 12.8 ng/mL. In June of 2010, his bone scan and CT scan of his abdomen and pelvis reported to show no obvious metastasis.

11. On or about January 27, 2011, Respondent first treated Patient A. The physical examination notes an enlarged hard right peripheral lobe with extracapsular extension. Patient A

[1] The patient is identified by the letter "A" to preserve his confidentiality.

was unable to feel the seminal vesicles. At that time, his PSA had increased to 15.2 ng/mL. Respondent noted that Patient A's Gleason scores from throughout his prostate biopsies were: 1) 4 + 4 = 8; and 2) 3 + 5 = 8. Patient A was in clinical stage III (T3aNxMxG4) and was considered high-risk with a high grade of cancer. Respondent ordered repeat bone and CT scans and discussed options with Patient A. Patient A had investigated proton treatment and Respondent was agreeable to have Patient A receive protons as a boost prior to beginning radiation treatment. Patient A was scheduled to then receive linear accelerator based x-ray treatment to complete his radiation.

12. Patient A received hormonal and androgen blockade therapy from a different physician beginning in February of 2011. It was scheduled to continue to 2 years; however, Patient A chose to stop hormonal therapy after he completed his radiation therapy.

13. In February 2011, Patient A's repeat bond and CT scans were completed. The bone scan remained negative. However, the CT scan showed an enlarged right external iliac lymph node, among other smaller lymph nodes. The final impression was that it was, "suggestive of at least local pelvic nodal metastatic disease." Respondent failed to change his clinical staging or pursue further investigation even though Patient A's clinical stage cancer changed to IVA (T3N1MxG4).

14. In March 2011, Patient A's PSA decreased to 1.94 ng/mL. Respondent noted in his physical examination and the right lobe nodule. Respondent concluded the pre-proton planning for Patient A.

15. On or about April 13, 2011, Respondent began Patient A's radiation treatment, and it concluded on or about May 6, 2011. The patient was treated through the right and left lateral fields.

16. On or about May 16, 2011, Patient A returned to Respondent and began external beam x-ray radiation therapy, which completed on or about June 14, 2011. The prostate, bladder, rectum, right and left pelvic lymph nodes were contoured and covered in the treatment. The total dose administered to Patient A's prostate, urethra, anterior wall of the rectum, and bladder base was 81 Gy (8100cGy). This amount was within the tolerance level of damage to the treated

portion of the small bowel and sigmoid colon for recovery and function, as long as no further injurious incidents occured. Patient A's PSA at the end of treatment was .43 ng/mL; however, he decided not to get his next anti-hormonal therapy injection and by September of 2011, his PSA was back to 1.02 ng/mL.

17. Patient A's PSA continued to rise. In January of 2012, his PSA was 1.35 ng/mL. In March of 2012, his PSA was 2.45 ng/mL. In June of 2012, his PSA was 3.67 ng/mL. This is evidence that Patient A's cancer growth had restarted.

18. In July of 2012, a bone and CT scan of Patient A's abdomen stated that he did not have obvious or visible cancer. In fact, the right iliac lymph node of previous concern had reduced in size. The rectum and sigmoid colon wall thickened, consistent with injury from the radiation.

19. In November of 2012, Respondent and Patient A discussed a salvage brachytherapy, along with other treatments. Patient A refused a re-biopsy of the prostate due to the amount of pain. His PSA in November of 2012, had increased to 7.4 ng/mL.

20. Salvage brachytherapy has the following criteria in order to be appropriate: 1) the original disease be confined to the gland; 2) no extension of the cancer into periprostatic tissue, seminal vesicles, or metastasis into lymph node; 3) PSA below 10 ng/mL at the time salvage is considered; 4) long PSA doubling time; and Gleason score below 6, a grade of 3; and 5) re-biopsy confirmation of carcinoma in the prostate is considered necessary by all authors on this subject.

21. On or about February 22, 2013, Respondent performed a salvage brachytherapy on Patient A, in order to attempt to stop the re-growing cancer before it metastasized to lymph nodes or other organs. No repeat PSA test or diagnostic radiology studies were obtained. Respondent used a real time dosimetry method under ultrasound guidance. He placed 55 iodine-125 seeds; 44 peripheral and 11 central seeds through needles.

22. On February 26, 2013, a dosimetric analysis of the implanted radiation seeds showed Patient A receiving 158 Gy to the prostate, 107 Gy to the urethra, and 38 Gy to the rectum. In September of 2013, a CT scan dosimetry analysis showed him receiving 150 Gy to the prostate, 9.8 Gy to the urethra, and 21.6 Gy to the rectum. The total dose of radiation Patient A received

from the seeds Respondent inserted was approximately 231-239 Gy to the prostate, 90.8-188 Gy to the urethra, and 102.6-119 Gy to the rectum. The Biologic Effective Dose (BED) was approximately 176 Gy to the prostate, 106-196 Gy to the urethra, and 83-100 Gy to the rectum.

23. In July of 2013, Patient A's PSA continued to increase to 43.59 ng/mL. In August of 2013, his PSA was 47 ng/mL. In September of 2013, his PSA was 55.9 ng/mL. In November of 2013, his PSA was 94.3 ng/mL.

24. In January of 2014, Patient A resumed hormonal therapy. In May of 2014, another surgeon performed a cystoscopy and transurethral resection of his prostate and his PSA decreased to 5 ng/mL. In September of 2014, Patient A's PSA was 3.72 ng/mL, and another surgeon performed laser litholopaxy and removal of prostate tissue.

25. In February of 2015, Patient A had stool mixed with his urine due to necrosis of his rectal wall and fistula developing in his bladder base and prostate.

26. Because Patient A received a high initial dose of external beam radiation (81 Gy), and then a brachytherapy dose of 140 Gy, the combined doses exceeded the ability of his prostate and rectum to survive. Moreover, Patient A's small bowel, prostate, rectum, and bladder were unable to heal after surgery and had additional complications.

27. Patient A was not an appropriate candidate for salvage therapy using iodine-125. He had a rising PSA immediately following initial radiation therapy, "previous dose escalated radiation," and previous response to hormonal therapy. More importantly, Patient A's cancer was never localized to his prostate. A brachytherapy could not cure his cancer. His CT scans showed cancer in an iliac lymph node in February of 2011. His prostate cancer was growing in his lymph node immediately after he was treated with 81 Gamma rays to his prostate. Because of his lymph node metastasis, Patient A would never be an appropriate candidate for a brachytherapy implant. In addition, salvage brachytherapy necessitates a biopsy to confirm that cancer is still in the gland, but a confirmation biopsy was never performed because Patient A refused due to the amount of residual pain.

//

//

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

28. Respondent Brent Le Kane, M.D. is subject to disciplinary action under section 2234, subdivision (b) in that he committed gross negligence in his care and treatment of Patient A. The circumstances are set forth in paragraphs 10 through 27, which are incorporated by reference as if fully set forth. Additional circumstances are as follows:

29. On or about February 22, 2013, Respondent committed an act of gross negligence in placing 55 iodine-125 seeds into Patient A during the salvage brachytherapy. Patient A was not an appropriate candidate for salvage brachytherapy using iodine-125 implants. Specific exclusion criteria existed for him and the procedure should not have been performed. Respondent's performance of the salvage brachytherapy resulted in the destruction of Patient A's prostate and more.

30. Respondent committed a second act of gross negligence in his care and treatment of Patient A when he failed to recognize he was overdosing the patient with radiation. Respondent neglected to perform a pre-plan analysis of the combined dosage effect in Patient A's prostate and surrounding organs. The prostate, urethra, and rectal dose far exceeded normal tissue tolerance and caused necrosis. Moreover, Respondent never performed a combined dosimetry report evaluating the maximum exposure of radiation to Patient A.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

31. Respondent Brent Le Kane, M.D. is subject to disciplinary action under section 2234, subdivision (c), in that he committed repeated acts of negligence. The circumstances are set forth in paragraphs 10 through 30, which are incorporated here by reference as if fully set forth.

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 75272, issued to Brent Le Kane, M.D.;

2. Revoking, suspending or denying approval of Brent Le Kane, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Brent Le Kane, 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: FEB 20 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

FR2020300135
95335872.docx