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

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| In the Matter of the Accusation Against:<br><br>Barnet Gary Meltzer, M.D.<br><br>Physician's and Surgeon's Certificate No. G 19625<br><br>Respondent. | Case No. 800-2017-033594 |

## 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 April 5, 2021.

IT IS SO ORDERED March 29, 2021.

MEDICAL BOARD OF CALIFORNIA

William Prasifka
Executive Director

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
GIOVANNI F. MEJIA
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*Attorneys for Complainant*

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

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| In the Matter of the Accusation Against:<br><br>**BARNET GARY MELTZER, M.D.**<br>1011 Camino Del Mar #234<br>Del Mar, CA 92014,<br><br>**Physician's and Surgeon's Certificate No. G 19625,**<br><br>Respondent. | Case No. 800-2017-033594<br>OAH No. 2020100191<br><br>**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. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). This action was previously brought by Christine J. Lally solely in her prior official capacity as Interim Executive Director of the Board. Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Giovanni F. Mejia, Deputy Attorney General.

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2. Barnet Gary Meltzer, M.D. (Respondent) is represented in this proceeding by attorney Robert W. Frank, Esq. whose address is: Neil, Dymott, Frank, McCabe & Hudson APLC, 110 West A Street, Suite 1200, San Diego, CA 92101.

3. On or about November 23, 1970, the Board issued Physician's and Surgeon's Certificate No. G 19625 to Barnet Gary Meltzer, 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. 800-2017-033594 and will expire on March 31, 2021, unless renewed.

## JURISDICTION

4. Accusation No. 800-2017-033594 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 June 3, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-033594 is attached as exhibit A and incorporated by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-033594. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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.

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## CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2017-033594, agrees that cause exists for discipline, and hereby surrenders his Physician's and Surgeon's Certificate No. G 19625 for the Board's formal acceptance.

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.

## CONTINGENCY

11. 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.

## ADDITIONAL PROVISIONS

12. Complainant understands and agrees that if and when the Board accepts the surrender of Respondent's Physician's and Surgeon's Certificate, Board case No. 800-2019-053987, which is currently a pending Board investigation involving Respondent, shall be closed.

13. Respondent understands and agrees that all information contained in Board case No. 800-2019-053987 shall be preserved by the Board. Respondent further understands, agrees, and hereby stipulates, that any information contained in case No. 800-2019-053987 shall be admissible in any future reinstatement proceeding, or any other proceeding seeking to deny or restrict licensure. Respondent further understands and agrees that any allegation of unprofessional conduct or violation of the Medical Practice act related to case No. 800-2019-053987 shall be deemed to be true, correct, and admitted by Respondent for the purposes of any future

reinstatement proceeding, or any other proceeding seeking to deny or restrict licensure. Respondent further understands, agrees, and hereby stipulates that he waives any and all defenses to any allegation of unprofessional conduct or violation of the Medical Practice Act relating to case No. 800-2019-053987 including, but not limited to, any laches, statute of limitations, or meritorious defenses.

14. This Stipulated Surrender of License and 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-captioned matter.

15. 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.

16. 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 19625, issued to Respondent Barnet Gary Meltzer, M.D., is surrendered 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 Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations

contained in Accusation No. 800-2017-033594 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. 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. 800-2017-033594 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.

6. Upon the Board's acceptance of the surrender of Respondent's Physician's and Surgeon's Certificate, pending Board investigation No. 800-2019-053987 shall be closed. All information contained in case No. 800-2019-053987 shall be preserved by the Board and any information contained therein shall be admissible in any future reinstatement proceeding, or any other proceeding before the Board seeking to deny or restrict licensure. Any allegation of unprofessional conduct or violation of the Medical Practice Act related to case No. 800-2019-053987 shall be deemed to be true, correct, and admitted by Respondent for the purposes of any future reinstatement proceeding, or any other proceeding before the Board 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, Robert W. Frank, Esq. 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: 2/5/21

BARNET GARY MELTZER, M.D.
*Respondent*

I have read and fully discussed with Respondent Barnet Gary Meltzer, 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: 2-25-21

ROBERT W. FRANK
*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: February 25, 2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

GIOVANNI F. MEJIA
Deputy Attorney General
*Attorneys for Complainant*

**Exhibit A**

**Accusation No. 800-2017-033594**

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*Attorneys for Complainant*

**BEFORE THE**
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| In the Matter of the Accusation Against:<br><br>**Barnet Gary Meltzer M.D.**<br>**1011 Camino Del Mar #234**<br>**Del Mar, CA 92014,**<br><br>**Physician's and Surgeon's Certificate**<br>**No. G 19625,**<br><br>Respondent. | Case No. 800-2017-033594<br><br>**A C C U S A T I O N** |

**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 November 23, 1970, the Medical Board issued Physician's and Surgeon's Certificate No. G 19625 to Barnet Gary Meltzer 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, 2021, 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, in pertinent part:

> (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.
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> ....

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.
>
> ...
>
> (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.

....

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 Barnet Gary Meltzer, M.D. has subjected his Physician's and Surgeon's Certificate No. G 19625 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. The circumstances are as follows:

8. At all times relevant to the allegations contained herein, Respondent has operated a private, solo medical practice in or around Del Mar, California.

9. On or about January 6, 2017, "Patient A,"[1] a minor female patient, presented to Respondent at his practice accompanied by Patient A's mother.

10. At one point during the January 6, 2017 encounter, Patient A's mother inquired about obtaining a vaccination exemption for Patient A.

11. On or about January 6, 2017, Respondent issued a letter (referred to hereinafter as the "Patient A Exemption Letter"), and provided a copy to Patient A's mother, stating, among other things, that "[Patient A] needs to be exempt from diptherеia, tetanus, pertussis, polio, hepatitis B, measles, mumps, rubella, and varicella [sic]." In the Patient A Exemption Letter, Respondent further stated, "...it is advised not to inoculate [Patient A] at this time until further notice."

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[1] Patient names or other personally identifying information are withheld from the instant Accusation to preserve patient privacy. All patient identities are known to Respondent, or will be provided to Respondent following Complainant's receipt of any duly issued request for discovery.

12. Respondent issued the Patient A Exemption Letter on or about June 6, 2017 without adequate medical justification.

13. Patient A presented to Respondent again on June 30, 2017.

14. Respondent's medical records for the January 6, 2017 or June 30, 2017 encounter, or both, are not adequately legible such that a third party reading the records could sufficiently understand Respondent's thought process or clinical assessment and reasoning.

15. Respondent's issuance of the Patient A Exemption Letter, as well as statements made by Respondent therein or in the course of the Board's subsequent investigation of the medical care and treatment rendered to Patient A, demonstrate a lack of knowledge regarding the risks of vaccines.

16. Respondent committed repeated negligent acts in his care and treatment of Patient A including, but not limited to:

(a) Issuing a vaccination exemption for Patient A without adequate medical justification.

(b) Failing to maintain adequate medical record documentation for Patient A.

**SECOND CAUSE FOR DISCIPLINE**

**(Incompetence)**

17. Respondent Barnet Gary Meltzer, M.D. has further subjected his Physician's and Surgeon's Certificate No. G 19625 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code in that he demonstrated incompetence as more particularly alleged in paragraphs 7 through 15, above, which are hereby incorporated by reference as if fully set forth herein.

**THIRD CAUSE FOR DISCIPLINE**

**(Failure to Maintain Adequate and Accurate Records)**

18. Respondent Barnet Gary Meltzer, M.D. has further subjected his Physician's and Surgeon's Certificate No. G 19625 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code in that he failed to maintain adequate and accurate records relating to the provision of services to Patient A as more particularly alleged in

paragraphs 7 through 16, above, which are hereby incorporated by reference as if fully set forth herein.

## FOURTH CAUSE FOR DISCIPLINE

**(Violating or Attempting to Violate the Medical Practice Act)**

19. Respondent Barnet Gary Meltzer, M.D. has further subjected his Physician's and Surgeon's Certificate No. G 19625 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code in that he violated or attempted to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate one or more provisions of the Medical Practice Act as more particularly alleged in paragraphs 7 through 18, above, which are hereby incorporated by reference as if fully set forth herein.

## DISCIPLINARY CONSIDERATIONS

20. To determine the degree of discipline, if any, to be imposed on Respondent Barnet Gary Meltzer, M.D.'s Physician's and Surgeon's Certificate No. G 19625, Complainant alleges that on or about September 19, 2002, in a prior disciplinary action titled *In the Matter of the Accusation Against Barnet Gary Meltzer M.D.*, before the Medical Board of California, Case No. 09-2000-106851, Respondent's license was revoked, with the revocation stayed, and Respondent was placed on probation for seven years for committing gross negligence by engaging in a sexual relationship with a patient. That decision is now final and is incorporated by reference 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 No. G 19625, issued to Respondent Barnet Gary Meltzer M.D.;

2. Revoking, suspending or denying approval of Respondent Barnet Gary Meltzer M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Barnet Gary Meltzer 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: JUN 0 3 2020

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