

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

In the Matter of the Accusation Against:

Joseph Jay Bistrain, M.D.

Physician's and Surgeon's
Certificate No. A 64943

Respondent.

Case No. 800-2018-047011

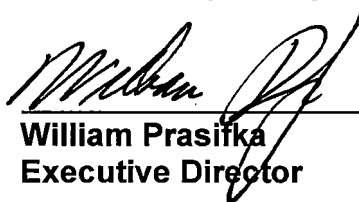
DECISION

The attached Stipulated Surrender of License 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 February 1, 2022.

IT IS SO ORDERED January 25, 2022.

MEDICAL BOARD OF CALIFORNIA



William Prasifka
Executive Director

1 ROB BONTA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 RYAN J. MCEWAN
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8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2018-047011

13 **JOSEPH JAY BISTRAIN, M.D.**
14 **7675 Pebblestone Way**
Reno, NV 89523

OAH No. 2021020772

15 **Physician's and Surgeon's Certificate**
16 **No. A 64943**

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Rob Bonta, Attorney General of the State of California, by Ryan J. McEwan, Deputy
25 Attorney General.

26 2. Joseph Jay Bistrain, M.D. (Respondent) is represented in this proceeding by attorney,
27 Dominique A. Pollara, Esq., whose address is: Pollara Law Group, 100 Howe Avenue, Suite
28 165N, Sacramento, CA 95825.

1 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
2 of Respondent's license history with the Board.

3 2. Respondent shall lose all rights and privileges as a physician and surgeon in
4 California as of the effective date of the Board's Decision and Order.

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

7 4. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
9 comply with all the laws, regulations and procedures for reinstatement of a revoked or
10 surrendered license in effect at the time the petition is filed, and all of the charges and allegations
11 contained in Accusation No. 800-2018-047011 shall be deemed to be true, correct and admitted
12 by Respondent when the Board determines whether to grant or deny the petition.

13 5. If Respondent should ever apply or reapply for a new license or certification, or
14 petition for reinstatement of a license, by any other health care licensing agency in the State of
15 California, all of the charges and allegations contained in Accusation No. 800-2018-047011 shall
16 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
17 Issues or any other proceeding seeking to deny or restrict licensure.

18 ACCEPTANCE

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

24
25 DATED: Nov. 8, 2021 Joseph Jay B. B.A.
26 JOSEPH JAY B. B. B.A.
27 Respondent
28

1 I have read and fully discussed with Respondent Joseph Jay Bistrain, M.D. the terms and
2 conditions and other matters contained in this Stipulated Surrender of License and Disciplinary
3 Order. I approve its form and content.

4 DATED: November 8, 2021


DOMINIQUE A. POLLARA, ESQ.
Attorney for Respondent


6
7 **ENDORSEMENT**

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

11 DATED: November 8, 2021

Respectfully submitted,

12 ROB BONTA
13 Attorney General of California
14 STEVEN D. MUNI
15 Supervising Deputy Attorney General



16 RYAN J. MCEWAN
17 Deputy Attorney General
18 *Attorneys for Complainant*

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Exhibit A

Accusation No. 800-2018-047011

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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 800-2018-047011

14 **Joseph Jay Bistrain, M.D.**
1479 Lewis Way
15 Folsom, CA 95630-5720

ACCUSATION

16 **Physician's and Surgeon's Certificate**
No. A 64943,

17 Respondent.
18

19
20 **PARTIES**

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

24 2. On or about April 24, 1998, the Medical Board issued Physician's and Surgeon's
25 Certificate Number A 64943 to Joseph Jay Bistrain, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on November 30, 2021; 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 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
7 one year, placed on probation and required to pay the costs of probation monitoring, or such other
8 action taken in relation to discipline as the Board deems proper.

9 5. Section 2234 of the Code, states:

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

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

15 (b) Gross negligence.

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

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

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

28 ...

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.

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FACTUAL ALLEGATIONS

Patient A

7. Patient A¹ was a type-1 diabetic, hypertensive with end-stage renal disease requiring dialysis and a kidney transplant. Patient A had a history of admissions into the emergency room at Mercy Hospital in Folsom.

8. On or about January 3, 2018, Patient A was taken to the emergency room at Mercy Hospital in an altered state. Patient A was intubated and several tests were performed on her. A chest x-ray revealed extensive bilateral infiltrates consistent with pulmonary edema and volume overload. An electrocardiogram indicated a first-degree atrioventricular block and poor R wave progression. Laboratory results indicated diabetic ketoacidosis.

9. Patient A was in the hospital from on or about January 3, 2018, through January 12, 2018. During that period, Patient A had elevated blood pressure readings on most days with readings ranging from 209/201, 217/64, 200/98 and 191/96. On days when Patient A had dialysis she continued to have blood pressure readings ranging from 160-178 systolic and 91-94 diastolic.

10. Patient A was discharged from Mercy Hospital on or about January 12, 2018. Included amongst her final diagnosis were: diabetic ketoacidosis, medical noncompliance, psychiatric disease, acute metabolic encephalopathy-resolved, acute hypoxic respiratory failure, acute pulmonary edema due to fluid overload, end-state renal disease, on hemodialysis, and insulin-dependent diabetes.

11. On or about January 14, 2018, Patient A returned to the Mercy Hospital emergency room requesting a breathing treatment. Her blood pressure readings were 214/106 and 205/101. The emergency room provider wrote, "She reports she is not taking her other hypertensives, but has them at home with a blood pressure monitor. Offered providing medication here for further treatment of HTN [hypertension]. PT declined and states she will take her medications at home, check her BP [blood pressure] and return if not improved." Patient A was discharged from the

¹ To protect the privacy of the patients involved, the patient names have not been included in this pleading. The identification of the patients will be disclosed to the Respondent during discovery.

1 hospital the same day with instructions to return to the hospital should her blood pressure
2 readings not improve.

3 12. On or about May 30, 2018, Patient A returned to the Mercy Hospital emergency room
4 due to feelings of unsteady legs, difficulty focusing, and some shortness of breath. Patient A had a
5 normal neurologic exam despite her complaints. Her blood pressure readings were lower than her
6 past readings, falling at 172/93, 170/75 and 178/81. Since Patient A did not have ketones or
7 marked hyperkalemia, the decision was made to await dialysis as scheduled for the following
8 date. Patient A was discharged from the hospital the same day with instructions on managing her
9 blood sugar and with recommendations to follow up with endocrinology as well as dialysis the
10 following day.

11 13. On or about June 3, 2018, an ambulance was called to Patient A's apartment because
12 Patient A had complaints of dizziness, nausea, and vomiting. Patient A reported being compliant
13 with her medications and dialysis treatment. Patient A's blood pressure reading was 230/116. The
14 paramedic administered Zofran² and proceeded to the emergency room at Mercy Hospital.

15 14. While at Mercy Hospital, Patient A was seen by Respondent, an emergency
16 physician. Upon entry into the emergency room, Patient A's chief complaints were documented
17 as "HTN (hypertension) dizziness, tingling to left arm, nausea, and headache, dialysis done".
18 Patient A's initial vitals were: blood pressure 218/100, pulse 75, 98% oxygen saturation and pain
19 severity of 9 out of 10. Patient A had laboratory studies along with an EKG, chest x-ray, and a
20 cat scan of her head. Most of the studies were documented in the medical record with
21 interpretations by Respondent as well as a specialist, except for the CT scan. The CT scan was
22 interpreted by Dr. CC whose notation included: "No acute intracranial findings. Occipital scalp
23 hematoma without underlying depressed/displaced calvarial fracture. Small hypodensity within
24 the left pons measuring 5 mm, new since the prior examination and is likely an old infarct." There
25 is no specific interpretation or discussion of the CT scan findings by Respondent. The chest x-ray
26 was read by Respondent noting, "no pneumothorax, pulmonary edema, mild cardiomegaly,
27 Impression: No acute process." The radiologist read the chest x-ray prior to Respondent and

28 ² Zofran (ondansetron) is an antiemetic used to treat nausea and vomiting.

1 found, "interval development of moderate interstitial edema and trace bilateral pleural effusions."
2 There is no documentation analyzing the differences between Respondent's interpretation of the
3 chest x-ray versus the radiologist's interpretation.

4 In addition to the examinations, Patient A received the following medications during the
5 course of her evaluation: metoclopramide³, Benadryl, labetalol⁴, ondansetron, hydralazine⁵,
6 promethazine⁶, Dilaudid⁷, clonidine⁸, and normal saline. The laboratory analysis did not reveal
7 signs of acidosis from renal failure or diabetic ketoacidosis.

8 15. On or about June 3, 2018, Patient A remained hypertensive during her stay at Mercy
9 Hospital. Patient A's blood pressure was taken at different times throughout the day and they
10 varied from 218/100, 225/110, 223/114, 210/86, 225/99, 212/99, 192/90, to 214/91, at discharge.

11 16. Respondent wrote a note that, "Patient was treated with IV labetalol and hydralazine
12 as well as oral clonidine. Patient did receive some IV Dilaudid Reglan and Zofran. The patient
13 after long period of observation CT scan looked urinalysis was reevaluated she's not hypoxic nor
14 tachypneic. There is some pulmonary edema noted on chest x-ray and she is scheduled for
15 dialysis on Tuesday. She is not Or hypoxic and she will be managed as an outpatient with her
16 current medications which include labetalol, clonidine, and hydralazine. The patient will be
17 managed and she stalled at the Orangevale Davida dialysis Center. She states that she can follow-
18 up for further dialysis tomorrow. Pressures improved and she'll be instructed to continue her
19 current medication treatment and obtain dialysis tomorrow as an outpatient. Otherwise patient has
20 no clinical signs symptoms of uremia and her headache is improved after receiving IV Dilaudid.
21 No clinical evidence of meningitis or sepsis."

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23
24 ³ Metoclopramide (Reglan) is a dopamine antagonist or serotonin 5-HT4 receptor agonist which
has been said to treat headaches and nausea.

25 ⁴ Labetalol is a beta blocker used to treat high blood pressure.

26 ⁵ Hydralazine is a medication used to treat high blood pressure.

27 ⁶ Promethazine is an antiemetic used to treat pain, nausea, and vomiting.

28 ⁷ Dilaudid is a brand name for hydromorphone, is a Schedule II controlled substance pursuant to Health
and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and
Professions Code section 4022.

⁸ Clonidine is a medication used to treat high blood pressure.

1 17. Patient A was discharged from Mercy Hospital on or about June 3, 2018, after
2 approximately 4 hours in the emergency room. The discharge notes from Respondent included,
3 “Follow up with: Continue taking your blood pressure medication as prescribed. Call you[r]
4 dialysis center tomorrow for re-evaluation and to have another dialysis treatment tomorrow as
5 opposed to Tuesday. Follow-up with your primary care provider in 2 days. Take all medications
6 as prescribed. Return to ED if symptoms worsen.”

7 18. Patient A’s father last spoke to Patient A on or about June 4, 2018 at approximately
8 noontime. At that time, Patient A reported she had a dialysis treatment later that day at 4:00 p.m.
9 Patient A did not go to her dialysis treatment.

10 19. On or about June 5, 2018, Patient A was found deceased in her kitchen. An autopsy
11 was not performed. The cause of death was listed as Chronic Kidney Disease Stage 5,
12 hypertension, and diabetes mellitus.

13 20. On or about February 19, 2020, Respondent interviewed with an investigator from the
14 Division of Investigation (DOI) to discuss his treatment of Patient A. During the course of that
15 interview, Respondent did not believe he pulled any of Patient A’s old records prior to treating
16 her. Ultimately, Respondent did not believe Patient A’s symptoms were consistent with a
17 hypertensive emergency. However, Respondent “absolutely” believed it was medically necessary
18 for Patient A to be treated with dialysis within 24 hours. Respondent relied on Patient A’s
19 assurance to seek out dialysis in a timely manner. Respondent admits he was not aware of Patient
20 A’s non-compliance with treatment until after her death. Respondent states he “was sort of
21 shocked at the amount of noncompliance. Unfortunately, [he] did not appreciate that in the real
22 moment as [he] was caring for her.” Later in the interview, Respondent states, “had he known her
23 degree of noncompliance, [he] probably would have done things differently, but he was not aware
24 of that, unfortunately. [He is] sorry for that.”

25 **Patient B**

26 21. On or about January 27, 2019, 6-year-old Patient B, was taken to the emergency room
27 at Mercy Hospital after having a brief seizure at home. Patient B was sleeping when her parents
28 noticed her shaking. After Patient B’s mother placed her in a sitting position, Patient B became

1 limp and fell backward. The episode lasted for approximately 30 seconds and by the time the
2 paramedics arrived, Patient B was alert but sleepy. The occurrence was a single episode with no
3 prior history. While at the emergency room laboratory tests were performed on Patient B and
4 they were normal. Patient B was discharged from the hospital with instructions to follow-up with
5 a pediatric neurologist, Dr. S.C.

6 22. On or about January 29, 2019, Patient B met with a pediatric neurologist who
7 conducted a very thorough examination. The neurologist ordered sleep deprived EEG as well as
8 an MRI of Patient B's head. Patient B was prescribed Diastat⁹ on an as-needed basis for seizures
9 lasting longer than 5 minutes long. Patient B was told to follow-up.

10 23. On or about June 2, 2019, Patient B had a seizure at her home and was taken to the
11 emergency department at Mercy Hospital of Folsom by emergency responders. Respondent was
12 her emergency physician. Respondent ordered basic laboratory studies; however, further imaging
13 was deferred since the patient had been receiving care by her neurologist. At the time of this visit,
14 Patient B weighed 18.18 kg. Respondent treated Patient B with Keppra¹⁰ with a dose of 20
15 milligrams per kilogram (mg/kg) given intravenously. Patient B was discharged home with
16 instructions about seizure precautions, recommendations to follow up with her neurologist within
17 the next 1-3 days, and instructions to pick up prescriptions for Zofran for nausea and Keppra. The
18 prescriptions for the new medications were electronically routed to Walgreens. The prescription
19 transmitted to Walgreens was for "Keppra 100mg/ml oral solution, 35 mL PO BID x 30 days
20 (orally twice a day for 30 days)." The actual dose in milligrams was not listed on the prescription,
21 which was 3,500 mg twice daily. Similarly, the patient's height and weight were not specifically
22 listed.

23 24. Upon receiving the medication from Walgreens, the patient's mother questioned the
24 dose of 35 mL and contacted Walgreens to confirm. She received confirmation that the
25 prescription matched the discharge paperwork, the electronic prescription at the pharmacy, and
26

27 ⁹ Diastat (diazepam) is a Schedule IV controlled substance pursuant to Health and Safety Code section
11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

28 ¹⁰ Keppra (levetiracetam) is an anticonvulsant used to treat seizures.

1 her bottle at home. She then contacted the emergency department at Mercy Hospital of Folsom
2 and another provider suggested the appropriate dose would be 5 mL twice a day versus the 35 mL
3 written on the bottle. Feeling uncertain, she did not administer any of the medication and waited
4 to be seen the following day by Patient B's neurologist. The neurologist confirmed the dosage
5 was incorrect and gave Patient B a new prescription for 2 mL 2/day. Luckily, Patient B never
6 received the dosage prescribed by Respondent.

7 25. On or about February 19, 2020, Respondent was interviewed by Division of
8 Investigations (DOI), Investigator Stacie Barrerra, regarding his treatment of Patient B.
9 Respondent stated he intravenously gave Patient B Keppra with a dose of 20 mg/kg for 360 mg.
10 He planned to write a prescription for 20 mg/kg administered twice a day orally for home.
11 Respondent notes he double checked the dose and to him "it looked like 100mg/10mL...I thought
12 it said 100mg/10mL, so I did an adjustment by ...one decimal point....I honestly misread the
13 concentration at 100 mg/10mL as opposed to 100 mg/mL and so I just looked at the screen and
14 didn't see it correctly, unfortunately." Respondent admitted ignoring the computer warning about
15 the dose and believed the error was in the computerized system. He also admitted that it is
16 common for him to prescribe Keppra to adults; however, he rarely needs to prescribe this
17 medication as a solution and thus, was unfamiliar with the concentration.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Gross Negligence)**

20 26. Respondent's license is subject to disciplinary action under section 2234, subdivision
21 (b), of the Code, in that he committed gross negligence during the care and treatment of Patients
22 A and B, as more particularly alleged in paragraphs 7 through 25, above, which is hereby
23 incorporated by reference and realleged as if fully set forth herein.

24 27. Respondent's license is subject to disciplinary action because he committed gross
25 negligence during the care and treatment of Patients A and B in the following distinct and
26 separate ways:

27 a. Failing to review previous emergency room visits for high blood pressure
28 trends in Patient A;

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1. Revoking or suspending Physician's and Surgeon's Certificate No. A 64943, issued to Joseph Jay Bistrain, M.D.;

2. Revoking, suspending or denying approval of Joseph Jay Bistrain, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Joseph Jay Bistrain, 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: JAN 07 2021


REJI VARGHESE
DEPUTY DIRECTOR
For: WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Bistrain Accusation with corrections.docx