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

In the Matter of the Accusation Against: **BRIAN PETER FIRST, M.D.** **4282 Genesee Ave., # 103** **San Diego, CA 92117** **Physician's and Surgeon's Certificate No. A 33952,** Respondent.	Case No. 800-2021-082668 **A C C U S A T I O N**

PARTIES

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

2. On or about June 11, 1979, the Board issued Physician's and Surgeon's Certificate No. A 33952 to Brian Peter First, 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 June 30, 2023, 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.
>
> ...

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.
>
> (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.

...

6. Section 2266 of the Code states that the failure of a physician and surgeon to maintain adequate and accurate medical records constitutes unprofessional conduct.

COST RECOVERY

7. Section 125.3 of the Code states:

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

(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.

(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 designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(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 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 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).

(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 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.

(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.

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

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any 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.

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

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

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

FIRST CAUSE FOR DISCIPLINE
(Gross Negligence)

8. Respondent has subjected his Physician's and Surgeon's Certificate No. A33952 to disciplinary action under sections 2222 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A and Patient B,[1] as more particularly alleged hereafter:

9. On or about May 5, 2021, Respondent signed vaccination exemption letters pertaining to Patient A, an eight-year-old, and Patient B, a six-year-old. Respondent specializes in internal medicine and endocrinology and only treats adult patients. Other than identifying the name and date of birth of each patient, the letters are identical.

10. In these letters, Respondent stated that Patient A and Patient B should be exempt from all CDC-recommended vaccines "until more complete immunological testing can be completed," because of their family medical history. Respondent wrote that both patients have a "strong family history of autoimmune disease such as Multiple Sclerosis, [i]mmune cancer and a genetic mutation that makes severe vaccine reactions more likely." The letters were ultimately submitted to the California Department of Public Health for review.

11. On or about November 15, 2021, Board investigators interviewed Respondent about these vaccination exemption letters. Respondent stated that no medical records exist for his treatment and care of Patient A and Patient B because they were never his patients. Instead, Respondent explained that he signed the vaccination exemption letters at the request of a close

[1] Names of the patients have been omitted to protect their privacy.

family friend, the father of Patient A and Patient B. Respondent said that he used a vaccination exemption letter previously written by another treatment provider for the patients, changed the wording a little, and signed it. Respondent admitted that he never saw or examined Patient A or Patient B.

12. Respondent committed gross negligence in his care and treatment of Patient A and Patient B, which includes, but is not limited to, the following:

a. Respondent failed to conduct a proper history and exam on each patient before writing a vaccination exemption letter;

b. Respondent went outside the scope of his practice by writing vaccination exemption letters for Patient A and Patient B, who were pediatric patients whom Respondent would not normally treat; and

c. Respondent failed to maintain adequate and accurate medical records for Patient A and Patient B.

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

13. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 33952 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patient A and Patient B, as more particularly alleged in paragraphs 9 through 12, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

14. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 33952 to disciplinary action under sections 2227 and 2234, as defined by section 2266 of the Code, in that Respondent failed to maintain adequate and accurate records in his care and treatment of Patient A and Patient B, as more particularly alleged in paragraphs 9 through 13, above, which are hereby incorporated by reference and re-alleged 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. A 33952, issued to Respondent Brian Peter First, M.D.;

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

3. Ordering Respondent Brian Peter First, M.D., to pay the Board the costs of the investigation and enforcement of this case, and 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 01 2022

WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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