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

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| In the Matter of the Second Amended Accusation Against:<br><br>Ellis Norman Beesley, Jr, M.D.<br><br>Physician's and Surgeon's Certificate No. A 41548<br><br>Respondent. | Case No.: 800-2019-054281 |

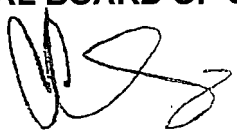
## DECISION

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 September 30, 2022.

IT IS SO ORDERED: August 31, 2022.

MEDICAL BOARD OF CALIFORNIA



Laurie Rose Lubiano, J.D. , Chair
Panel A

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
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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 Second Amended Accusation Against:<br><br>**ELLIS NORMAN BEESLEY JR., M.D.**<br>**1127 Wilshire Boulevard, Suite 707**<br>**Los Angeles, CA 90017**<br><br>**Physician's and Surgeon's Certificate No. A 41548,**<br><br>Respondent. | Case No. 800-2019-054281<br><br>OAH No. 2021100134<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY 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). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Rebecca L. Smith, Deputy Attorney General.

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2. Respondent Ellis Norman Beesley Jr., M.D. is represented in this proceeding by attorneys Christopher P. Wend and Mark B. Guterman, whose address is 701 North Brand Boulevard, Suite 600, Glendale, California 91203.

3. On or about March 11, 1985, the Board issued Physician's and Surgeon's Certificate No. A 41548 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 800-2019-054281, and will expire on May 31, 2024, unless renewed.

## JURISDICTION

4. Second Amended Accusation No. 800-2019-054281 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 August 4, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Second Amended Accusation No. 800-2019-054281 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 Second Amended Accusation No. 800-2019-054281. 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 Second Amended 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 understands and agrees that the charges and allegations in Second Amended Accusation No. 800-2019-054281, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Second Amended Accusation No. 800-2019-054281, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. A 41548 to disciplinary action.

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 probationary terms 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. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Second Amended Accusation No. 800-2019-054281 shall be deemed true, correct and fully admitted by respondent for purposes of any

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such proceeding or any other licensing proceeding involving Respondent in the State of California.

14. 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.

15. 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**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 41548 issued to Respondent Ellis Norman Beesley, Jr., M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, and on an annual basis thereafter, 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 forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall 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 sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

2. 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 approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider 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 Second Amended 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 fifteen (15) calendar days after successfully completing the course, or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice

safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Should the program recommend that Respondent participate in a professional enhancement program or maintain a practice monitor, Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program 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 enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If Respondent did not successfully complete the clinical competence assessment program, Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within fifteen (15) calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, amended accusations, legal reviews, joint investigations, and subpoena enforcement, as applicable, in the amount of $2,795.00 (Two Thousand Seven Hundred Ninety Five Dollars and No Cents). Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Any and all requests for a payment plan shall be submitted in writing by respondent to the Board.

The filing of bankruptcy by Respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs.

8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than ten (10) calendar days after the end of the preceding quarter.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no

circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting more than 30 calendar days and within fifteen (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be

considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds eighteen (18) calendar months, Respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

12. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall

be extended until the matter is final.

14. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within fifteen (15) calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

16. FUTURE ADMISSIONS CLAUSE. 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 action agency in the State of California, all of the charges and allegations contained in Second Amended Accusation No. 800-2019-054281 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 license.

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## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Christopher P. Wend and Mark B. Guterman. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. 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: 3-1-2022

ELLIS NORMAN BEESLEY JR., M.D.
*Respondent*

I have read and fully discussed with Respondent Ellis Norman Beesley Jr., 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: 3/1/22

CHRISTOPHER P. WEND
MARK B. GUTERMAN
*Attorneys for Respondent*

## ENDORSEMENT

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

DATED: 3/1/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

REBECCA L. SMITH
Deputy Attorney General
*Attorneys for Complainant*

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# Exhibit A

**Second Amended Accusation No. 800-2019-054281**

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*Attorneys for Complainant*

**BEFORE THE**
**MEDICAL BOARD OF CALIFORNIA**
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| In the Matter of the Second Amended Accusation Against:<br><br>**ELLIS NORMAN BEESLEY, JR., M.D.**<br>**1127 Wilshire Boulevard, Suite 707**<br>**Los Angeles, CA 90017**<br><br>**Physician's and Surgeon's Certificate No. A 41548,**<br><br>Respondent. | Case No. 800-2019-054281<br><br>**SECOND AMENDED ACCUSATION** |

## PARTIES

1. William Prasifka (Complainant) brings this Second Amended 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 March 11, 1985, the Board issued Physician's and Surgeon's Certificate Number A 41548 to Ellis Norman Beesley, Jr., M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2022, unless renewed.

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## JURISDICTION

3. This Second Amended 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 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

5. 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.

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(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.

6. Section 2234 of the Code, states:

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.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

(g) The failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

7. 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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## COST RECOVERY

8. Business and Professions Code section 125.3 states that:

(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 licentiate 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.

## FACTUAL ALLEGATIONS

9. Patient 1,[1] a then 6-year-old male, was taken to the emergency department at California Hospital Medical Center by his mother on March 5, 2015 at 3:13 a.m., with a complaint of asthma with expiratory and inspiratory wheezes. Patient 1's mother noted that her son had a cough and wheezing since the day prior and had not improved with home treatment. In the emergency department, Patient 1 was noted to be hypoxic with an oxygen saturation of 88% on room air, upon arrival. His breathing was labored, and retractions were observed. Patient 1 was seen by emergency room physician, Dr. M.K., who, upon examination, noted that the patient was tachypneic with diffuse wheezing, and his oxygen saturation was 94%. A chest x-ray was negative. He was treated with an albuterol nebulizer and Atrovent[2] to relax his airway muscles to make breathing easier. He was also given steroids (Decadron), antibiotics (azithromycin) and a bronchodilator (magnesium sulfate). Dr. M.K., noted that while the precipitating cause of the cough and wheezing was unknown, Patient 1 may have been developing an upper respiratory infection. Dr. M.K. diagnosed Patient 1 with moderate asthma exacerbation and possible pneumonia. She discussed Patient 1 with Respondent, the on-call pediatrician, who agreed to admit the patient to the hospital for observation.

10. That same morning, at 8:00 a.m., Patient 1 was admitted to the hospital. He was seen by Respondent and pediatric resident, Dr. R.R. at approximately 10:20 a.m. An admission history and physical was prepared by Dr. R.R. and endorsed by Respondent. It was noted that the patient presented with complaints of chest pain and difficulty breathing. It was also noted that he had been hospitalized twice before for asthma exacerbations for approximately 4 days in 2013, and that the patient's father had asthma. Neither Respondent nor the resident documented the

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[1] The Patient is identified herein by number for privacy concerns.

[2] Atrovent is a bronchodilator that relaxes muscles in the airways and increases air flow to the lungs.

patient's prior history of intubation.[3] The patient's Respiratory Syncytial Virus (RSV) and influenza test results were negative. Respondent's admitting diagnosis was asthma exacerbation. Respondent prescribed nebulized albuterol and Atrovent every 6 hours, and ten milligrams of Solu-Medrol[4] intravenously every 12 hours. The patient weighed 20.5 kilograms (kg).

11. Respondent did not document that he performed asthma education and training with Patient 1 and his caregiver. Respondent did not document an asthma action plan tailored to Patient 1.

12. Patient 1 was also seen by child life specialist, T.Y., on March 5, 2015. T.Y. noted that she provided basic asthma education to the patient's mother inclusive of (1) the role of keeping logs; (2) the signs and symptoms of an asthma attack; (3) asthma triggers and prevention; (4) peak flow meter zones; (5) an asthma action plan; and (6) school issues regarding asthma. The patient's mother stated that the patient did not have a peak flow meter, asthma action plan, or asthma medications at school. The patient's mother also reported that the patient's maternal grandmother smokes around the patient and that she would speak with her again about smoking. T.Y. provided the patient's mother with a handout regarding second hand smoke and made a referral to the Healthy Breathing Program for smoking cessation. T.Y. documented that the patient was able to verbalize understanding that when he has a hard time breathing, he needs to (1) stop, (2) tell a grown up, and (3) take asthma medications.

13. Per the patient's medication reconciliation form, he had been prescribed Xopenex[5] and QVar[6] in the past, but his mother did not use them anymore.

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[3] The emergency department records document that the patient had not been intubated in the past. Respondent testified in deposition that he was told by the emergency room physician, as well as by the patient's mother, that the patient had not been intubated in the past. He did not document these discussions. Respondent did not review Patient 1's medical records from his prior admissions at California Hospital Medical Center, which would have revealed that he had been intubated in the past.

[4] Solu-Medrol is a systemic corticosteroid and is used in patients suffering from acute asthma exacerbations to decrease airway inflammation or for patients who fail to respond promptly and completely to conventional therapy.

[5] Xopenex is a brand name of levalbuterol. It is used to treat the symptoms of asthma.

[6] QVar is a brand name of beclomethasone dipropionate. It is used to prevent and control symptoms caused by asthma.

14. On March 6, 2015, Respondent noted that Patient 1 was feeling well and saturating well on room air. He had no shortness of breath or wheezing and had clear lungs on examination. Respondent noted that Patient 1's condition had improved and he was stable for discharge. In his discharge summary, Respondent instructed Patient 1 to follow up with his primary care physician in one week. Respondent noted that a nebulizer was ordered for the patient's home and that the patient's mother was instructed to use an albuterol inhaler (2 puffs every 4 hours as needed for shortness of breath/wheezing) and albuterol nebulizer solution (every four hours as needed for shortness of breath/wheezing). Respondent did not instruct Patient 1 on the use of the inhaler or the peak flow meter and failed to ensure that Patient 1 was able to use the inhaler and peak flow meter.

15. The Interdisciplinary Patient Education Record for Pediatric Asthma documents that the caregiver was given verbal and written instructions, as well as a demonstration on the use of the peak flow meter,[7] inhalers, and the nebulizer machine. Nursing records document that when the home nebulizer was delivered, the patient's mom stated that she knew how to use it and did not need any instruction. In addition, Patient 1's medical record contains a document identifying six asthma related documents that were to be given to the patient's mother. The hospital educator signed the form; however, the acknowledgment that Patient 1's mother "received the documents and verbalized understanding" was not checked off and the signature line for the patient's mother was blank. Patient 1 was discharged at 11:50 a.m., less that 33 hours after he had presented to the hospital with oxygen dependent hypoxia, and had required three nebulizer respiratory treatments with albuterol over the course of one hour, to stabilize his breathing.

16. The following day, March 7, 2015, Patient 1 had an asthma attack with associated chest pain. He collapsed in the car. Cardiopulmonary resuscitation (CPR) was administered en route to the hospital. He was unable to be revived with CPR and arrived at the hospital deceased. An autopsy was performed, revealing bilateral pneumothoraces, a pneumomediastinum, and

[7] A peak flow meter is a portable, easy-to-use, hand-held device used to measure how well the lungs are able to expel air. Regular use of a peak flow meter can help track asthma control by detecting airway narrowing before symptoms are felt, allowing time for medication adjustment or other steps before the symptoms worsen.

subcutaneous emphysema. The cause of Patient 1's death was determined to be spontaneous pneumothorax as a consequence of asthma.

**FIRST CAUSE FOR DISCIPLINE**

**(Gross Negligence)**

17. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he committed gross negligence in his care and treatment of Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 16, above, as though fully set forth herein. The circumstances are as follows:

Failure to Obtain Complete Asthma History.

18. The standard of care requires that a pediatrician obtain a full medical history when admitting a pediatric patient to the hospital. For an asthmatic patient, this includes a detailed history of the patient's asthma, such as prior admissions, prior treatments, prior intubations, asthma triggers, and asthma symptomatology. Obtaining such a history can help classify the patient's asthma, help anticipate medical needs while an inpatient, guide proper treatment at time of discharge, and guide education prior to discharge.

19. Respondent failed to obtain and document a comprehensive history of the patient's asthma symptoms, asthma triggers, and the presence, if any, of any prior asthma action plans. Patient 1 had a significant history of asthma and a family history of asthma. A review of Patient 1's prior medical records would have revealed his prior intubation related to asthma. A history of a prior intubation related to asthma elevates the severity of the patient's asthma history significantly, and can portend equally severe asthma exacerbations in the future. Obtaining Patient 1's asthma history would assist in classifying the patient's asthma. In addition, the information assists in guiding patient education prior to discharge and proper treatment at the time of discharge. This is an extreme departure from the standard of care.

Inappropriate Inpatient Treatment of Status Asthmaticus.

20. Steroid treatment is critical for the management of status asthmaticus. When a patient is admitted to the hospital with status asthmaticus, the standard of care requires that the patient be treated with inhaled or nebulized albuterol as well as a steroid.

21. Respondent failed to treat Patient 1 with an appropriate course of steroid treatment during his admission for status asthmaticus. When administering intravenous Solu-Medrol, the standard of care requires a dosing of 0.5 to 1 milligram of steroid, per kilogram of the child's weight, every six hours. Patient 1 should have received 10-20 milligrams of Solu-Medrol intravenously every 6 hours. Respondent ordered that Patient 1 receive 10 mg of Solu-Medrol intravenously every 12 hours. The underdosing of Patient 1's steroid treatment was an extreme departure from the standard of care.

Failure to Ensure and Document Proper Asthma Education and Training of Patient 1 and his Caregiver.

22. When treating an asthmatic pediatric patient, the standard of care requires that the pediatrician establish and document a specific asthma action plan, tailored to the patient, including the use of a peak flow meter. The asthma action plan must be documented and given to the patient and the patient's parent (or primary caregiver) in writing. A copy of the asthma action plan should be maintained in the patient's medical record.

23. During Patient 1's hospitalization, Respondent failed to develop or approve, as well as document, a specific asthma action plan tailored to the patient. This was an extreme departure from the standard of care.

Failure to Ensure and Document a Specific Asthma Action Plan with the Use of a Peak Flow Meter at the Time of Patient 1's Discharge.

24. Prior to discharging an asthmatic pediatric patient from the hospital, the standard of care requires that the physician render and document proper asthma education and training to the patient and the patient's parent or primary care giver, including the use of a peak flow meter (if successful) and a spacer for a metered dose inhaler.

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25. Respondent failed to ensure and document proper asthma education and training of Patient 1 and his mother, including the use of a peak flow meter and a spacer for a metered dose inhaler,[8] prior to discharge from the hospital. This is an extreme departure from the standard of care.

Failure to Prescribe Proper Asthma Medications and Equipment at Time of Discharge.

26. When a pediatric patient is discharged following an admission for status asthmaticus and returns to the same pre-hospitalization environment less than 48 hours after admission, the standard of care requires that the physician maintain the patient on scheduled albuterol and steroid (either inhaled or oral) treatments until the patient follows up with his primary care physician in 2-3 days.

27. Patient 1 was discharged from the hospital less than 48 hours after his initial presentation to the emergency department. Respondent failed to recognize that Patient 1 was returning to an environment that could trigger an asthma attack. Respondent failed to make arrangements for Patient 1 to undergo scheduled albuterol treatments until he could be seen by his primary care physician and provide Patient 1 with an inhaled corticosteroid or an oral steroid to replace the intravenous Solu-Medrol. This is an extreme departure from the standard of care.

Failure to Ensure Timely Follow-Up with a Primary Care Physician.

28. The standard of care required upon discharge is for the patient to be evaluated by his pediatrician in 2-3 days so that the primary care physician can review the hospitalization course, ensure retention of asthma and medication education, review and modify the asthma action plan, as needed, review the medications prescribed and being taken, and plan appropriate follow-up and/or consultation, if needed. Respondent failed to recognize that Patient 1 was at risk for a fatal asthma attack at the time of discharge on March 6, 2015, and failed to timely make arrangements for the patient to be seen by his primary care physician. This was an extreme departure from the standard of care.

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[8] A spacer is a device that attaches to the metered-dose inhaler. It helps deliver medicine to the airways of the lungs instead of the mouth.

29. Respondent's acts and/or omissions as set forth in paragraphs 9 through 28, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

**SECOND CAUSE FOR DISCIPLINE**

**(Repeated Negligent Acts)**

30. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he was negligent in the care and treatment of Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 9 through 29, above, as though fully set forth herein.

31. Respondent's acts and/or omissions as set forth in paragraphs 9 through 30, above, whether proven individually, jointly, or in any combination thereof, constitute repeated acts of negligence pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

**THIRD CAUSE FOR DISCIPLINE**

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

32. Respondent is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records for Patient 1. The circumstances are as follows:

33. The allegations of Paragraphs 10, 11, and 14, as set forth above, are incorporated herein by reference.

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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 41548, issued to Respondent Ellis Norman Beesley, Jr., M.D.;

2. Revoking, suspending or denying approval of Respondent Ellis Norman Beesley, Jr., M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Ellis Norman Beesley, Jr., 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: DEC 24 2021

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

Reji Varghese
Deputy Director

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