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

In the Matter of the Accusation Against: Bennie Leonard Brown, M.D. Physician's and Surgeon's Certificate No. A 30405 Respondent.	Case No. 800-2013-000333

DECISION

The attached Stipulated Surrender 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 January 26, 2023.

IT IS SO ORDERED January 19, 2023.

MEDICAL BOARD OF CALIFORNIA

Reji Varghese
Deputy Director

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

In the Matter of the Accusation Against:	Case No. 800-2013-000333
BENNIE LEONARD BROWN, M.D. **1221 Morse Ave., Apt. 63** **Sacramento, CA 95864-3884** **Physician's and Surgeon's Certificate No. A 30405** Respondent.	**STIPULATED SURRENDER 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 Megan R. O'Carroll, Deputy Attorney General.

2. Respondent Bennie Leonard Brown, M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about August 30, 1976, the Board issued Physician's and Surgeon's Certificate No. A 30405 to Bennie Leonard Brown, M.D. (Respondent). The Physician's and Surgeon's Certificate was current and renewed at all times relevant to the charges brought in Accusation No. 800-2013-000333. The license has been in retired status since December 28, 2020, and will expire on December 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2013-000333 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 26, 2022. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2013-000333 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2013-000333. Respondent has also carefully read, and understands the effects of this Stipulated Surrender and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; 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 admits the truth of each and every charge and allegation in Accusation No. 800-2013-000333.

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 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 surrender, without notice to or participation by Respondent. 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.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. 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 30405 issued to Respondent Bennie Leonard Brown, M.D. is surrendered and accepted by the Board.

14. 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.

15. 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.

16. 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.

17. 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 First Amended Accusation No. 800-2013-000333 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

18. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $14,586.24 prior to issuance of a new or reinstated license.

19. 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 First Amended Accusation, No. 800-2013-000333 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.

ACCEPTANCE

I have carefully read the Stipulated Surrender and Disciplinary Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 10/9/2022 Bennie Leonard Brown, MD

BENNIE LEONARD BROWN, M.D.
Respondent

ENDORSEMENT

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

DATED: 11/22/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

Megan R O'Carroll

MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

SA2022301010

Exhibit A

Accusation No. 800-2013-000333

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

In the Matter of the Accusation Against: **BENNIE LEONARD BROWN, M.D.** **1221 Morse Ave., Apt. 63** **Sacramento, CA 95864-3884** **Physician's and Surgeon's Certificate No. A 30405,** Respondent.	Case No. 800-2013-000333 **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 August 30, 1976, the Medical Board issued Physician's and Surgeon's Certificate Number A 30405 to Bennie Leonard Brown, 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 December 31, 2022, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. 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.

6. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

7. Section 2228.1 of the Code states.

(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board and the Podiatric Medical Board of California shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information internet web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

...

(C) Criminal conviction directly involving harm to patient health.

...

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendre or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

...

8. Section 802.1 of the Code states:

(a)(1) A physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, and a physician assistant shall report either of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000).

9. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

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COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

11. Respondent's license is subject to disciplinary action under sections 2234 and 2236, subdivision (a) of the Code, and under Title 16 of the California Code of Regulations, section 1360, in that he was convicted of crimes substantially related to the qualifications, functions and duties of a person licensed to practice medicine. The circumstances are as follows:

12. In approximately March of 2013, Respondent entered into an agreement with non-physicians to be the physician-front for a medical marijuana clinic owned by the non-physicians. Respondent and the non-physicians entered into an agreement to create a sham medical services organization. Under the terms of the agreement, Respondent paid the non-physicians one dollar in exchange for their services in managing the practice. Separate documents, however, showed that the business was actually owned by the non-physicians who employed Respondent and all other employees of the business, and had control over the operation of the clinic, located at 36 S. First Street in San Jose, California.

13. The non-physicians paid Respondent a wage of $800.00 per day, in cash, for each day he worked. Respondent's obligations were to issue medical recommendations in exchange for cash payment from patients, and to maintain a Fictitious Name Permit (FNP), with the Board for the First Street location in San Jose. Although Respondent maintained an FNP for the First Street location under his name and medical license, the non-physicians paid the FNP license fee and owned the business operating the clinic at that location. Board investigators performed an undercover operation at the clinic in July of 2013, and were able to confirm that Respondent did not in fact conduct a physical examination or a complete medical history of the undercover patient before issuing the medical recommendation in exchange for cash payment.

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14. In July of 2013, Board investigators advised Respondent that his employment at the practice at First Street was illegal because he was employed by non-physicians in violation of the Medical Practice Act. Respondent continued the illegal practice until at least October of 2013 and continued to collaborate with the non-physicians through approximately March of 2016. The Board investigators completed their investigation in approximately February of 2014, and submitted their findings to local law enforcement agencies for review and prosecution.

15. On or about April 16, 2018, a Grand Jury of Santa Clara County issued an indictment against Respondent and four others in the case of *People of the State of California v. Bennie Leonard Brown*, Case No. 216694, accusing them of conspiring to violate the Medical Practice Act, by engaging in or aiding and abetting the unlicensed practice of medicine. The indictment alleged Respondent's overt act in participation in the conspiracy was his act of procuring an FNP for the medical marijuana business owned and operated by non-physicians. In addition to charging Respondent with Conspiracy, under Penal Code section 182, subdivision (a)(1), a felony, the Santa Clara District Attorney further charged Respondent with six additional felony counts as follows:

- Aiding and abetting the unlicensed practice of medicine, in violation of Business and Professions Code section 2052, subdivision (b);
- Perjury, in violation of Penal Code section 118, subdivision (a);
- Unemployment insurance fraud, in violation of Unemployment Insurance Code section 2101;
- Filing a false tax return in 2013, a violation of Tax and Revenue Code section 19705, subdivision (a)(1);
- Filing a false tax return with the intent to evade tax for 2013 Tax and Revenue Code section 19706; and
- Filing a false amended tax return for 2013 Tax and Revenue Code section 19705(a)(1).

16. On or about August 26, 2021, Respondent pled no contest to the seven felony counts described above, in Paragraph 14.

17. Following his plea, the Court sentenced Respondent to 90 days of jail and two years of probation in addition to various fines and fees.

18. Respondent's license is subject to disciplinary action because he was convicted of crimes substantially related to the practice of medicine.

SECOND CAUSE FOR DISCIPLINE

(Action or Conduct Warranting Denial of Certificate)

19. Respondent is subject to disciplinary action under sections 2234, subdivision (f), and 802.1 of the Code in that he failed to report his convictions to the Board.

20. Paragraphs 12 through 18, above, are hereby incorporated by reference and re-alleged as if fully set forth here.

21. Respondent's license is subject to discipline because he committed an act that would warrant denial of a certificate by failing to report, in writing and within 30 days, his convictions for aiding and abetting the unlicensed practice of medicine, perjury, and tax fraud.

FIRST CAUSE FOR FINE

(Violation of Section 802.1)

22. Respondent is subject to a fine under section 802.1, subdivision (b), for failing to report in writing, within 30 days, his convictions for aiding and abetting the unlicensed practice of medicine, perjury, and tax fraud, as required under section 802.1, subdivisions (a)(1)(A) and (a)(1)(B), as more particularly alleged in paragraphs 12 through 18, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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 30405, issued to Bennie Leonard Brown, M.D.;

2. Revoking, suspending or denying approval of Bennie Leonard Brown, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Bennie Leonard Brown, M.D., if placed on probation, to disclose the disciplinary order to patients pursuant to section 2228.1 of the Code;

4. Ordering Bennie Leonard Brown, M.D. to pay the Medical Board of California a fine not to exceed five thousand dollars ($5,000) pursuant to section 802.1, subdivision (b);

5. Ordering Bennie Leonard Brown, 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

6. Taking such other and further action as deemed necessary and proper.

DATED: AUG 26 2022

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

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