

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

**In the Matter of the Accusation
Against:**

Patrick Joseph Gainey, M.D.

**Physician's and Surgeon's
Certificate No. G 141832**

Case No.: 800-2018-051339

Respondent.

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 June 15, 2023.

IT IS SO ORDERED: May 16, 2023.

MEDICAL BOARD OF CALIFORNIA



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

1 ROB BONTA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 MICHAEL C. BRUMMEL
Deputy Attorney General
4 State Bar No. 236116
California Department of Justice
5 2550 Mariposa Mall, Room 5090
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Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

14 **PATRICK JOSEPH GAINEY, M.D.**
15 **FCPP**
16 **1541 Florida Ave., Suite 103**
Modesto, California 95350

17 **Physician's and Surgeon's Certificate**
No. G 141832

18 Respondent.

Case No. 800-2018-051339

OAH No. 2022050367

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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 was the Executive Director of the Medical Board of California
23 (Board). He brought this action solely in his official capacity. Reji Varghese (Complainant) is
24 the Interim Executive Director of the Board and brings this action solely in his official capacity,
25 and is represented in this matter by Rob Bonta, Attorney General of the State of California, by
26 Michael C. Brummel, Deputy Attorney General.

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2. Respondent Patrick Joseph Gainey, M.D. (Respondent) is represented in this proceeding by attorney Adam J. Richards, Esq., whose address is: 2530 J Street, Suite 320 Sacramento, California 95816.

3. On or about April 7, 2016, the Board issued Physician's and Surgeon's Certificate No. G 141832 to Patrick Joseph Gainey, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2018-051339, and will expire on September 30, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-051339 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 November 30, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2018-051339 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 Accusation No. 800-2018-051339. 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 Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2018-051339, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case
6 or factual basis for the charges and allegations in Accusation No. 800-2018-051339, a true and
7 correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his
8 Physician's and Surgeon's Certificate, No. G 141832 to disciplinary action, and that Respondent
9 hereby gives up his right to contest those charges.

10 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
11 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
12 Disciplinary Order below.

13 **CONTINGENCY**

14 12. This stipulation shall be subject to approval by the Medical Board of California.
15 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
16 Board of California may communicate directly with the Board regarding this stipulation and
17 settlement, without notice to or participation by Respondent or his counsel. By signing the
18 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
19 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
20 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
21 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
22 action between the parties, and the Board shall not be disqualified from further action by having
23 considered this matter.

24 13. Respondent agrees that if he ever petitions for early termination or modification of
25 probation, or if an accusation and/or petition to revoke probation is filed against him before the
26 Board, all of the charges and allegations contained in Accusation No. 800-2018-051339 shall be
27 deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any
28 other licensing proceeding involving Respondent in the State of California.

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

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or opportunity to be heard by the Respondent, issue and
6 enter the following Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 141832
9 issued to Respondent PATRICK JOSEPH GAINEY, M.D. is revoked. However, the revocation
10 is stayed and Respondent is placed on probation for four (4) years on the following terms and
11 conditions:

12 1. **PROFESSIONALISM PROGRAM (ETHICS COURSE)**. Within 60 calendar days of
13 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
14 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
15 Respondent shall participate in and successfully complete that program. Respondent shall
16 provide any information and documents that the program may deem pertinent. Respondent shall
17 successfully complete the classroom component of the program not later than six (6) months after
18 Respondent's initial enrollment, and the longitudinal component of the program not later than the
19 time specified by the program, but no later than one (1) year after attending the classroom
20 component. The professionalism program shall be at Respondent's expense and shall be in
21 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

22 A professionalism program taken after the acts that gave rise to the charges in the
23 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
24 or its designee, be accepted towards the fulfillment of this condition if the program would have
25 been approved by the Board or its designee had the program been taken after the effective date of
26 this Decision.

27 Respondent shall submit a certification of successful completion to the Board or its
28 designee not later than 15 calendar days after successfully completing the program or not later

1 than 15 calendar days after the effective date of the Decision, whichever is later.

2 2. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the
3 effective date of this Decision, Respondent shall enroll in a professional boundaries program
4 approved in advance by the Board or its designee. Respondent, at the program's discretion, shall
5 undergo and complete the program's assessment of Respondent's competency, mental health
6 and/or neuropsychological performance, and at minimum, a 24 hour program of interactive
7 education and training in the area of boundaries, which takes into account data obtained from the
8 assessment and from the Decision(s), Accusation(s) and any other information that the Board or
9 its designee deems relevant. The program shall evaluate Respondent at the end of the training
10 and the program shall provide any data from the assessment and training as well as the results of
11 the evaluation to the Board or its designee.

12 Failure to complete the entire program not later than six (6) months after Respondent's
13 initial enrollment shall constitute a violation of probation unless the Board or its designee agrees
14 in writing to a later time for completion. Based on Respondent's performance in and evaluations
15 from the assessment, education, and training, the program shall advise the Board or its designee
16 of its recommendation(s) for additional education, training, psychotherapy and other measures
17 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with
18 program recommendations. At the completion of the program, Respondent shall submit to a final
19 evaluation. The program shall provide the results of the evaluation to the Board or its designee.
20 The professional boundaries program shall be at Respondent's expense and shall be in addition to
21 the Continuing Medical Education (CME) requirements for renewal of licensure.

22 The program has the authority to determine whether or not Respondent successfully
23 completed the program.

24 A professional boundaries course taken after the acts that gave rise to the charges in the
25 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
26 or its designee, be accepted towards the fulfillment of this condition if the course would have
27 been approved by the Board or its designee had the course been taken after the effective date of
28 this Decision.

1 If Respondent fails to complete the program within the designated time period, Respondent
2 shall cease the practice of medicine within three (3) calendar days after being notified by the
3 Board or its designee that Respondent failed to complete the program.

4 3. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of
5 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
6 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
7 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
8 consider any information provided by the Board or designee and any other information the
9 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
10 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
11 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
12 psychiatric evaluations and psychological testing.

13 Respondent shall comply with all restrictions or conditions recommended by the evaluating
14 psychiatrist within 15 calendar days after being notified by the Board or its designee.

15 4. THIRD PARTY CHAPERONE. During probation, Respondent shall have a third
16 party chaperone present while consulting, examining or treating all patients. Respondent shall,
17 within 30 calendar days of the effective date of the Decision, submit to the Board or its designee
18 for prior approval name(s) of persons who will act as the third party chaperone. Respondent is
19 not required to maintain a third party chaperone for hospital consultations in the emergency room,
20 or when providing telemedicine care.

21 If Respondent fails to obtain approval of a third party chaperone within 60 calendar days of
22 the effective date of this Decision, Respondent shall receive a notification from the Board or its
23 designee to cease the practice of medicine within three (3) calendar days after being so notified.
24 Respondent shall cease the practice of medicine until a chaperone is approved to provide
25 monitoring responsibility.

26 Each third party chaperone shall sign (in ink or electronically) and date each patient
27 medical record at the time the chaperone's services are provided. Each third party chaperone
28 shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party

1 chaperone.

2 Respondent shall maintain a log of all patients seen for whom a third party chaperone is
3 required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical
4 record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger,
5 in chronological order, shall make the log available for immediate inspection and copying on the
6 premises at all times during business hours by the Board or its designee, and shall retain the log
7 for the entire term of probation.

8 Respondent is prohibited from terminating employment of a Board-approved third party
9 chaperone solely because that person provided information as required to the Board or its
10 designee.

11 If the third party chaperone resigns or is no longer available, Respondent shall, within five
12 (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for
13 prior approval, the name of the person(s) who will act as the third party chaperone. If Respondent
14 fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or
15 unavailability of the chaperone, Respondent shall receive a notification from the Board or its
16 designee to cease the practice of medicine within three (3) calendar days after being so notified.
17 Respondent shall cease the practice of medicine until a replacement chaperone is approved and
18 assumes monitoring responsibility.

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

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

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

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

7 8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
8 ordered to reimburse the Board its costs of investigation and enforcement, including, but not
9 limited to, expert review, amended accusations, legal reviews, investigation(s), and subpoena
10 enforcement, as applicable, in the amount of \$5,000 (five thousand dollars). Costs shall be
11 payable to the Medical Board of California. Failure to pay such costs shall be considered a
12 violation of probation.

13 Payment must be made in full within 30 calendar days of the effective date of the Order, or
14 by a payment plan approved by the Medical Board of California. Any and all requests for a
15 payment plan shall be submitted in writing by respondent to the Board. Failure to comply with
16 the payment plan shall be considered a violation of probation.

17 The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to
18 repay investigation and enforcement costs, including expert review costs (if applicable).

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

22 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
23 of the preceding quarter.

24 10. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

26 Respondent shall comply with the Board's probation unit.

27 Address Changes

28 Respondent shall, at all times, keep the Board informed of Respondent's business and

1 residence addresses, email address (if available), and telephone number. Changes of such
2 addresses shall be immediately communicated in writing to the Board or its designee. Under no
3 circumstances shall a post office box serve as an address of record, except as allowed by Business
4 and Professions Code section 2021, subdivision (b).

5 Place of Practice

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

9 License Renewal

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

12 Travel or Residence Outside California

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

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

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

22 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
23 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
24 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
25 defined as any period of time Respondent is not practicing medicine as defined in Business and
26 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
27 patient care, clinical activity or teaching, or other activity as approved by the Board. If
28 Respondent resides in California and is considered to be in non-practice, Respondent shall

1 comply with all terms and conditions of probation. All time spent in an intensive training
2 program which has been approved by the Board or its designee shall not be considered non-
3 practice and does not relieve Respondent from complying with all the terms and conditions of
4 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
5 on probation with the medical licensing authority of that state or jurisdiction shall not be
6 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
7 period of non-practice.

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

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

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

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

20 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
21 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
22 completion of probation. This term does not include cost recovery, which is due within 30
23 calendar days of the effective date of the Order, or by a payment plan approved by the Medical
24 Board and timely satisfied. Upon successful completion of probation, Respondent's certificate
25 shall be fully restored.

26 14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
27 of probation is a violation of probation. If Respondent violates probation in any respect, the
28 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and

1 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
2 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
3 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
4 the matter is final.

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

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

20 17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
21 a new license or certification, or petition for reinstatement of a license, by any other health care
22 licensing action agency in the State of California, all of the charges and allegations contained in
23 Accusation No. 800-2018-051339 shall be deemed to be true, correct, and admitted by
24 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
25 restrict license.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Adam J. Richards. I understand the stipulation and the effect it
4 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: _____

9 PATRICK JOSEPH GAINNEY, M.D.
Respondent

10 I have read and fully discussed with Respondent Patrick Joseph Gainney, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13 DATED: _____

14 ADAM J. RICHARDS
Attorney for Respondent

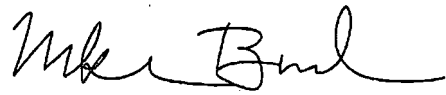
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16
17 ENDORSEMENT

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

20 DATED: May 16, 2023 _____

21 Respectfully submitted,

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

24 
25 MICHAEL C. BRUMMEL
26 Deputy Attorney General
Attorneys for Complainant

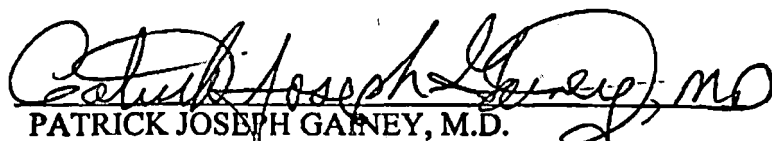
27 FR2021304845
28 95492741

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam J. Richards. 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.

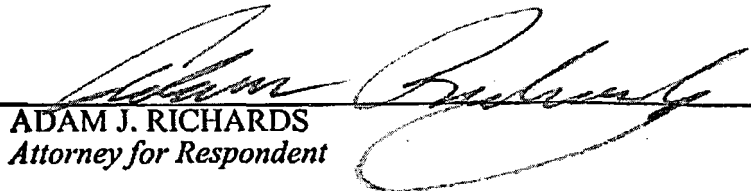
DATED:

5/15/2023


PATRICK JOSEPH GAINAY, M.D.
Respondent

I have read and fully discussed with Respondent Patrick Joseph Gainey, 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: May 15, 2023


ADAM J. RICHARDS
Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

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

MICHAEL C. BRUMMEL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2018-051339

1 ROB BONTA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 MICHAEL C. BRUMMEL
Deputy Attorney General
4 State Bar No. 236116
California Department of Justice
5 2550 Mariposa Mall, Room 5090
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7 E-mail: Michael.Brummel@doj.ca.gov
Attorneys for Complainant
8

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

13 In the Matter of the Accusation Against:

Case No. 800-2018-051339

14 **PATRICK JOSEPH GAINNEY, M.D.**
15 **1541 Florida Ave., Ste. 103**
Modesto, CA 95350

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. G 141832,**

Respondent.

18
19 **PARTIES**

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

23 2. On or about April 7, 2016, the Board issued Physician's and Surgeon's Certificate
24 No. G 141832 to Patrick Joseph Gainney, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on September 30, 2023, unless renewed.

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1 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
3 included in a stipulated settlement.
4

5 **FACTUAL ALLEGATIONS**

6 **CIRCUMSTANCES RELATED TO PATIENT A¹**

7 6. On or about June 6, 2016, Patient A presented to Respondent for treatment for the
8 first time at 66 years old. Patient A's history included longstanding epilepsy, and dysesthesias of
9 the legs, for which Respondent prescribed Keppra, Topamax and Neurontin.

10 7. On or about June 25, 2018, Patient A underwent an EEG that revealed
11 temporopareital spike-wave discharges. Respondent ordered a brain CT for Patient A, that
12 subsequently revealed "age related changes only."

13 8. On or about October 4, 2018, Patient A telephoned Respondent's office reporting that
14 she had suffered a possible seizure in her sleep one month prior.

15 9. On or about November 7, 2018, Patient A presented to Respondent, complaining of
16 increased headaches. Respondent increased the Topamax prescription for her headaches and
17 concluded that the nocturnal seizure was a dream.

18 10. On or about December 7, 2018, Patient A filed a complaint with the Board, alleging
19 that Respondent engaged in unprofessional conduct during the November 7, 2018 visit. Patient A
20 stated that her caregiver remained in the waiting room during the visit. While she was alone in
21 the examination room with Respondent, he asked her "What's the wackiest thing you've ever
22 done?" Respondent then detailed that when in college, he lost a bet and had to pose nude for an
23 art class. Respondent told her that he posed nude unabashedly and that he wouldn't mind taking
24 his clothes off in front of Patient A. Respondent held his finger up to his lips to shush her, told
25 her not to tell anyone, and left the examination room. Patient A felt uncomfortable with
26 Respondent's sexually charged statements.
27

28 ¹ To protect the privacy of patients, the Accusation does not identify individual names.

1 **CIRCUMSTANCES RELATED TO PATIENT B**

2 11. On or about October 24, 2018, Patient B presented to Respondent for the first time
3 with a history of traumatic brain injury and a left frontoparietal skull fracture. Patient B, who
4 was joined at the appointment by his spouse, complained of involuntary movements of his legs
5 during sleep and intermittent tremor of the upper extremities. Respondent recommended that
6 Patient B continue taking gabapentin and obtain an EEG to rule out a seizure. Respondent
7 believed that Patient B most likely suffered from restless legs syndrome and/or periodic leg
8 movements of sleep, along with a benign essential tremor.

9 12. On or about October 25, 2018, the first day following the appointment, Patient B's
10 spouse filed a complaint with Respondent's office. The complaint stated that Respondent spent
11 the majority of the visit attempting to solicit them to participate in a financial pyramid scheme.
12 Patient B's spouse explained that she did not want to pay the copay for the visit, because the time
13 was spent discussing Respondent's business scheme and not treating Patient B's medical
14 condition.

15 **CIRCUMSTANCES RELATED TO PATIENT C**

16 13. On or about August 8, 2016, Patient C first presented to Respondent for treatment of
17 chronic migraines. Respondent prescribed Patient C Topamax, sumatriptan, and Botox injections
18 for her chronic migraines over the next two years. Respondent also provided treatment of Patient
19 C's hip and shoulder pain intermittently.

20 14. On or about August 2, 2018, Patient C presented to Respondent for her final visit.
21 Respondent provided Patient C Botox injections for her migraines. Following the visit, Patient C
22 complained to staff at Respondent's office that Respondent told her an inappropriate story on
23 several occasions during office visits, most recently on August 2, 2018. Patient C explained that
24 Respondent told her about a time in college when he placed a bet with his friends. According to
25 Respondent, the loser of the bet would have to pose nude for an art class. At the final visit,
26 Respondent added that he used to be a stripper and offered to take his clothes off in front of her in
27 his private office with the door locked. Respondent told her that one of the best things about the
28 last appointment of the day was that they were the only people left in the office. Patient C stated

1 that Respondent's comments and demeanor made her feel uncomfortable. Later that night,
2 Patient C received a call from Respondent, but she did not answer. Respondent left her a
3 message asking her to call him back to discuss a business investment opportunity involving
4 health insurance.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Repeated Negligent Acts)**

7 15. Respondent has subjected his Physician's and Surgeon's Certificate No. G 141832 to
8 disciplinary action under section 2227, as defined by section 2234, subdivision (c), of the Code,
9 in that he committed multiple acts and/or omissions constituting negligence. The circumstances
10 are set forth in paragraphs 6 through 14, which are hereby incorporated by reference as if fully set
11 forth herein. Additional circumstances are as follows:

12 **Patient A**

13 16. Respondent shared a sexually charged story from his past with Patient A and
14 suggested that he was willing to remove his clothing in front of Patient A. Respondent failed to
15 maintain professionalism in his communications with Patient A, constituting a departure from
16 the standard of care.

17 **Patient B**

18 17. Respondent inappropriately used a clinic visit to solicit Patient B's participation in a
19 business venture, which constitutes a departure from the standard of care.

20 **Patient C**

21 18. Respondent shared a sexually charged story from his past with Patient C and
22 suggested that he was willing to remove his clothing in front of Patient C. Respondent shared
23 inappropriate personal, sexually charged material with an unaccompanied female patient, that she
24 interpreted as sexual overtures. Respondent failed to maintain professionalism in his
25 communications with Patient C, constituting a departure from the standard of care.

26 19. Respondent inappropriately used a clinic visit to solicit Patient C's participation in a
27 business venture, which constitutes a departure from the standard of care.

28 //

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Medical Board of California issue a decision:

4 1. Ordering Respondent Patrick Joseph Gainey, M.D., to pay the Board the reasonable
5 costs of the investigation and enforcement of this case, pursuant to Business and Professions
6 Code section 125.3; and

7 2. Revoking or suspending Physician's and Surgeon's Certificate Number G 141832,
8 issued to Respondent Patrick Joseph Gainey, M.D.; and

9 3. Revoking, suspending or denying approval of Respondent Patrick Joseph Gainey,
10 M.D.'s authority to supervise physician assistants and advanced practice nurses; and

11 4. Ordering Respondent Patrick Joseph Gainey, M.D., if placed on probation, to pay
12 the Board the costs of probation monitoring; and

13 5. Taking such other and further action as deemed necessary and proper.

14
15 DATED: NOV 30 2021



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

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