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

13 In the Matter of the First Amended Accusation
14 Against:

Case No. 800-2019-051542

15 **NATHAN BRIAN KUEMMERLE, M.D.**
16 **13924 Recuerdo Drive**
17 **Del Mar, CA 92014-3129**

FIRST AMENDED ACCUSATION

17 **Physician's and Surgeon's Certificate**
18 **No. A 89368,**

Respondent.

19
20 **PARTIES**

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

24 2. On or about November 17, 2004, the Medical Board issued Physician's and
25 Surgeon's Certificate No. A 89368 to Nathan Brian Kuemmerle M.D. (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
27 charges brought herein and will expire on June 30, 2022, unless renewed.

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JURISDICTION

3. This First Amended Accusation, which supersedes the Accusation filed on August 25, 2021, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states, in pertinent part:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

...

5. Section 2234 of the Code, states, in pertinent part:

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

(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.

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1 6. Unprofessional conduct under Business and Professions Code section 2234 is
2 conduct which breaches the rules or ethical code of the medical profession, or
3 conduct which is unbecoming a member in good standing of the medical profession,
and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical
Examiners* (1978) 81 Cal.App.3d 564, 575.)

4 7. Section 2236 of the Code states, in pertinent part:

5 (a) The conviction of any offense substantially related to the qualifications,
6 functions, or duties of a physician and surgeon constitutes unprofessional conduct
7 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
8 occurred.

9 ...

10 (d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
11 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
12 occurred.

13 8. Section 2239 of the Code states:

14 (a) The use or prescribing for or administering to himself or herself, of any
15 controlled substance; or the use of any of the dangerous drugs specified in Section
16 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
or injurious to the licensee, or to any other person or to the public, or to the extent that
17 such use impairs the ability of the licensee to practice medicine safely or more than
one misdemeanor or any felony involving the use, consumption, or
18 self-administration of any of the substances referred to in this section, or any
combination thereof, constitutes unprofessional conduct. The record of the
19 conviction is conclusive evidence of such unprofessional conduct.

20 (b) A plea or verdict of guilty or a conviction following a plea of nolo
21 contendere is deemed to be a conviction within the meaning of this section. The
Division of Medical Quality may order discipline of the licensee in accordance with
22 Section 2227 or the Division of Licensing may order the denial of the license when
the time for appeal has elapsed or the judgment of conviction has been affirmed on
23 appeal or when an order granting probation is made suspending imposition of
sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
the Penal Code allowing such person to withdraw his or her plea of guilty and to enter
24 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
complaint, information, or indictment.

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

26 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
27 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
28 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

1 be limited to the following: Violating or attempting to violate, directly or indirectly, or
2 assisting in or abetting the violation of, or conspiring to violate any provision of the
3 Medical Practice Act.

4 COST RECOVERY

5 10. Section 125.3 of the Code states:

6 (a) Except as otherwise provided by law, in any order issued in resolution of a
7 disciplinary proceeding before any board within the department or before the
8 Osteopathic Medical Board upon request of the entity bringing the proceeding, the
9 administrative law judge may direct a licensee found to have committed a violation or
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
11 investigation and enforcement of the case.

12 (b) In the case of a disciplined licentiate that is a corporation or a partnership,
13 the order may be made against the licensed corporate entity or licensed partnership.

14 (c) A certified copy of the actual costs, or a good faith estimate of costs where
15 actual costs are not available, signed by the entity bringing the proceeding or its
16 designated representative shall be prima facie evidence of reasonable costs of
17 investigation and prosecution of the case. The costs shall include the amount of
18 investigative and enforcement costs up to the date of the hearing, including, but not
19 limited to, charges imposed by the Attorney General.

20 (d) The administrative law judge shall make a proposed finding of the amount
21 of reasonable costs of investigation and prosecution of the case when requested
22 pursuant to subdivision (a). The finding of the administrative law judge with regard
23 to costs shall not be reviewable by the board to increase the cost award. The board
24 may reduce or eliminate the cost award, or remand to the administrative law judge if
25 the proposed decision fails to make a finding on costs requested pursuant to
26 subdivision (a).

27 (e) If an order for recovery of costs is made and timely payment is not made as
28 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.

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

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Excessive Use of Alcohol)**

8 11. Respondent has subjected his Physician's and Surgeon's Certificate No. A 89368
9 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a),
10 of the Code, in that he has used, or administered to himself, alcoholic beverages to the extent, or
11 in such a manner, as to be dangerous or injurious to himself, another person, or the public, as
12 more particularly alleged hereinafter:

13 12. On or about 12:01 a.m., a Carlsbad Police Officer was on routine patrol when he
14 observed Respondent's vehicle stopped on the off-ramp of the freeway. The officer approached
15 the vehicle and witnessed Respondent passed out in the driver's seat with the vehicle in drive and
16 the display screen illuminated inside the vehicle. The officer also witnesses fresh vomit on the
17 outside of the driver's door and window.

18 13. After the officer was able to awaken Respondent, he noted Respondent smelled of
19 alcohol, slurred when he spoke, and had red bloodshot eyes. Respondent informed the officer
20 that there was nothing wrong with his vehicle and denied he was sick, but admitted drinking prior
21 to driving.

22 14. Respondent had difficulty exiting his vehicle and had to be assisted with walking and
23 sitting on the nearby curb. After performing poorly on field sobriety tests, the officer placed
24 Respondent under arrest for driving under the influence of alcohol.

25 15. At approximately 1:17 a.m., a blood sample was obtained from Respondent that was
26 subsequently tested for alcohol. The blood test result indicated Respondent had a blood alcohol
27 content (BAC) of .17 percent.

28 16. On or about January 30, 2019, the San Diego County District Attorney filed a
criminal complaint against Respondent in the matter of *The People of the State of California v.*

1 *Nathan Brian Kurmmerle (aka Nathan Brian Kuemmerle)*, San Diego County Superior Court
2 Case No. CN395898. Count one of the complaint charged Respondent with driving under the
3 influence of drugs and/or alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
4 misdemeanor. Count two of the complaint charged Respondent with driving with a blood alcohol
5 content level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b),
6 a misdemeanor. Both counts were charged with a further allegation that Respondent's
7 concentration of blood alcohol was 0.15 percent by weight or more, within the meaning of
8 Vehicle Code section 23578.

9 17. On or about March 5, 2019, Respondent was convicted of a lesser related offense to
10 count one, of "wet reckless driving," pursuant to Vehicle Code sections 23013(a) and 23103.5.
11 On that date, the Superior Court sentenced Respondent to three years of probation subject to
12 various terms and conditions.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Conviction of an Offense Substantially Related to the Qualifications,
15 Functions, or Duties of a Physician and Surgeon)**

16 18. Respondent has further subjected his Physician's and Surgeon's Certificate No.
17 A 89368 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the
18 Code, and California Code of Regulations, title 16, section 1360, in that he has been convicted of
19 an offense substantially related to the qualifications, functions, or duties of a physician and
20 surgeon, as more particularly alleged in paragraphs 11 through 17, above, which are hereby
21 incorporated by reference and realleged as if fully set forth herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 19. Respondent has subjected his Physician's and Surgeon's Certificate No. A 89368 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
5 the Code, in that he was grossly negligent in his care and treatment of Patients A and B,¹ as more
6 particularly alleged hereinafter:

7 20. On or about February 3, 2017, Patient A presented to Respondent for psychiatric
8 treatment. At this visit, Patient A brought his wife, Patient B, to his session for therapy, but
9 Patient B specifically informed Respondent that she did not want to be a patient. Respondent
10 spent a total of approximately two to ten minutes speaking with Patient B, during which time
11 Patient B stated that her husband was "yelling at me in front of the kids, says bad words, he spit
12 on me on my face twice...I don't see any respect in front of the kids. He interrupts me. I don't
13 feel like I have a voice and feel controlled. I feel offended." Respondent did not conduct a
14 diagnostic evaluation or psychometric testing of Patient B at any time, and had no further
15 interaction with Patient B after that visit.

16 21. Between in or around February 2017, and in or around December 2017, Respondent
17 had multiple visits with Patient A that occurred approximately every three months. During these
18 visits, Patient A informed Respondent that he and Patient B were going through a contentious
19 divorce. Patient A also informed Respondent that he felt Patient B was deceitful and
20 manipulative, and he felt fearful for his children.

21 22. In or around November 2017, Patient A and Patient B were involved in a domestic
22 violence incident that resulted in Patient A's arrest.

23 23. On or about December 1, 2017, Respondent voluntarily wrote a letter to the court on
24 Patient A's behalf. This letter was written on his medical group's letterhead, Respondent
25 identified himself as an adult psychiatrist, and included his California Medical License number.

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28 ¹ To protect the privacy of the patients involved, the patient names have not been included
in this pleading. Respondent is aware of the identity of the patients referred to herein.

1 Respondent did not obtain authorization from Patient B prior to writing this letter. In this letter,
2 Respondent stated, in part, the following:

3 It is my strong impression through getting to know [Patient A] well that his
4 wife [Patient B] suffers from Borderline Personality Disorder. This disorder is
5 characterized by a poor attachment from parental figures from childhood. As an adult
6 this personality type will manifest as someone that can create extremely dramatic
7 situations from the smallest of life circumstances. In addition they can villainize or
8 over idealize individuals, causing them to not accurately characterize the situation.
9 They can create completely false stories and impressions. Serious cases of this
10 personality can be very dangerous to children under their care...

11 Borderline personality can often go through periods of stability but with enough
12 stress, a person with borderline personality can have severe brief episodes of
13 extremely unstable behavior and anger. It is really important to strongly consider that
14 she is a risk to her children and that the accusation against [Patient A] is very likely
15 false...

16 24. On or about May 11, 2021, Respondent participated in an interview with an
17 investigator for the Board. During this interview, Respondent denied he had formally diagnosed
18 Patient B but only provided a "strong impression." Respondent admitted that all of the
19 information he knew about Patient B was obtained from his brief encounter with her on February
20 3, 2017, and from information provided by Patient A during their sessions. Respondent further
21 stated that one of the reasons he wrote the letter was to "balance the playing field," for Patient A.

22 25. Respondent committed gross negligence, which included, but was not limited to, the
23 following:

24 (A) Communicating a "strong impression" regarding the diagnosis of Patient B, a
25 person who was never under his psychiatric case, whom Respondent never diagnostically
26 evaluated, and who never provided authorization for the release of her information;

27 (B) Communicating a "strong impression" of a diagnosis of Patient B of borderline
28 personality disorder without regard for the criteria for the disorder; and

(C) Communicating a "strong impression" of a diagnosis of Patient B of borderline
personality disorder without sufficient evidence that criteria for the disorder was present.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 26. Respondent has further subjected his Physician's and Surgeon's Certificate No.
4 A 89368 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
5 subdivision (c), of the Code, in that he committed repeated negligent acts in his care and
6 treatment of Patient A, as more particularly alleged in paragraphs 19 through 25(C), above, which
7 are hereby incorporated by reference and realleged as if fully set forth herein.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(General Unprofessional Conduct)**

10 27. Respondent has further subjected his Physician's and Surgeon's Certificate No.
11 A 89368 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged
12 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is
13 unbecoming to a member in good standing of the medical profession, and which demonstrates an
14 unfitness to practice medicine, as more particularly alleged in paragraphs 11 through 26, above,
15 which are hereby incorporated by reference and realleged as if fully set forth herein.

16 **DISCIPLINARY CONSIDERATIONS**

17 28. To determine the degree of discipline, if any, to be imposed on Respondent,
18 Complainant alleges that on or about February 1, 2013, in a prior disciplinary action entitled, *In*
19 *the Matter of the Accusation Against Nathan B. Kuemmerle M.D.*, Case No. 17-2009-197899,
20 before the Medical Board of California, Respondent's license was suspended for a period of one
21 (1) year, and placed on probation for a period of seven (7) years subject to various terms and
22 conditions of probation. While on probation, on or about January 20, 2017, Respondent was
23 issued Citation No. 8002016028990 for noncompliance, and on or about May 25, 2018,
24 Respondent was issued Citation No. 8002017038046 for noncompliance. Respondent completed
25 probation in Case No. 17-2009-197899 on or about September 29, 2020, and that Decision is now
26 final and incorporated by reference as if fully set forth herein.

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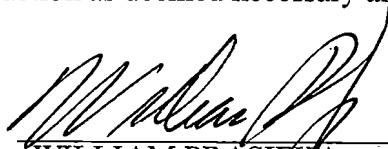
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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 89368, issued to Respondent, Nathan Brian Kuemmerle M.D.;
2. Revoking, suspending or denying approval of Respondent, Nathan Brian Kuemmerle M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent, Nathan Brian Kuemmerle M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: FEB 03 2022



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

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