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

14 In the Matter of the Accusation Against:

Case No. 800-2019-051542

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

A C C U S A T I O N

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

Respondent.

18
19
20 **PARTIES**

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

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

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

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

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

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

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

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

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

21 ...

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

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

26 (a) Violating or attempting to violate, directly or indirectly, assisting in or
27 abetting the violation of, or conspiring to violate any provision of this chapter.

28 (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.

...

6. Unprofessional conduct under Business and Professions Code section 2234 is
conduct which breaches the rules or ethical code of the medical profession, or
conduct which is unbecoming a member in good standing of the medical profession,

1 and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical*
2 *Examiners* (1978) 81 Cal.App.3d 564, 575.)

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

4 (a) The conviction of any offense substantially related to the qualifications,
5 functions, or duties of a physician and surgeon constitutes unprofessional conduct
6 within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record
7 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.
12 The record of conviction shall be conclusive evidence of the fact that the conviction
13 occurred.

14 8. Section 2239 of the Code states:

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

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

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

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Excessive Use of Alcohol)**

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

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

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

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

20 14. At approximately 1:17 a.m., a blood sample was obtained from Respondent that was
21 subsequently tested for alcohol. The blood test result indicated Respondent had a blood alcohol
22 content (BAC) of .17 percent.

23 15. On or about January 30, 2019, the San Diego County District Attorney filed a
24 criminal complaint against Respondent in the matter of *The People of the State of California v.*
25 *Nathan Brian Kurmmerle (aka Nathan Brian Kuemmerle)*, San Diego County Superior Court
26 Case No. CN395898. Count one of the complaint charged Respondent with driving under the
27 influence of drugs and/or alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
28 misdemeanor. Count two of the complaint charged Respondent with driving with a blood alcohol

1 content level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b),
2 a misdemeanor. Both counts were charged with a further allegation that Respondent's
3 concentration of blood alcohol was 0.15 percent by weight or more, within the meaning of
4 Vehicle Code section 23578.

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

9 **SECOND CAUSE FOR DISCIPLINE**

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

12 17. Respondent has further subjected his Physician's and Surgeon's Certificate No.
13 A 89368 to disciplinary action under sections 2227 and 2234, as defined by section 2236, of the
14 Code, and California Code of Regulations, title 16, section 1360, in that he has been convicted of
15 an offense substantially related to the qualifications, functions, or duties of a physician and
16 surgeon, as more particularly alleged in paragraphs 10 through 16, above, which are hereby
17 incorporated by reference and realleged as if fully set forth herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Gross Negligence)**

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

24 19. On or about February 3, 2017, Patient A presented to Respondent for psychiatric
25 treatment. At this visit, Patient A brought his wife, Patient B, to his session for therapy, but
26 Patient B specifically informed Respondent that she did not want to be a patient. Respondent

27 _____
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 spent a total of approximately two to ten minutes speaking with Patient B, during which time
2 Patient B stated that her husband was “yelling at me in front of the kids, says bad words, he spit
3 on me on my face twice...I don’t see any respect in front of the kids. He interrupts me. I don’t
4 feel like I have a voice and feel controlled. I feel offended.” Respondent did not conduct a
5 diagnostic evaluation or psychometric testing of Patient B at any time, and had no further
6 interaction with Patient B after that visit.

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

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

14 22. On or about December 1, 2017, Respondent voluntarily wrote a letter to the court on
15 Patient A’s behalf. This letter was written on his medical group’s letterhead, Respondent
16 identified himself as an adult psychiatrist, and included his California Medical License number.
17 Respondent did not obtain authorization from Patient B prior to writing this letter. In this letter,
18 Respondent stated, in part, the following:

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

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

23. On or about May 11, 2021, Respondent participated in an interview with an
investigator for the Board. During this interview, Respondent denied he had formally diagnosed

1 Patient B but only provided a “strong impression.” Respondent admitted that all of the
2 information he knew about Patient B was obtained from his brief encounter with her on February
3 3, 2017, and from information provided by Patient A during their sessions. Respondent further
4 stated that one of the reasons he wrote the letter was to “balance the playing field,” for Patient A.

5 24. Respondent committed gross negligence, which included, but was not limited to, the
6 following:

7 (A) Communicating a “strong impression” regarding the diagnosis of Patient B,
8 a person who was never under his psychiatric care whom Respondent never diagnostically
9 evaluated, and who never provided authorization for the release of her information;

10 (B) Communicating a “strong impression” of a diagnosis of Patient B of borderline
11 personality disorder without regard for the criteria for the disorder; and

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

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Repeated Negligent Acts)**

16 25. 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 2234,
18 subdivision (c), of the Code, in that he committed repeated negligent acts in his care and
19 treatment of Patient A, as more particularly alleged in paragraphs 18 through 24(C), above, which
20 are hereby incorporated by reference and realleged as if fully set forth herein.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(General Unprofessional Conduct)**

23 26. Respondent has further subjected his Physician’s and Surgeon’s Certificate No.
24 A 89368 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged
25 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is
26 unbecoming to a member in good standing of the medical profession, and which demonstrates an
27 unfitness to practice medicine, as more particularly alleged in paragraphs 10 through 25, above,
28 which are hereby incorporated by reference and realleged as if fully set forth herein.

1 **DISCIPLINARY CONSIDERATIONS**

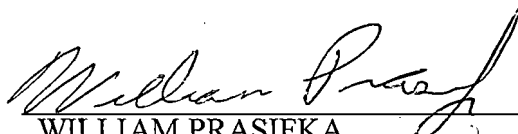
2 27. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about February 1, 2013, in a prior disciplinary action entitled, *In*
4 *the Matter of the Accusation Against Nathan B. Kuemmerle M.D.*, Case No. 17-2009-197899,
5 before the Medical Board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

12 **PRAYER**

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

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

22
23 DATED: **AUG 25 2021**

24 
25 WILLIAM PRASIFKA
26 Executive Director
27 Medical Board of California
28 Department of Consumer Affairs
State of California
Complainant

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