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

12 In the Matter of the Accusation Against:

Case No. 800-2021-076670

13 **JOHN NATHANIEL ALVAREZ, M.D.**
14 **401 East Imperial Highway**
Fullerton, CA 92835-1145

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. A 155288,**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about April 9, 2018, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 155288 to John Nathaniel Alvarez, M.D. (Respondent). The Physician's
25 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2023, 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:

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 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
22 medical review or advisory conferences, professional competency examinations,
23 continuing education activities, and cost reimbursement associated therewith that are
24 agreed to with the board and successfully completed by the licensee, or other matters
25 made confidential or privileged by existing law, is deemed public, and shall be made
26 available to the public by the board pursuant to Section 803.1.

27 **STATUTORY PROVISIONS**

28 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 (1) An initial negligent diagnosis followed by an act or omission medically
2 appropriate for that negligent diagnosis of the patient shall constitute a single
3 negligent act.

4 (2) When the standard of care requires a change in the diagnosis, act, or
5 omission that constitutes the negligent act described in paragraph (1), including, but
6 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
7 licensee's conduct departs from the applicable standard of care, each departure
8 constitutes a separate and distinct breach of the standard of care.

9 (d) Incompetence.

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

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

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

17 6. Section 2236 of the Code states:

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

23 (b) The district attorney, city attorney, or other prosecuting agency shall notify
24 the Medical Board of the pendency of an action against a licensee charging a felony
25 or misdemeanor immediately upon obtaining information that the defendant is a
26 licensee. The notice shall identify the licensee and describe the crimes charged and
27 the facts alleged. The prosecuting agency shall also notify the clerk of the court in
28 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 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any
controlled substance; or the use of any of the dangerous drugs specified in Section
4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous

1 or injurious to the licensee, or to any other person or to the public, or to the extent that
2 such use impairs the ability of the licensee to practice medicine safely or more than
3 one misdemeanor or any felony involving the use, consumption, or
4 self-administration of any of the substances referred to in this section, or any
5 combination thereof, constitutes unprofessional conduct. The record of the
6 conviction is conclusive evidence of such unprofessional conduct.

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

17 8. Section 490 of the Code states:

18 (a) In addition to any other action that a board is permitted to take against a
19 licensee, a board may suspend or revoke a license on the ground that the licensee has
20 been convicted of a crime, if the crime is substantially related to the qualifications,
21 functions, or duties of the business or profession for which the license was issued.

22 (b) Notwithstanding any other provision of law, a board may exercise any
23 authority to discipline a licensee for conviction of a crime that is independent of the
24 authority granted under subdivision (a) only if the crime is substantially related to the
25 qualifications, functions, or duties of the business or profession for which the
26 licensee's license was issued.

27 (c) A conviction within the meaning of this section means a plea or verdict of
28 guilty or a conviction following a plea of nolo contendere. Any action that a board is
permitted to take following the establishment of a conviction may be taken when the
time for appeal has elapsed, or the judgment of conviction has been affirmed on
appeal, or when an order granting probation is made suspending the imposition of
sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section
has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
(2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
number of statutes and regulations in question, resulting in potential harm to the
consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

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1 9. Section 493 of the Code states:

2 (a) Notwithstanding any other law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or
4 revoke a license or otherwise take disciplinary action against a person who holds a
5 license, upon the ground that the applicant or the licensee has been convicted of a
6 crime substantially related to the qualifications, functions, and duties of the licensee
7 in question, the record of conviction of the crime shall be conclusive evidence of the
8 fact that the conviction occurred, but only of that fact.

9 (b) (1) Criteria for determining whether a crime is substantially related to the
10 qualifications, functions, or duties of the business or profession the board regulates
11 shall include all of the following:

12 (A) The nature and gravity of the offense.

13 (B) The number of years elapsed since the date of the offense.

14 (C) The nature and duties of the profession.

15 (2) A board shall not categorically bar an applicant based solely on the type of
16 conviction without considering evidence of rehabilitation.

17 (c) As used in this section, "license" includes "certificate," "permit,"
18 "authority," and "registration."

19 (d) This section does not in any way modify or otherwise affect the existing
20 authority of the following entities in regard to licensure:

21 (1) The State Athletic Commission.

22 (2) The Bureau for Private Postsecondary Education.

23 (3) The California Horse Racing Board.

24 (e) This section shall become operative on July 1, 2020.

25 **REGULATORY PROVISIONS**

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

27 For the purposes of denial, suspension or revocation of a license, certificate or
28 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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1 COST RECOVERY

2 11. Section 125.3 of the Code states:

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

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

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

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

24 (e) If an order for recovery of costs is made and timely payment is not made as
25 directed in the board's decision, the board may enforce the order for repayment in any
26 appropriate court. This right of enforcement shall be in addition to any other rights
27 the board may have as to any licensee to pay costs.

28 (f) In any action for recovery of costs, proof of the board's decision shall be
conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or
reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion,
conditionally renew or reinstate for a maximum of one year the license of any
licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid
costs.

(h) All costs recovered under this section shall be considered a reimbursement
for costs incurred and shall be deposited in the fund of the board recovering the costs
to be available upon appropriation by the Legislature.

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

(j) This section does not apply to any board if a specific statutory provision in

1 that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.

2 **FACTUAL ALLEGATIONS**

3 12. On or about March 28, 2021, officers with the San Luis Obispo Police Department
4 observed a vehicle driving the wrong way on a one-way street, at a high rate of speed. Officers
5 also observed the vehicle run through stop signs. Officers began pursuing the vehicle but soon
6 lost sight of the vehicle. The vehicle was eventually located parked.

7 13. Officers approached the vehicle and found two passengers inside, but the driver's seat
8 was empty. The passengers indicated that the driver, later identified as Respondent, parked the
9 car and fled on foot. Soon thereafter, Respondent returned to the scene and indicated that he was
10 the driver of the vehicle. Respondent denied drinking any alcohol before, during, or after driving.
11 Officers detected of the odor of alcohol emitting from Respondent's person and noticed that
12 Respondent's eyes were watery and unfocused, his speech was slurred, and his gait was unsteady
13 as he walked.

14 14. Officers administered a series of Field Sobriety Tests (FSTs), to which Respondent
15 performed poorly and failed to follow instructions. Officers attempted to retrieve Respondent's
16 blood alcohol concentration, by using a Preliminary Alcohol Screen device, but Respondent
17 avoided blowing into the machine and stated that he did not want to provide a sample.

18 15. Respondent was placed under arrest and a non-consensual blood draw warrant was
19 obtained. Respondent was transported to French Hospital for the blood draw. Respondent
20 continually pulled away from the staff trying to draw his blood. Officers admonished
21 Respondent's behavior, but he repeatedly pulled the needle out of his arm and hand, flailed his
22 arms, and yelled. The hospital staff tried three times to obtain Respondent's blood but was
23 unable to do so.

24 16. Respondent was transported to the jail, where he began crying and made threats
25 against himself. Officers placed Respondent in a padded safety cell.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 22. Respondent John Nathaniel Alvarez, M.D. is subject to disciplinary action under
4 Code section 2234 in that he engaged in unprofessional conduct. The circumstances are as
5 follows:

6 23. The allegations in the First and Second Causes for Discipline are incorporated herein.
7 by reference as if fully set forth.

8 **PRAYER**

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

- 11 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 155288,
12 issued to Respondent John Nathaniel Alvarez, M.D.;
- 13 2. Revoking, suspending or denying approval of Respondent John Nathaniel Alvarez,
14 M.D.'s authority to supervise physician assistants and advanced practice nurses;
- 15 3. Ordering Respondent John Nathaniel Alvarez, M.D., to pay the Board the costs of the
16 investigation and enforcement of this case, and if placed on probation, the costs of probation
17 monitoring; and
- 18 4. Taking such other and further action as deemed necessary and proper.

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20 DATED: MAR 03 2023

21 
22 REJI VARGHESE
23 Interim Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant

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