

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 VERONICA VO
Deputy Attorney General
4 State Bar No. 230698
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7508
Facsimile: (916) 327-2247
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8 *Attorneys for Complainant*

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

In the Matter of the First Amended Accusation
Against:

**Sharmistha Barai, M.D.
3805 Shoreview Dr.
Kissimmee, FL 34744-0003**

**Physician's and Surgeon's Certificate
No. A 135050,**

Respondent.

Case No. 800-2016-028702

FIRST AMENDED ACCUSATION

20 Complainant alleges:

PARTIES

- 22 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
23 official capacity as the Executive Director of the Medical Board of California, Department of
24 Consumer Affairs (Board).
- 25 2. On or about March 12, 2015, the Medical Board issued Physician's and Surgeon's
26 Certificate No. A 135050 to Sharmistha Barai, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and expired on April 30, 2020.

JURISDICTION

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

4. Section 2227 of the Code states:

(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.

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

5. Section 2234 of the Code, states:

The board shall take action against any licensee who is charged with unprofessional conduct.¹ 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.

¹ Unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules of ethical codes of the medical profession, or conduct which is unbecoming to 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.)

1 (c) Repeated negligent acts. To be repeated, there must be two or more
2 negligent acts or omissions. An initial negligent act or omission followed by a
3 separate and distinct departure from the applicable standard of care shall constitute
4 repeated negligent acts.

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

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

13 (d) Incompetence.

14 (e) The commission of any act involving dishonesty or corruption which is
15 substantially related to the qualifications, functions, or duties of a physician and
16 surgeon.

17 (f) Any action or conduct which would have warranted the denial of a
18 certificate.

19 (g) The practice of medicine from this state into another state or country
20 without meeting the legal requirements of that state or country for the practice of
21 medicine. Section 2314 shall not apply to this subdivision. This subdivision shall
22 become operative upon the implementation of the proposed registration program
23 described in Section 2052.5.

24 (h) The repeated failure by a certificate holder, in the absence of good cause, to
25 attend and participate in an interview by the board. This subdivision shall only apply
26 to a certificate holder who is the subject of an investigation by the board.

27 6. Section 2236 of the Code states:

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

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

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

1 duties of a physician and surgeon.

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

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Conviction of a Crime)**

8 7. Respondent has subjected her Physician's and Surgeon's Certificate No. A 135050 to
9 disciplinary action under Business and Professions Code (Code) sections 2227 and 2234, as
10 defined by section 2236, of the Code, in that Respondent was convicted of a crime substantially
11 related to the qualifications, functions, or duties of a physician and surgeon. The circumstances
12 are as follows:

13 8. Between on or about February 21, 2014, and continuing through on or about October
14 3, 2016, Respondent did knowingly conspire and agree to provide and obtain the labor and
15 services of persons by means of threat or force.

16 9. Respondent used Internet websites and other advertising media to seek out foreign
17 domestic laborers. Through those advertisements, Respondent made materially false
18 representations and omissions regarding the amount of compensation and the conditions of
19 employment including, but not limited to, the hours of employment, the duties of employment,
20 and the conditions under which these duties would be performed.

21 10. In total, three foreign workers responded to the advertisements.

22 11. Once workers arrived at the Respondent's residence, the Respondent imposed a work
23 schedule consisting of approximately 18 hours a day with limited rest and nourishment. Workers
24 were required to help with childcare, cooking and household chores.

25 12. Respondent obtained labor and services from the workers without the payment of
26 wages and with the use of threat or force such that it caused the workers to believe that if they did
27 not perform as ordered, they would suffer serious harm and physical restraint. Instances of such
28 physical harm and threats included Respondent physically striking a worker and preventing
another worker from leaving the home by threatening to call the police.

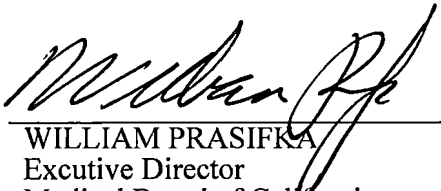
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PRAYER

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 135050, issued to Sharmistha Barai, M.D.;
2. Revoking, suspending or denying approval of Sharmistha Barai, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Sharmistha Barai, M.D., 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 12 2021



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

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