

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
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  
7

8 *Attorneys for Complainant*

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

13 In the Matter of the Automatic Suspension  
Order Against:

Case No. 800-2016-028702

14 **Sharmistha Barai, M.D.**  
15 **3805 Shoreview Dr.**  
16 **Kissimmee, FL 34744-0003**

**ACCUSATION**

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

Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity  
23 as the Deputy Director of the Medical Board of California, Department of Consumer Affairs  
24 (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 will expire on April 30, 2020, unless renewed.

**JURISDICTION**

1  
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  
into a stipulation for disciplinary action with the board, may, in accordance with the  
provisions of this chapter:

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

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

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

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

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

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

25           5.     Section 2234 of the Code, states:

26                   The board shall take action against any licensee who is charged with  
27 unprofessional conduct.<sup>1</sup> In addition to other provisions of this article, unprofessional  
28 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.

---

<sup>1</sup> 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  
separate and distinct departure from the applicable standard of care shall constitute  
repeated negligent acts.

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

5 (2) When the standard of care requires a change in the diagnosis, act, or  
6 omission that constitutes the negligent act described in paragraph (1), including, but  
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  
constitutes a separate and distinct breach of the standard of care.

8 (d) Incompetence.

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

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

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

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

18 6. Section 2236 of the Code states:

19 (a) The conviction of any offense substantially related to the qualifications,  
20 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  
21 of conviction shall be conclusive evidence only of the fact that the conviction  
occurred.

22 (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  
23 or misdemeanor immediately upon obtaining information that the defendant is a  
licensee. The notice shall identify the licensee and describe the crimes charged and  
24 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  
25 prominently in the file that the defendant holds a license as a physician and surgeon.

26 (c) The clerk of the court in which a licensee is convicted of a crime shall,  
27 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  
28 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.

1           13. On March 14, 2019, in the case entitled *United States of America v. Sharmistha*  
2 *Barai*, criminal case number 2:16-cr-00217-MCE, in the United States District Court, Eastern  
3 District of California, Respondent, upon jury verdict, was convicted of violations of 18 United  
4 States Code section 1594, subdivision (b), Conspiracy to Commit Forced Labor, and two counts  
5 of 18 United States Code section 1589, subdivision (a), Forced Labor.

6           14. Respondent is scheduled for sentencing on January 30, 2020.

7  
8  
9

**SECOND CAUSE FOR DISCIPLINE**

**(General Unprofessional Conduct)**

10           15. Respondent has further subjected her Physician's and Surgeon's Certificate No.  
11 A 135050 to disciplinary action under sections 2227 and 2234 of the Code, in that she has  
12 engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct  
13 which is unbecoming to a member in good standing of the medical profession, and which  
14 demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 7  
15 through 14 above, which is hereby incorporated by reference and realleged as if fully set forth  
16 herein.

17 ///  
18 ///  
19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

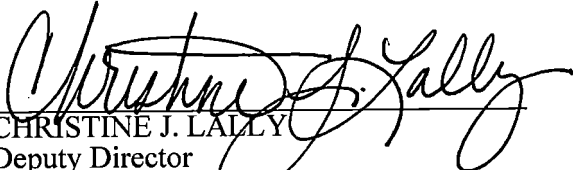
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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: November 5, 2019

  
CHRISTINE J. LALLY  
Deputy Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

SA2019104809  
14097103.docx