

JURISDICTION

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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 unless otherwise indicated.

4 4. Section 2227 of the Code states:

5 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
6 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
7 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
8 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 year upon
11 order of the board.

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

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

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

24 5. Section 2234 of the Code, states:

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

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

3 “(b) Gross negligence.

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

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

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

14 “(d) Incompetence.

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

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

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

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

25 6. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
26 adequate and accurate records relating to the provision of services to their patients constitutes
27 unprofessional conduct.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 7. Respondent Robert William Sears, M.D. is subject to disciplinary action under
4 section 2234 (c), in that he was negligent in his treatment of two minor patients. In the case of
5 each patient, he issued a vaccination exemption letter without an appropriate medical basis. The
6 circumstances are as follows:

7 **Patient One**

8 8. Patient One, a then seven-year-old child, was seen by Respondent on one occasion,
9 on May 4, 2016. Patient One was accompanied by his mother. He was seen for a chief complaint
10 of vaccine exemption. His past medical history documented psoriasis and no prior vaccines. No
11 other past medical history was documented. His family history included autoimmune disorders,
12 lupus, psoriasis (in Dad), inflammatory bowel disease, irritable bowel syndrome (in Dad), gluten
13 sensitivity severe in Mom and Aunt, suspect CD in aunt, neurodevelopmental disorders,
14 ADD/ADHD (in Dad), psychiatric disorders, schizophrenia (Dad), bipolar, and depression. No
15 social history was documented. His examination documented, “psoriatic plaques on scalp, back
16 of neck and ears.” The rest of the exam is documented as normal. The assessment was that the
17 patient qualified for medical exemption from vaccines for family history of autoimmune disorders
18 (Dad and others), inflammatory bowel disease (Dad), neurodevelopmental disorders (Dad),
19 psychiatric disorders (Dad), and child’s own autoimmune disorder. He was diagnosed with viral
20 infection, unspecified and feeding difficulties.

21 9. On the same date a medical exemption letter was generated for Patient One,
22 exempting him from all vaccines for the rest of his childhood, through July 1, 2025.

23 10. An entry in the medical record maintained by Respondent for Patient One, and dated
24 January 25, 2017, stated that a phone conversation was had with the patient’s mom regarding the
25 medical exemption letter. The mom advised Respondent that the patient’s father retracted his
26 consent regarding the medical exemption letter. Respondent reminded the mother that consent is
27 required from both custodial parents. Respondent advised that the previously issued vaccine
28 exemption letter was no longer valid. In order for a new valid exemption letter to be issued for

1 Patient One both custodial parents would need to appear and consent and the patient's past
2 medical records were required.

3 11. Patient One's medical records contain an amended copy of the medical exemption
4 letter dated May 4, 2017, stating the original exemption letter is no longer valid and should be
5 disregarded due to a change in family circumstances and consent.

6 12. Giving a childhood long medical vaccine exemption letter to Patient One, based on a
7 diagnosis of psoriasis, without immunosuppressive medication, is a simple departure from the
8 standard of care. The diagnosis and the patient's family history are not a known contraindication
9 or precaution to routine childhood vaccination.

10 Patient Two

11 13. Patient Two, who is the sister of Patient One, was seen by Respondent on one
12 occasion, on May 4, 2016. Patient Two was also accompanied to her visit by her mother. She
13 was seen for a chief complaint of "vaccine exemption appt." Her past medical history is only
14 documented as significant for bee sting allergy. Her family history is identical to that of Patient
15 One. It included autoimmune disorders, lupus, psoriasis (Dad), inflammatory bowel disease,
16 irritable bowel syndrome (Dad), gluten sensitivity severe in Mom and Aunt, suspect CD in aunt,
17 neurodevelopmental disorders, ADD/ADHD (Dad), psychiatric disorders, schizophrenia (Dad),
18 bipolar, and depression. No social history was documented. Her examination was normal.
19 weight and height were documented, but no vital signs were documented. She was diagnosed
20 with viral infection, unspecified and feeding difficulties. The assessment discussed that Patient
21 Two qualified for a medical exemption from vaccines based on review of her past medical
22 history, family history, and current state of health.

23 14. On the same date a medical exemption letter was generated for Patient Two,
24 exempting her from all vaccines for the rest of her childhood.

25 15. An entry in the medical record maintained by Respondent for Patient Two, and dated
26 January 25, 2017, stated that a phone conversation was had with the patient's mom regarding the
27 medical exemption letter. The mom advised that the patient's father retracted his consent
28 regarding the medical exemption letter. Respondent reminded the mother that consent is required

1 from both custodial parents. Respondent advised that the previously issued vaccine exemption
2 letter was no longer valid. In order for a new valid exemption letter to be issued for Patient Two
3 both custodial parents would need to appear and provide consent and the patient's past medical
4 records were required.

5 16. Patient Two's medical records contain an amended copy of the medical exemption
6 letter dated May 4, 2017, stating the original exemption letter is no longer valid and should be
7 disregarded due to a change in family circumstances and consent.

8 17. Giving a childhood long medical vaccine exemption letter to Patient Two, based on
9 the identified family history alone is a simple departure from the standard of care.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Maintain Adequate Records)**

12 18. Respondent is subject to disciplinary action under Code section 2266 in that he failed
13 to maintain adequate medical records in the case of Patients One and Two.

14 19. Respondent failed to obtain and document an appropriate and accurate past medical
15 history, physical exam and family/social history for these patients.

16 **DISCIPLINARY CONSIDERATIONS**

17 20. To determine the degree of discipline, if any, to be imposed on Respondent Robert
18 William Sears, M.D., Complainant alleges that on or about July 27, 2018, in a prior disciplinary
19 action entitled *In the Matter of the Accusation Against Robert William Sears, M.D.*, before the
20 Medical Board of California, in Case Number 800-2015-012268, Respondent's license was
21 disciplined. Respondent's license is currently subject to a 35-month probation, and he is required
22 to complete education course(s), a professionalism program and have a practice monitor.
23 Discipline was imposed in the prior case for Respondent's failure to obtain necessary information
24 regarding a patient, prior to issuing a childhood vaccination exemption letter. That decision is
25 now final and is incorporated by reference as if fully set forth herein.


26 **PRAYER**

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

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1. Revoking or suspending Physician's and Surgeon's Certificate Number A 60936, issued to Robert William Sears, M.D.;
2. Revoking, suspending or denying approval of Robert William Sears, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Robert William Sears, 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:
June 18, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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